

Pattern of the Tribal Administration System*

Sultan-i-Rome

Peace and progress on the Frontier were of little concern to the men who ruled India. Security was the all-important objective.

D.G. Tendulkar

Very little is known about tribal areas adjoining North-West Frontier Province of former British India and now Pakistan and its way of life, especially in the outside world, particularly about its mores and goods, people and their way of life, beliefs and ideals, and the way in which the administrative apparatus operates and works. For judicious and proper understanding and comprehension of the pattern of the tribal administration system a thorough knowledge of its historical background, constitutional and legal status and position, and the all-embracing facets of the tribal society and the people is essential.

Being part, though loosely held, of the then Sikh kingdom of Punjab, the settled areas of the present day North-West Frontier Province were annexed by the English East India Company to her Indian domain by the proclamation of 29 March 1849 – issued by the governor-general, Lord Dalhousie – at the defeat of the Sikhs in the Second Anglo-Sikh War (1848-49). The area was made part of the Punjab province and administered on the same lines as other parts of the province. But certain laws and administrative tools of different kinds were introduced and adopted, later on, which continued in force even after the separation of these areas from the Punjab in 1901 and after the formation of a separate province with the name of the North-West Frontier Province.

The tribal areas which, on the whole, 'are stretches of inhospitable stony hills, the home of fiercely independent tribesmen who bow to no man, not even their own elders; magnificent fighting men who on their home ground are a match for any army in the world'¹, remained

* This article will form a chapter of the author's book on the history of the North-West Frontier Province.

outside the domain, pale and control of the colonial government. The northwestern boundary of the new Punjab 'province was drawn along the foothills as far as the line where the Sikhs, and probably Durrani and Mogul [Mughal] before them, had claimed conquest and revenue.' 'No attempt was made to advance into the highlands, or even secure the main passage through the mountains such as the Khaibar Pass. As in the Peshawar valley, so in Bannu and the Derajat, the line of administration stopped like a tide almost at the first contour of rough country. Beyond that lay Yaghistan – the land of the rebels.'²

Being on the border of the Punjab province or British administered area, the unruly and independent tribal areas remained source of troubles for the colonial government due to the constant raids from here over the British administered and controlled areas. Therefore, initially main concern of the British frontier 'policy was to ensure law and order in the bordering districts,' which they sought to achieve by 'securing 'pacification and contentment' of the Frontier tribes.'³ In view of this anomalous situation special forces, like Punjab Frontier Force and Punjab Border Military Police, were created. The tribal territory, however, still remained independent of British India's government and control. With the passage of time, mainly due to strategic reasons, the colonial government tried to bring these areas under its sphere of influence as a sort of protectorate, though not under direct control and rule.

To meet the above objectives most of the tribal territories were gradually brought under the British sphere of influence and a sort of protectorate was established, one way or the other, from 1879 to 1895 by the means of the Durand Line Agreement, use of force, and agreements with the tribesmen. These areas were divided into five political agencies, each headed by a political agent, to look after the affairs of the areas, to safeguard British interest there, to have a political and military check over the tribes and to communicate and deal with the tribes. The independence and internal affairs of the tribes, however, were not touched, on the whole, and they continued to enjoy their age long

¹ J.G. Elliott, *The Frontier, 1839-1947: The Story of the North-West Frontier of India*, with preface by Olaf Caroe (London: Cassell & Company Ltd, 1968), p. 4.

² *Ibid.*, p.87.

³ *Tribal Areas: Status, Border Control and Policy: Governor's Committee Report*, Government of North-West Frontier Province, Home and Tribal Affairs Department, September-October 1997, p. 55.

independent status. It has aptly been stated in the 'Governor's Committee Report' that:

The administration of tribal areas and formulation of tribal policy had constantly engaged attention of British Empire ever since the border alignment. From 'close door' to 'forward' policy, the British Empire carried out many moves in this direction supported by military expeditions, but kept its options open till finally evolving the policy of 'non-interference' in accordance with the customs and traditions of tribal society and its governance through the tribal hierarchy of chieftains, Maliks and sectional elders by entering into treaties with the tribes. The Crown strengthened its hold through an evolutionary process of making inroads into the tribal society and expanded its area of influence by establishing communication links in closed areas and studded them with posts, picquets and forts at strategic points.⁴

On the other side, the Frontier Regions or the tribal areas that 'remained attached to the adjoining districts ever since' the annexation of the settled districts by the English too, 'enjoyed the status of 'centrally administered' area in respect of which the Home Government at London was always taken into confidence in all policy decisions' owing 'to the sensitivity of lengthy unmanned border with Afghanistan and long history of incursions of foreign as well as local invaders through its passes,' and also because 'it had a direct link with the 'British external policy and defence' of its possessions in the Sub-Continent.'⁵

However, the creation of the political agencies, in 1880s and 1890s, and the appointment of 'political agents responsible only for tribal affairs resulted in a far clearer understanding of the problems involved but by no means ironed out all the conflicting factors that could complicate the conduct of operations after the army had been called in to help.'⁶ And when the separate Frontier Province was created the situation remained unchanged. The tribal areas, states D.G. Tendulkar, still 'constituted a no man's land.' Although 'part of India on the map' it was not so 'in fact.'

Its residents did not owe any direct allegiance to the British Crown.... Beyond the military roads, the tribesmen did what was right in their own eyes.... They were not to be treated as British subjects but British protected persons, independent as long as

⁴ *Ibid.*, p.10.

⁵ *Ibid.*, p.55.

⁶ J.G. Elliott, *op.cit.*, p.93.

they remained passive but subject to 'protection' as soon as they became active.⁷

The tribal areas, though little known to the outside world, were and still are 'a focal point in international strategy.' The British attitude towards this area was completely different, looking upon it primarily as strategic area, to be controlled 'for the defence of their empire in India.'⁸ The British policy and attitude somewhat changed in the course of time. Nevertheless, 'because of their global strategy,' they 'could never tackle the problem of tribal control by isolating it.' However, 'the immediate requirements of the local situation often made the frontier problem more complex.' Therefore, 'expedition after expedition was necessary to show each tribe, in turn, the strength of the British Government and the folly of resisting it by force of arms.' But at the same time 'no effort was spared to encourage friendly feelings and to show the tribesmen that all the British Government, insisted upon was peace on the border.'⁹ The British practised the 'policy of pacification and contentment' till the end of their rule.¹⁰

The British followed the policy of 'indirectly governing the tribal area,' entailing noninterference in the internal affairs of the tribes and allowing them self rule or governance in conformity with their customary law or *riwaj*. They, however, ensured protection of their own interest through treaties concluded with the tribes making them responsible under the rule of tribal and territorial responsibility. Although not fool proof, and least interested in the development of the tribal areas due to their own reasons, the system devised by the British was economical and effective to a greater extent.¹¹

The Pakistan government too followed the British policy and the status quo continued, to a greater extent, till the end of 1960s. The Pakistan government, however, changed its policy in the 1970s and initiated 'a deliberate policy of development' so as to achieve the integration of the tribal areas 'through development in communication infrastructure, and other social sectors like education, health etc.' and

⁷ D.G. Tendulkar, *Abdul Ghaffar Khan: Faith is a Battle* (Bombay: Popular Prakashan, 1967), p. 3.

⁸ Izzat Awan, *Pattern of Administration in the Tribal Areas of Pakistan* (Peshawar: Provincial Civil Services Academy, November 1972), pp. 7-8.

⁹ *Ibid.*, p. 14.

¹⁰ *Tribal Areas: Status, Border Control and Policy: Governor's Committee Report, op.cit.*, p. 56.

¹¹ *Ibid.*, p.11.

‘increase in concessions in border trade’ (now called smuggling). The concessions given under this policy were:

Alluring tribesmen to develop business stakes in administered areas of FATA [Federally Administered Tribal Areas] and settled districts; ii. Reservation of quotas in services and educational institutions with emphasis on professional education; iii. Scholarships and stipends to tribal students; iv. Imparting technical education in various trades for availing labour opportunities in Pakistan and abroad; v. Recruitment in Civil Armed Forces on the basis of tribal identity and assigning platoon strengths to various tribes; vi. Supply of electricity at subsidized fixed rates; vii. Telephone and telegraph network; and viii. Non-extension of any corporate or tax-based laws.¹²

The results of the above mentioned ‘policy of peaceful penetration and integration’ were claimed, by the Governor’s Committee in its report, as ‘highly successful.’¹³

British showed no main primary concern for educational, economic and social development of the tribal areas, terming it ‘unnecessary interference’ which was to be avoided; and the other steps adopted by them did not remedy the situation properly. Pakistan inherited the problem as the tribesmen joined Pakistan by making treaties after the departure of the British. To remedy the situation, the Pakistan government withdrew the army. The local khasadars were made fully responsible for civil administration and the scouts and militia, recruited from amongst the tribesmen, performed the duty of the army. Though not real and adequate, some sort of socio-economic programmes were started. Schools and colleges were opened and the tribal students given special privileges for admission to professional and technical colleges and universities, and financial assistance was also provided to them. Quotas, for them, were fixed in different government educational institutions and services and trade privileges afforded to them. They were granted representation in the National Assembly and Senate; first with the right of vote to a limited section, Malaks and *lungi* holders, but then through adult franchise and agency councils as well. The agency councils, however, were practically not operational. With the passage of time they have now open opportunities in trade and industry, business and commerce and other spheres of life and the whole country is open to them for these purposes.¹⁴

¹² *Ibid.*, pp. 11-12.

¹³ For the claimed successful results of the policy see *ibid.*, pp.12-13.

¹⁴ Also see Izzat Awan, *op.cit.*, pp. 15-17.

It is worth mentioning that it was in 1944 that ‘the Commander in Chief appointed a committee to review future defence policy on the frontier.’ The committee ‘recommended the withdrawal of the regular army from [the] tribal territory to the administrative border, and the better equipment of the Frontier Corps (or Scouts) on whom in the first instance the main burden of dealing with trouble should in future fall.’¹⁵ The recommendation was implemented after the departure of the British when ‘in September 1947 the Pakistan Government ordered this policy to be put into effect’¹⁶ and hence the regular army was withdrawn from the tribal areas.

Types of tribal areas

During the British time, the tribal areas were administratively divided into two types, i.e. Political Agencies and Frontier Regions (FRs). Although both the types were, on the whole, administered under the same laws, rules and procedures, the Political Agencies were headed by political agents, with their own type of administrative hierarchy—detailed herein after. The Frontier Regions were linked with the neighbouring settled districts for administrative purpose and hence the deputy commissioners of the respective districts were in-charge and headed the administration of the Frontier Regions. However, a Frontier Region, FR Kurram, was linked with the Kurram Agency and hence the political agent of the agency also headed the administration of this Frontier Region. With the departure of the British and the emergence of Pakistan, the same type of the tribal areas and administrative apparatuses continued to function. Besides, at the time of the British departure there were five political agencies—the Agency of Dir, Swat and Chitral (commonly referred to Malakand Agency, which also dealt with the princely states of Chitral, Dir and Swat) (created in 1895), and Khyber Agency (created in 1879), Kurram Agency (created in 1892), North Waziristan Agency (created in 1895) and South Waziristan Agency (created in 1896), from north to south. But with the passage of time the Pakistan government created three more agencies—Mohmand Agency (created in 1951), Bajawar Agency (created in 1973) and Orakzai Agency (created in 1973)—out of the tribal areas. At present the Frontier Regions are FR Peshawar, FR Kohat, FR Kurram, FR Bannu, FR Lakki, FR Tank and FR Dera Ismail Khan, from north to south. The Pakistan government has continued to keep separate constitutional status of both

¹⁵ F.A.K. Harrison, ‘The British Interest in the North West Frontier,’ *Peshawar University Review* (Peshawar), 1:1 (1974-75), p. 55.

¹⁶ *Ibid.*

types of these tribal areas in the constitutional documents since 1947 (detailed below). These tribal areas are now called Federally Administered Tribal Areas (FATA).

Muhammad Anwar Khan has mistaken the Frontier Regions for the Provincially Administered Tribal Areas (PATA) and hence states that:

The provincial administered area [sic] (PATA), also called Frontier Region are tribes and clans contiguous or lying within a district. These regions are four in number and are administered by the deputy commissioner of the district. They are (i) F.R. Peshawar concerned with Mohmand and Afridis (ii) F.R. Kohat dealing with Afridis of Dara Adam Khel (iii) F.R. Bannu governing Bhattani, and Wazir tribes of the district and (iv) F.R. Dera Ismail Khan relating to Bhattani and Sherani tribesmen. In a way the provincial chief minister is concerned with the Frontier Region tribes, while the governor carries responsibility for the tribal belt located on the Durand border.¹⁷

The previously given detail about the Frontier Regions and the forth coming about PATA would clarify the position.

There, however, is now another type of tribal areas called Provincially Administered Tribal Areas (PATA). The jurisdiction of the Agency of Dir, Swat and Chitral was spread over the Malakand Protected Area and the territories of the princely states of Chitral, Dir and the later emerged Swat state. Though the political agent in Malakand—the agency headquarter—had no direct say and role in internal affairs of the princely states and the British only conducted their affairs through him with the rulers, he was head of the administration for the Malakand Protected Area like the political agents of the other agencies. With the departure of the Britons, the arrangement remained as it was as the Pakistan government too conducted affairs with the rulers of the princely states through the political agent in Malakand and he headed administration of the Malakand Protected Area like the political agents of the other agencies.

Although for Swat state same arrangements were kept, the situation in Dir and Chitral states later changed and the political authorities of the agency were given say and role in their internal administration. But then too the separate constitutional status, as ‘special areas’ and ‘tribal areas,’ of all the areas linked with the Agency of Dir, Swat and Chitral was kept intact. All the three states were brought to an

¹⁷ Muhammad Anwar Khan, *The Role of N.W.F.P. in the Freedom Struggle* (Lahore: Research Society of Pakistan, 2000), p.11.

end in 1969 and their areas were made one district each but the special status of their been tribal areas was retained. However, in the Interim Constitution of 1972, a new type of tribal areas called Provincially Administered Tribal Areas (PATA) was created and Article 260 (b) i, which is related to PATA of NWFP, stated them as ‘the districts of Chitral, Dir and Swat (which includes Kalam), Malakand Protected Area, the Tribal Area adjoining Hazara district and the former State of Amb.’¹⁸

In this way the area that formally comprised the Agency of Dir, Swat and Chitral—commonly referred to as Malakand Agency—was taken out of the Centrally or Federally Administered Tribal Areas and to that effect from the direct control of the central or federal government and was made part of the Frontier Province and placed under its provincial government. But then too no law made or act passed by the central and provincial legislatures was automatically applicable to the area as for their extension to the area special procedures were provided under Article 261 clauses 2 to 7. The same status and position was retained under Article 246 and 247 of the Constitution of 1973.¹⁹ However, being part of the province, unlike FATA which has only representation in the National Assembly and Senate, PATA has representation in the provincial legislature as well.

Although special procedures are provided for extension of any law to PATA, under Article 247 of the Constitution of 1973, and different sets of laws have been given to the people from time to time, since then, in judicial respect, the pattern and apparatus of the administration in PATA are the same as in the settled districts of the province, save the Malakand Protected Area. Though the Malakand Protected Area (commonly called Malakand Agency) is part of PATA and hence of the province and therefore has representation in the provincial legislature, the pattern of administration remains unchanged due to which political agent head the area, instead of deputy commissioner (now district coordination officer).

The pattern and apparatus of the tribal administration system dealt herewith is of the tribal areas called FATA and from PATA Malakand Protected Area (Malakand Agency) falls in this category. The

¹⁸ See ‘The Interim Constitution of the Islamic Republic of Pakistan, [1972]’ in *The All Pakistan Legal Decisions* [henceforward *PLD*], Vol. 24 (1972), Central Statutes, pp. 579-80.

¹⁹ See Muhammad Munir, *Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan, 1973*, ed. Mian Bashir Ahmad, Vol. 2, [Art. 185 – Subject Index] (Lahore: P.L.D. Publishers, n.d.), pp. 1359-62.

administration system of the rest of the PATA areas is the same as that of the other settled areas or districts with some exceptions in judicial aspect.

Constitutional status

In the Government of India Act 1935, 'tribal area' has been defined as 'the areas along the Frontier of India or in Baluchistan which are not part of British India or of Burma or of any Indian State or of any Foreign States.'²⁰ The British did not make the tribal areas, situated on the North-West Frontier, part of British India as they made the Indian territories because the control and jurisdiction of the British empire in the tribal areas 'was not acquired through conquest or cessation but through treaty rights or capitulation or grant of usage or sufferance etc.'²¹ The Britons concluded treaties with the tribes and, therefore, granted to and maintained the special constitutional status of the North-West Frontier tribal areas till the end of their rule.²²

As the tribal areas were not part of any of the provinces of which Pakistan was coming into being, these were not included in the dominion of Pakistan under the Indian Independence Act, 1947. It, however, was left open for Pakistan 'to enter into such arrangements with the Tribal Areas' as they had with the departing British power, which were going to lapse on and from 15 August 1947.²³ Therefore, Muhammad Ali Jinnah, governor-general of Pakistan, assured, both in the pre and post partition days, the tribesmen of maintaining the treaties they concluded with the British and also of their special status in case of their accession to Pakistan. Consequently, the tribesmen acceded to Pakistan and both the sides rectified the terms of the treaties previously concluded between the tribes and the British.²⁴

Therefore, in the subsequent constitutional documents and developments in the country, the special status of the tribal areas that existed under the Government of India Act 1935 was retained. A change, however, was brought that these areas were made 'integral part of the dominion of Pakistan,' with effect from 15 August 1947, 'by means of retrospective legislation': by a notification of the governor-general of Pakistan issued on 27 June 1950.²⁵ The 'Establishment of West Pakistan

²⁰ *PLD*, Vol. 59 (2007), Peshawar, pp. 45-6.

²¹ *Ibid.*, p. 49. Also see p. 46.

²² Also see *ibid.*, pp. 45-9.

²³ *Ibid.*, p. 49.

²⁴ Also see *Tribal Areas: Status, Border Control and Policy: Governor's Committee Report*, p. 11, 15, 60.

²⁵ *PLD*, Vol. 59 (2007), Peshawar, pp. 50-51.

Act, 1955' although incorporated the tribal areas in the province of West Pakistan, their special status was retained by making them part of the 'specified territories' under Article 2 (1) iv. Article 2 (3) envisaged that 'nothing in this Act shall authorise any change in the internal administration of the Tribal Areas of Baluchistan and the North-West Frontier or the States of Amb, Chitral, Dir and Swat (herein after referred to as the 'special areas') except in accordance with this subsection and the following provisions shall apply to the special areas.' Subsection (a) to (c), of Article 2 section 3, has dealt with the procedures through which any law was to be extended or regulation made for the 'specified territories' and directions given by the governor-general to the governor regarding tribal areas. However, subsection (d), of Article 2 section 3, has authorised the governor-general to change the special status of the tribal areas 'provided that before making such an order the Governor-General shall ascertain, in such manner as he considers appropriate, the views of the people of the special area or areas concerned.'²⁶

The special status of the tribal areas and the princely states was retained also under the Constitution of 1956. Article 104, sections (1) to (3), of the constitution has dealt with the procedures through which any law was to be extended or regulation made for the 'Special Areas' and directions given to the governor by the president. Section (4) of the same Article 104 authorise the president, but conditionally, to change the special status of the 'Special Areas' or part thereof by stating that:

The President may, at any time, by order, direct that the whole or any part of a Special Area shall cease to be Special Area, and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper: Provided that before making any Order under this clause, the President shall ascertain, in such manner as he considers appropriate, the views of the people of the area concerned.²⁷

In the Constitution of 1962, the tribal areas of the North-West Frontier, as they were on 13 October 1955, and the states of Amb, Chitral, Dir and Swat, along with the tribal areas of Balochistan and Punjab, were defined as 'Tribal Areas,' under Article 223. Section (1) and (2) of Article 223 has dealt with the procedures through which any law can be extended or regulation made for the 'Tribal Areas'. Section

²⁶ See 'Establishment of West Pakistan Act', [1955], in *PLD*, Vol. 7 (1955), Central Acts and Notifications, pp. 273-74. Also see *PLD*, Vol. 59 (2007), Peshawar, p. 51.

²⁷ See 'Constitution of the Islamic Republic of Pakistan, 1956,' in *PLD*, Vol. 8 (1956), Central Acts and Notifications, pp. 88-9, 120-21.

(3) of Article 223 has given the president the same powers as were given in section 4 of Article 104 of the Constitution of 1956, reproduced above, in respect of the 'Tribal Areas' but with restrictions. However, section (4), of the same article, has added that 'this Article shall not be construed as limiting in any way the executive authority of the Republic or a Province in relation to a Tribal Area.'²⁸

As stated earlier, the tribal areas were divided, into two types—Provincially Administered Tribal Areas (PATA) and Centrally Administered Tribal Areas—under Article 260 of the Interim Constitution of 1972. The 'districts of Chitral, Dir and Swat (which includes Kalam), Malakand Protected Area, the tribal area adjoining Hazara district and the former State of Amb' of the Frontier Province were made PATA and the rest of the tribal areas of the province—the political agencies and Frontier Regions—were made Centrally Administered Tribal Areas. In Article 261 sections (1) to (5), the procedures required to be adopted for the extension of the laws made and acts passed by the central and provincial legislatures, making regulations and status of the directions of the president to the governor related to the tribal areas have been given. And section (6), of Article 261, has granted the president the same power as was previously given in section 4 of Article 104 of the Constitution of 1956 and section (3) of Article 223 of the Constitution of 1962, but with the difference that the president shall ascertain the views of the people of the area concerned, for doing away with its tribal status, 'as represented in jirga.' The full text of Article 261 section (6) run thus:

The President may at any time by Order, direct that the whole or any part of a Tribal Area shall cease to be a Tribal Area, and such Order may contain such incidental and consequential provisions as appear to the President to be necessary and proper: Provided that before making any Order under this clause, the President shall ascertain, in such manner as he considers appropriate, the views of the people of the area concerned, as represented in jirga.²⁹

All the aforesaid—envisaged in articles 260 and 261 of the Interim Constitution of 1972—has also been retained under Articles 246 and 247 of the Constitution of 1973, with the difference that the

²⁸ See 'Constitution of the Republic of Pakistan, 1962,' in *PLD*, Vol. 14 (1962), Central Statutes, pp. 206, 215.

²⁹ See 'The Interim Constitution of the Islamic Republic of Pakistan, [1972]' in *PLD*, Vol. 24 (1972), Central Statutes, pp. 579-80.

‘Centrally Administered Tribal Areas’ has been replaced with ‘Federally Administered Tribal Areas’.³⁰

The special status, thus given to the tribal areas in the British time and acceded to and maintained by Pakistan, throughout, can only be changed under Article 247(6) of the Constitution—with the consent of the people represented in tribal *jirgah*. The Governor’s Committee—constituted by the decision of the federal cabinet’s special meeting held on 23 August 1997 and headed by governor NWFP, the first issue of the terms of reference of which was to study in-depth ‘justification for retention of special status of FATA and PATA of NWFP and Class-A and Class-B Areas of Baluchistan’—has rightly stated that ‘the existing situation does not warrant any adventurism of even broaching such an overture,’ viz. for changing the existing constitutional status, because ‘it will give rise to fears and apprehensions and all efforts made in the last fifty years [now sixty years] to integrate tribal population in national polity would fall apart resulting in an un-retrievable situation’³¹; and that the treaties entered into with the tribes in the past ‘can not be over ruled or ignored without serious socio-political repercussions.’³²

The Governor’s Committee has further stated that often the ‘law and order issues are linked with ill-conceived ideas like discarding special status of FATA’ and has asserted that, ‘these are, of course, law and order issues of great importance, but most of these were there in one form or another throughout the long history of the borderland’ and hence has opined that:

Whereas there is a dire need to tone up the Political Administration to deal with law and order issues the present status of FATA should not be tampered with and the present policy of peaceful penetration in inaccessible tribal areas and integration of tribal society with the mainstream of national polity should continue. Moreover, demands like introduction of local self government, and legal reforms within the existing tribal system could be considered in real earnest.³³

About the proposal of the change of the special status of PATA, the committee has concluded that ‘we need not meddle with its status,

³⁰ See Muhammad Munir, *Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan, 1973*, ed. Mian Bashir Ahmad, Vol. 2, [Art. 185 – Subject Index], pp. 1359-62.

³¹ *Tribal Areas: Status, Border Control and Policy: Governor’s Committee Report*, p. 13.

³² *Ibid.*, p. 15.

³³ *Ibid.*, p. 16.

because the consent of the people is necessary under the Constitution which will not be forthcoming in the existing conditions.’ And as far as the Federally Administered Tribal Areas ‘is concerned even slight indication of merger with settled areas may lead to mass uprising. The policy makers should not be carried away by the slogans of reforms raised by a few tribesmen who have settled down in NWFP and elsewhere. No doubt the tribesmen raise demands for legal and administrative reforms but by no mean they are ready to barter away their special status.’³⁴ And while dealing with the policy options, the committee has stated that ‘a sudden change in the status of FATA neither appears to be possible nor advisable.’ The committee has, moreover, assessed the factors that are in favour and against the change of the present constitutional status and has favoured gradual integration by way of socio-political changes.³⁵

The situation and environment has been drastically changed, since the committee’s work and report in 1997, in the upshot of the US invasion of Afghanistan in 2001 and the deployment of Pakistani forces in the tribal areas and on the border with Afghanistan and also as a result of the military actions and operations in the tribal areas. Keeping in view the new scenario, thinking of doing away with the special status of the tribal areas—both FATA and PATA—is tantamount to a night mare; and any attempt in this direction will surely lead to further worsening the situation.

Administration hierarchy

During British rule in India, Foreign and Political Department of the Government of India exercised overall administration of these tribal areas, but the executive authority rested with the Punjab governor in respect of the agencies of Khyber, Kurram, North Waziristan and South Waziristan as agent to the governor-general, and in respect of the Agency of Dir and Swat (later Dir, Swat and Chitral) directly with the governor-general. And after the creation of the separate Frontier Province, in 1901, the executive authority of all the five agencies rested with the head of the province—first called chief commissioner and agent to the governor-general and later governor and agent to the governor-general—as agent to the governor-general. This assertion, made by Muhammad Anwar Khan, did not stand sound that ‘Malakand agency since placed inside the N.W.F.P. remained provincial subject while those located on the border,

³⁴ *Ibid.*, p. 17.

³⁵ *Ibid.*, pp.18-19.

termed Durand Line since 1893, became part of the Indian foreign affairs concern and treated as central government issue.³⁶

After the emergence of Pakistan, at federal level SAFRON—formerly a separate ministry known as Ministry of States and Frontier Regions, and now part of the Ministry of Kashmir and Tribal Areas—exercise overall administration of these tribal areas.³⁷ However, the executive authority rests with the governor of the province, formerly as agent to the governor-general of Pakistan and now as agent to the Pakistan president. At the provincial level the Ministry of Home was in-charge of the tribal administration under the governor; and the secretary of Home and Tribal Affairs, at the provincial secretariat, conducted the tribal affairs. But in the post-2001 US invasion of Afghanistan and the military action in the tribal areas by the Pakistan government, a special secretariat, with the name FATA secretariat, has been established and the tribal affairs are conducted through that secretariat under the governor of the Frontier province. The administrative apparatus at the local/agency level has been dealt with below.

The tribal areas—now Federally Administered Tribal Areas (FATA)—are divided into political agencies for administration purpose, every agency been an administrative unit with its territorial limits. The administration skeleton at the agency level consists of a political agent at the top, below him is an assistant political agent and one or more assistant political officers, under whom are two or more *naib tahsildars* or one *tahsildar* and one or more *naib tahsildars*. By virtue of his office, the political agent is head of all the nation building or line departments working in the agency and hence is head and in-charge of all the officers of these departments in the agency. He has to coordinate the work of the line departments.³⁸

Being pivot of the entire administrative setup of the agency, ‘the Political Agent has to control the tribes by his constant vigilance and has to have a close eye over a particular ebb and flow of tribal opinion.’ He, however, ‘least interferes with [the] domestic [or internal] affairs of the tribes who are regulated by a tough unwritten code of conduct or better said ‘code of honour’.’³⁹

³⁶ Muhammad Anwar Khan, *op. cit.*, p. 5.

³⁷ Also see Sher Muhammad Mohmand, *FATA (Federally Administered Tribal Areas of Pakistan): A Socio-Cultural and Geo-Political History* (n.p., n.d.), pp. ii-iii.

³⁸ Also see Izzat Awan, *op. cit.*, pp. 29-31.

³⁹ Sher Muhammad Mohmand, *op.cit.*, p. iii.

The agency administration and all administrative affairs in the agency revolve round the political agent. He has to administer the area by his personal relations with the tribes, and hence has to win confidence of the tribes and ensure that they had faith in his sincerity. He has to command respect in the area by his virtues and fairness so that the people may bring their problems and disputes to him for arbitration and settlement. As the tribesmen associate the entire government with the person of the political agent, so to them a good political agent means good government and vice versa. As stated earlier the political agent heads all the line departments working in the agency, due to which his duties are 'manifold and all embracing,' for his being the magistrate, police chief, director health and education, chief engineer, head of the employment exchange and so forth.⁴⁰

Law and order

Certain traits of the tribesmen and tribal life affect not only the day to day life of the people but are responsible, in their own ways, for the law and order situation and its maintenance, in the agencies. Some of them are *badal*, *melmastya*, *panah*, *jargah* (*jarga*, *jirga*), *nanawatay*, *nang*, *riwaj*, *toi* and *shariat*.⁴¹ A further trait and custom is *itbar* (trust); in the context of administration and law and order also as voluntary surrender on safe conduct. Any infringement of *itbar* is contrary to the sense of honour, and leaves a permanent stain on the breaker's fair name because it is dishonourable conduct and no explanation of or justification for it is acceptable.⁴²

Tribal and territorial responsibility or collective tribal responsibility

The tribal and territorial responsibility is an important organ and 'corner stone' of the tribal administration. Under the obligation of tribal responsibility a tribe or sub-tribe is collectively responsible for offences or crimes committed by any of its members or individuals. A tribe or sub-tribe is also collectively responsible for the offences or crimes committed within its territorial jurisdiction—no matter whether the offender or culprit belong to that tribe or sub-tribe or not. These are collective or joint responsibilities, in force through tribal *jirgahs* and also by the political authorities. Under these obligations share of the individuals, in case of fine imposed, is determined by the system of *nikat*

⁴⁰ Izzat Awan, *op. cit.*, pp. 30-31.

⁴¹ For detail see Sultan-i-Rome, 'Pukhtu: The Pukhtun Code of Life,' *Pakistan Vision* (Lahore), Vol. 7 (December 2006), pp. 1-30.

⁴² Also see Izzat Awan, *op. cit.*, p. 18.

and *wurbal* or *logay*.⁴³ Both kinds of these collective responsibilities ‘are the two main principles of dealing with the tribes in regard to the maintenance of peace both within their own territory and on the border with the settled districts.’⁴⁴

Nikat and wurbal

Nikat is ‘the close and detailed organization based on heredity in a tribe.’ It ‘fixes the share of each class and sub-section, even of each family in all tribal loss and gain—benefits are distributed and liabilities apportioned.’ It ‘regulate shares in allowances from the government, or booty from a raid and equally the amount due in fine under any settlement either with the government or with contending sections.’⁴⁵ *Nikat* determines the share or proportion of each section or sub-section in the government services—especially in the forces. A ‘raison d’être of the tribal system,’ *nikat* ‘is no less than a temporal command which is unnegotiable inspite of intervening demographic changes.’ And ‘any deviation’ from it ‘invites serious troubles and no Political Administration can venture to enter into this forbidden area.’ The ‘rigidity’ with which this rule have been struck to and followed ‘could be imagined from the fact that in some Agencies even the ration and development outlay is based on the dictates of shares contrived under ‘Nikat’.’⁴⁶

The tribes’ rigidly striking to the principle of *nikat* sometimes has created problems for the government, especially when cases of promotion in the army and Frontier Corps and reward for good services or penalty for misconduct came up. However, with the passage of time, due to the spread of education and the travelling and services in other parts of the country ‘adherence to Nikat has softened down in cases of outstanding merit or of penalty to a person with established guilt.’⁴⁷

In case a small number of tribesmen are involved in sharing the fines liable or distributing the amount received, instead of *nikat* the method of *wurbal* are followed. *Wurbal* is the method or custom through which the benefits and losses are shared on household basis.⁴⁸ The

⁴³ See *Tribal Areas: Status, Border Control and Policy: Governor’s Committee Report*, p. 65; Izzat Awan, *op. cit.*, p. 20.

⁴⁴ Sher Muhammad Mohmand, *op.cit.*, p. iv.

⁴⁵ Izzat Awan, *op. cit.*, p. 20.

⁴⁶ *Tribal Areas: Status, Border Control and Policy: Governor’s Committee Report*, p. 64.

⁴⁷ Izzat Awan, *op. cit.*, pp. 20-21.

⁴⁸ *Ibid.*, p. 20.

households are ascertained or counted by the fires lit for cooking food at the end of the day or by the number of smoke rises from the houses in which case it is called *logay*. In *wurbal* and *logay* the fires lit or smoke rises are not counted at one time but their having been on permanent basis. Under this system, although there may live a number of families in a single house but if they cook collectively and hence lit a single fire in the house and a single smoke rises from the house they are considered and counted as one household. And in spite of living in a single house they are considered and counted different households to the effect the numbers of fires permanently lit for cooking in the house, ascertained by the numbers of smoke rises from the house.

Temporary cessation of hostilities

Pukhtu—the Pukhtun code of life—and the tribal system has a built-in procedure for cessation of hostilities temporarily, in cases of emergencies, so that to have time and opportunity for reaching to a permanent or durable peaceful solution. Normally, the ‘disputes are solved by mutual consultation’ or ‘through arbitration by impartial parties’ or persons. In cases of involvement of third parties for solution, consensus of the parties involved is obtained. Sometimes the political authorities are also required to intervene in case the dispute disturbs the tranquility of the area. In such a situation a temporary truce is made between the parties symbolized by placing a stone called *tigah* or *konrah* (*kanray*), meaning thereby cessation of hostilities and ‘forgetting of the dispute by both the sides till tempers cool and sanity returns’ and the matter ‘decided on principles of justice and fairplay, to the satisfaction of both the sides.’⁴⁹

The government also guarantees the maintenance of such a truce and its violation is punishable according to the terms made and ‘often there is a provision of a substantial fine or forfeiture of a right.’ And in case the political authorities are also party to the truce, the violation additionally results in their displeasure—who are entitled to suspend in such a situation ‘any of the economic benefits enjoyed by the offending party.’ A wise and sane political agent can save an ugly situation by the tactful use of this indigenous solution and article of the Pukhtun code of conduct.⁵⁰ Besides other components and commandments of Pukhtu, the aforementioned are the salient features of the tribal mores and customs which have their due role in the maintenance of law and order in the tribal areas. In the words of Izzat Awan:

⁴⁹ *Ibid.*, p. 21.

⁵⁰ *Ibid.*, pp. 21-2.

As a race, tribesmen are never constant in respect for authority as such, and never forget a slight on them as they see it. Such men can only be held in a bond of loyalty which is personal and which is offered specifically to the tribe or tribes. Even today the Pathans will chafe under authority and the slightest affront would rouse the instinct of the tribesmen to get free, to strike off every bond, obeying only the 'nang', the honour.⁵¹

Punjab Frontier Force

The internal administration of the English occupied territories remained the same as in other parts of Punjab 'but to maintain the peace of the border' with the tribes 'a special force—the Punjab Frontier Force—was raised under the direct orders of the Board of Administration at Lahore. The force was, at first, consisted 'of 5 regiments of cavalry, the Corps of Guides, 5 regiments of infantry, 3 light field batteries, 2 garrison batteries, 2 companies of sappers and miners, and the Sind Camel Corps.' However, various changes were made in its composition and in 1886 it was detached from the Punjab government control and 'amalgamated with the regular army.'⁵²

Role of Frontier Corps

Frontier Corps is combination of armed forces, organized on the pattern of the army with the same standard of discipline, yet it is different from the army. It is divided into militia, scouts and riffles etc. according to the name assigned to it in the specific agency and area.

Militia: The word 'miles' in Latin, 'means a soldier and Militia means force on military service comprising of soldiers'. Militia is a type of the Frontier Corps and 'a body of men specially raised from among civil population', 'drilled as soldiers' and 'liable to home service only' but 'in case of emergency, assist the regular army in operations.' The Turi Militia was the first of its kind, raised out of the Turis 'who volunteered to serve under the British in their own area' of the Kurram valley in 1892, which was later on named as Kurram Militia. Later on, many other

⁵¹ *Ibid.*, p. 22.

⁵² *Administration Report on the North-West Frontier Province from 9th November 1901 to 31st March 1903* (Peshawar: Printed at the North-West Frontier Province Government Press, 1903), p. 6. Also see C. Collin Davies, *The Problem of the North-West Frontier, 1890-1908: With a Survey of Policy since 1849*, 2nd edn., revised and enlarged (London: Curzon Press, 1975), p. 24.

militias were also raised in other areas by enrolling the local tribesmen as soldiers, such as North Waziristan Militia, South Waziristan Militia, Mohmand Militia. The knowledge of the militias of their own areas greatly assisted and facilitated the British in the course of their expeditions against the tribes.⁵³

Scouts: The word scouts is derived from a Latin word ‘auscultare’ meaning listening, and scouting stands for spying, watching or observing and in this context the scout force was used by the English. As the British needed to use force against the tribes owing to a number of problems and factors, instead of British and Indian forces the militia was used for gathering information and small actions both in front and flank. This changed the role of militia to resorting to picqueting and guarding routes before military force could be used, owing to which the name militia lost its practical meaning and the corps was named as scouts. Hence the North and South Waziristan militias were renamed as scouts and later on other corps are also raised with the name of scouts, such as Chitral Scouts, Dir Scouts, Bajawar Scouts, Tal Scouts.⁵⁴

Rifles: ‘The units whose troops were armed with rifles were named as rifles.’ The rifles’ basic organisation is based on *qaum* or tribe basis. With the passage of time many corps were raised with the name rifles—such as Khyber Rifles, Mohmand Rifles, Shawal Rifles—which have also been part of the Frontier Corps. However, the ‘Samana Rifles which existed in Kohat district and named after the famous Samana valley, was border military police force and in no way part of the Frontier Corps.’⁵⁵

Thus corps or units in the Frontier Corps existed under the names militia, rifles and scouts with the same organisation and role. Organised into various wings and *qaumi* platoons, these corps worked and still work ‘on the famous customs of the militia.’ These are now equipped with more modern weapons and equipment.⁵⁶

Now governed under the Frontier Corps Ordinance, 1959, ‘the Frontier Corps acts as an arm of the Political Agent’ and also deputy commissioner (now district coordination officer)—where Frontier region is linked with district for administration purpose—‘in maintaining law

⁵³ Sher Muhammad Mohmand, *op.cit.*, p. vi. For the militias coming into being, and structure and role also see J.G. Elliott, *op. cit.*, pp. 95-96.

⁵⁴ Sher Muhammad Mohmand, *op.cit.*, pp. vii-viii. For example of the scouts mobility, success and working also see J.G. Elliott, *op. cit.*, p. 96.

⁵⁵ Sher Muhammad Mohmand, *op.cit.*, pp. viii-ix.

⁵⁶ *Ibid.*, p. ix.

and order in tribal areas besides its role of guarding the Frontier.’ As ‘it is necessary that the Frontier Corps is always on the beck and call of the Political Agent’ and the deputy commissioner (now district coordination officer), ‘without seeking prior orders from the Headquarters.’ Section 7(2) of the Frontier Corps Ordinance, 1959, has provided this power by ordaining that ‘every Frontier Corps and the Commandant of every Unit of Frontier Corps shall, in time of peace, be subject save in respect of administration, internal economy and training to the directions of the Political Agent or the Deputy Commissioner of the area within [which] the headquarters of the Frontier Corps are located.’⁵⁷

The Frontier Corps ‘are specially effective for ‘guerrilla’ type of warfare’ and as army was withdrawn from the tribal areas after the emergence of Pakistan, the defence of the border also rested with the Frontier Corps. An army officer of Brigadier rank commands the force and commanding officer of each unit is Lt. Colonel; and the second-in-command is of the rank of a Major of the army. Although a good number of officers have been promoted from the rank and file of the force, the officers mostly come from the army. The recruitment of the men is made from the tribal areas on tribal and sectional basis or according to the rule of *nikat*. They have to fulfil, in all respects, before the recruitment, the standard or requirements laid for the army. The Frontier Corps not only solves employment problem of the tribesmen and ‘provides prestigious source of livelihood’ to them but also provides an efficient and effective force to the government, which not only relieves army from tribal areas but also assists it elsewhere in time of emergency.⁵⁸

The Frontier Corps have served not only inside the tribal areas but also all over the border with Afghanistan till recently when army was again deployed—after 11 September 2001 incident in USA and the consequent haunt for Al-Qaida and Talban members—on the border and inside the tribal areas, but then even the Frontier Corps is not spared of their duties.

Role of levies and khasadars

Levies and khasadars have been a sort of police force, at the disposal of the political agents of the tribal agencies—Malakand Levies and Bittani Levies are the examples of the levies force—which have their due role in the tribal or agency administration. They are responsible for the maintenance of law and order in their respective areas in the agencies.

⁵⁷ *Tribal Areas: Status, Border Control and Policy: Governor’s Committee Report*, pp. 66-7.

⁵⁸ Izzat Awan, *op.cit.*, pp. 23-24.

Raised from the tribes—on the basis of quota fixed for each tribe and section—the khasadars are paid by the government but carry their own weapons.⁵⁹ ‘The main difference between the khasadars and the levies is that whereas the *khasadari* is hereditary and the incumbent supplies his own weapons, the government provides service rifles to the Levies and they can be replaced by selection.’⁶⁰ Save this, the khasadars and the levies, on the whole, are forces of the same nature having same duties, responsibilities and obligations.

The *khasadari* system, introduced in 1921, not only places responsibility of the maintenance of law and order on the tribesmen themselves but is the most inexpensive way of dealing with the tribes and at the same time bolster the power and influence of the Malaks from the government which in turn serves the government cause. This not only decrease military commitment and responsibility in the tribal areas but extends government control by placing responsibility of maintaining law and order and enforcing government’s writ on the tribes by the tribesmen themselves. As the khasadars are recruited—on the basis of *nikat* or quota—by the tribal Malaks, the *khasadari* system is a corollary to the Malaki system and hence ‘has often been termed as a colossal favour to the Maliks or even blackmail.’ This, however, is ‘an unfair criticism,’ contends Sher Muhammad Mohmand. because ‘they are used as tribal police force to back the authority of the Maliks when they are acting as agents to the Government, in maintaining Law and Order and protecting roads, buildings, and other installations and properties of the Government.’⁶¹

The duties and responsibilities of the khasadars ‘in the tribal structure classifies them as the instrument of the tribal will.’ And as Bruce points out ‘though paid by the Government’ the khasadars ‘are not the servants of the Government,’ but of the tribe. The collective local responsibility is an important feature of the *khasadari* system from many counts, such as their selection through tribal consultation; khasadars’ liability to punishment—like fine, suspension, arrest—for misbehaviour on the part of the tribe concerned; the Malaks and even the tribe having been answerable to the government for the khasadars’ absence from duty; and the khasadars’ liability for punishment under their territorial

⁵⁹ Mohmand, *FATA: A Socio-Cultural and Geo-Political History*, p. x.

⁶⁰ *Tribal Areas: Status, Border Control and Policy: Governor’s Committee Report*, p. 65.

⁶¹ Mohmand, *FATA: A Socio-Cultural and Geo-Political History*, pp. x-xi.

responsibility for the offences that occur in the area of their jurisdiction.⁶²

The khasadars are supposed to perform the duty of protecting their territorial jurisdiction from raids and offences; to provide escort to government officials and protect government property; to investigate reports and provide correct information about activities and intentions of anti-government elements; to trace where-about and recover kidnapped persons—whether kidnapped from settled districts, government roads or tribal areas; to report incidents occurred in their territorial jurisdiction; to summon and provide safe passage to persons required to or called by the government; and to perform other general duties.⁶³

The khasadars duties are of the nature of the police force of the settled districts. J.G. Elliott points out that the khasadars are ‘by no means the figures of fun’ as they have ‘often made out to be—one of them was given the posthumous award of the George Cross.’ But as they are ‘recruited, trained and administered entirely under tribal arrangements’ it is ‘obviously impossible to counts on their services if things’ are ‘going badly.’⁶⁴

Organized in companies, each under the command of a *subidar*, the khasadars have their own uniform in different agencies. At the agency level, a *khasadar* officer, under the political agent, oversee affairs of the khasadars, their training, discipline, performance of duty, pay and administration. Their posts are established at various important points and along roadsides and their companies are transferred, from one place to another, at regular intervals. Their companies, having a ‘tribal and sectional basis, are usually employed in their own areas.’ Divided into two, their companies perform duty on alternate months on their posts. This privilege was granted to them in lieu of decrease in pay but with the passage of time the alternate months during which they remains at home have been ‘considered as privileged leave with full pay.’⁶⁵

Role of Frontier Constabulary

After occupation of the settled districts of the Frontier, the British felt the need of a special force for pursuing the ordinary raiding gangs and action against a section of a tribe within the district border, because the military aid was not always forth coming for such matters. As the tribesmen ‘were armed to the teeth and were the most notorious raiders and

⁶² *Ibid.*, p. xi.

⁶³ *Ibid.*, pp. xi-xii.

⁶⁴ J.G. Elliott, *op. cit.*, pp. 96-7.

⁶⁵ Sher Muhammad Mohmand, *op.cit.*, pp. xii-xiii.

plunderers,' contends Olaf Caroe, 'it was clearly necessary to build up a force which should be more mobile than regular soldiers and act under the civil authority.'⁶⁶

As the Guides were the model of such a force, a militia named Punjab Irregular Force also called the Piffers was raised on this model. This Frontier Force, at first operated as Border Military Police, 'were not employed as policemen on the investigation or control of crime.'⁶⁷ The Border Military Police were later on, in 1913, 'reorganized on a more efficient footing as the Frontier Constabulary with officers seconded from the Indian Police,'⁶⁸ for the purpose previously served by the Border Military Police. Frontier Constabulary formally came into being as a new force under FC Act No. XIII of 1915 and was reorganized in 1926, as an independent civil armed force by virtue of its organization, control and officers.⁶⁹

The ranks and file of the Frontier Constabulary are recruited from amongst the tribesmen and staffed by officers of the Indian Police later Pakistan Police Service. The force is commanded by a commandant at its headquarter in Peshawar, with its own divisions commanded by its own district officers. Its district officer has the rank of superintendent of police of the police cadre, and in large districts there are assistant district officers of the Frontier Constabulary. The junior commissioned and non-commissioned officers in Frontier Constabulary are like the army. The force has been organized on platoon basis, and being recruited from the tribesmen. The platoons comprise on tribal and sub-tribal basis.⁷⁰

Although recruited from the tribal areas, the Frontier Constabulary are stationed in the settled districts and its posts situated close to the borders with the tribal areas in places suitable for watch and ward duties—as it performs duty mainly on the borders with tribal areas. It normally has to patrol on the borders of the tribal and settled areas so as to prevent raids from the tribal areas and check smuggling. However, basically been a mobile force, it is despatched wherever the need arises, even inside the districts. And though not trained in the military sense, it possesses 'a fair knowledge of guerrilla warfare and make effective use of the ground with which they are familiar as having been born in the locality and neighbourhood.' They carryout patrol from their posts, both

⁶⁶ Olaf Caroe, *The Pathans: 550 B.C.–A.D. 1957*, reprint (Karachi: Oxford University Press, 1976), p. 348.

⁶⁷ *Ibid.*

⁶⁸ J.G. Elliott, *op. cit.*, p. 94.

⁶⁹ Izzat Awan, *op. cit.*, pp. 24-5.

⁷⁰ *Ibid.*, p. 25.

during day and night, for surveillance, the number of which depends on the local conditions.⁷¹

The Frontier Constabulary not only 'led a life of Spartan simplicity manning small forts and piquets in remote, inaccessible spots, constantly on the move and always ready to concentrate to meet a major threat' but also 'numbered in their ranks many remarkable characters, none more famous than Handyside who was their commandant for five years from 1921' and who 'was killed leading an attack on a village house occupied by a raiding gang.' Therefore, 'an arch was erected over the road at the summit of the Kohat Pass', 'as a tribute to his fearlessness, tenacity and almost quixotic bravery, which gained him the name of Kishn Sani—Mackeson the Second.'⁷²

Though not concerned with the normal police duties—like prevention of crimes and the maintenance of law and order in the settled districts—it did go at the times of emergencies it has been deployed for the said purposes. Like the forces, Frontier Constabulary officers do not have the police powers and duties. Their duties include patrolling the border between tribal and settled areas for preventing raids in the settled areas by tribal gangs, capturing raiding groups and outlaws, collecting early and accurate information regarding the border events and outlaws, and maintaining border defence up to the point where intervention of regular forces becomes necessary.⁷³

The force not only provides jobs to a large number of the tribesmen, with lucrative opportunities for promotions and benefits but its thoroughness, discipline, efficiency and efficacy is also commendable.

Police force's role in the tribal areas

As a force concerned with and the settled districts only, by law the tribal areas being outside its domain of jurisdiction, the police force has no direct role in the tribal administration and affairs. However, the tribal areas border the settled areas and the tribesmen have been allowed to work, carry on trade and commerce, own lands and settle in the settled areas of the Frontier province and other parts of the country. A large number of them either permanently settle outside the tribal areas or carry on their business and jobs or work as labourer. In this way they are part of the settled areas as well, which brings them in the pale and domain of police force as far as their affairs, crimes and offences are concerned

⁷¹ *Ibid.*, pp. 25-6.

⁷² J.G. Elliott, *op. cit.*, pp. 94-5.

⁷³ Izzat Awan, *op. cit.*, p. 26.

with and committed in the settled areas. This not only has increased responsibility and duty of the police but also creates problems for them, when the culprits and offenders hailing from the tribal areas commit crimes and offences in the settled areas and flee on abscond to the tribal areas.⁷⁴

Besides, sometimes the tribesmen hijack vehicles and persons from the settled areas for ransom; and criminals hailing from the settled areas also sometimes take shelter and abode in the tribal areas. In all such circumstances, 'the police invoke the relevant provisions' of the law, 'regarding issuance of proclamation and attachment/confiscation of [the] offenders property,' and seek the cooperation of the Frontier Constabulary and political authorities of the tribal agencies. In case 'this does not work in bringing the offenders back, a perpetual warrant of arrest is issued by the Court against the offenders.' The Frontier Crimes Regulation 1901, having been in force in the tribal areas, empowers the political authorities to take effective action in the tribal areas against such wanted persons and bring them to the book and under the law. They also use other methods like collective responsibility and economic pressure from different counts.⁷⁵

Likewise, the offenders and criminals and persons wanted to the political authorities and government for their acts committed in the tribal areas flee, abscond and take shelter and abode in the settled areas. In such cases the political authorities and their forces, having no jurisdiction and power in the settled areas, seek cooperation and assistance of the police and the administration of the settled areas. In this respected too the police has significant role in relation to the tribal areas.

For this purpose full cooperation between the political authorities of the tribal areas and their forces and the administration of the settled districts and police becomes vital and unavoidable. This cooperation between the political and district authorities and police ensure smooth working of the administration, maintenance of law and order and protection of the people in the tribal and settled areas to a considerable degree.⁷⁶

Malaki and muwajibs

During the British period, the political officers dealt with the 'tribes through their elders' due to which, they 'started formally enlisting Maliks'. This led to the evolution of the institution of *Malaki* that was

⁷⁴ See *ibid.*, p. 28.

⁷⁵ *Ibid.*, p. 29.

⁷⁶ *ibid.*

‘synonymous with the system of tribal administration.’ Besides those ‘previously in the pay of Afghanistan, fresh registration of tribal elders [Malaks] on the basis of house hold strength was made.’ These Malaks were also called *lungi* holders, and were paid *lungi* allowance locally called *muajib* (*muwajib*) for their ‘political services’ to the government. The *lungi* or *Malaki* was terminated on the death of the *Malak* or *lungi* holder, but as the system involved his family deeply in the government services the political agent held the authority to designate his eldest son as the *Malak* and allow continuation of the *lungi* allowance or *muwajib* in his favour. This provided continuity not only in the allegiance of the family to the government but also rendering the political services. This institution continued and was followed in the Pakistan days as well.⁷⁷

Besides the above-mentioned allowances paid to the *lungi* holders or tribal Malaks, there is another kind of *muwajib* or allowance paid to the tribesmen. The history been not known to many, the *muwajib*s (allowances) paid to the tribesmen ‘are the most misunderstood part of the tribal administration,’ contends Izzat Awan. These have sometimes been termed as ‘dole-money,’ which is not appropriate because these *muwajib*s have been mostly paid either in lieu of the losses permanently incurred by the tribes for giving off their rights to water, handing over possession of land to the government for meeting government needs, rendering services like the *khasadari* and giving off traditional sources of revenue in favour of government, like *rahdaris* and tolls on the passages passing through their territories and jurisdictions.⁷⁸ Izzat Awan illustrate that:

If one travels through the tribal areas, one will at once realize that the best cultivable land or land with water facilities was taken over by the British for an Army camp or for a post or for a road or for an air-field. In a mountaneous area where plain land is difficult to find and where water facilities are practically non existent, it was indeed a great hardship for the tribes who were deprived of these. One must not forget that in these inhospitable areas there are no alternative means of livelihood. So the British, in order to secure the goodwill of the people, arranged a fixed

⁷⁷ *Tribal Areas: Status, Border Control and Policy: Governor’s Committee Report*, pp. 64-65.

⁷⁸ See Izzat Awan, *op. cit.*, p. 33. Also see J.G. Elliott, *op. cit.*, p. 71; Arthur Swinson, *North-West Frontier: People and Events, 1839-1947* (London: Hutchinson & Co Ltd, 1967), p. 251.

annual payment for the things taken rather than making an outright lumpsum payment as compensation.⁷⁹

Olaf Caroe has dealt with the point and issue of the muwajibs, paid to the tribes, from another perspective. He points out that 'the application of force by the army or civil power,' for restraining the tribesmen from raids and depredations and keeping them passive, 'was the negative side of the coin' and the British 'administrators were not without positive ideas. The most obvious of these [ideas] were written agreements and allowances.' Therefore, 'during the first twenty years' of their coming to the area 'signed agreements were negotiated with every tribe up and down the Frontier and secured, on paper, everything that the government needed.' A clause of these agreements guaranteed 'an annual allowance contingent' to the tribes called *muwajib* but subject to their 'good behaviour' and abiding by the terms of the treaty.⁸⁰ Besides,

These payments might be in the form of compensation for roads through their country, or in recognition of some special service. A good example is that of the Khaibar Afridis, whose original allowances were granted in lieu of the tolls which the tribe itself formerly levied by force on all traffic through the pass. Subsequent increases were made to the Afridi allowances as rewards for the signal service rendered by the tribe in remaining staunch through World War I, and as compensation for roads, railways and camps.⁸¹

Caroe has, in strongest words, negated the arguments and objections of those who terms the muwajibs as 'blackmail' and, besides other arguments, has concluded that:

All allowances, for whatever reason given, are conditional on good behaviour and liable to suspension, or forfeiture, in part or in whole, if the tribe breaks an agreement or commits offences. Such suspension is one of the most effective weapons of retaliation upon a lawless tribe, and the value of the allowance system is best shown by government's comparative impotence in dealing with a tribe not so subsidized.⁸²

'There is no doubt,' observes J.G. Elliott, 'that over the years these allowances achieved a considerable degree of success but they were a palliative and not a cure, and on occasion they could be the cause

⁷⁹ Izzat Awan, *op.cit.*, p. 33.

⁸⁰ Olaf Caroe, *op.cit.*, p. 349.

⁸¹ *Ibid.*, pp. 349-50. Also see J.G. Elliott, *op.cit.*, p. 71; Collin Davies, *op. cit.*, p.139.

⁸² Olaf Caroe, *op.cit.*, p. 350.

of trouble when those who were receiving what they felt to be less than their fair share stirred up trouble to discredit those through whom the political agent dealt when making the payments.’⁸³ Muhammad Anwar Khan makes the position clear in another way by stating that:

While the settled area contributed, though marginal to the revenue income of the state, the tribal belt remained exempt from all kind of taxes, rather some public monetary assistance, though nominal, was extended to the Malik, tribes and individuals. *Lungi* went to the Malik, *muajib* for the tribe and *kharcha* [expenditures’ sum or pocket money or sum for the expenditures incurred] to the worker. In return the tribesmen protected the security infrastructure in their area and helped in maintenance of peace against raids and dacoity in the settled districts.⁸⁴

Bandish and baramta

Besides the punitive expeditions and stoppage of allowances (muwajibs), ‘for controlling tribal depredation on the districts,’ *bandish* (blockade) and *baramta* have been used. *Bandish* or ‘blockade is a means of exerting economic pressure by excluding a tribe from markets, land, or grazing in the neighbouring district.’ And *baramta* means ‘the seizure of persons, animals or property belonging to a tribe or an individual at fault, in order to bring pressure for restitution.’ *Bandish* and *baramta* are part of both individual and collective tribal responsibility, of which the later ‘weapon works best when enforced against the tribal section actually responsible, or to which the aggressors actually belong; the smaller the section on which pressure can be brought, the more likely is restitution.’⁸⁵

Secret service and entertainment funds

Despite the difference in their nature and methods, secret service always remains integral and established part of the administration systems, irrespective of the government pattern and system. The same is also applicable to the tribal areas and hence remained part of the tribal administration. The political authorities of the political agencies are granted funds for the purpose, the utilization and disbursement of which remains at their disposal. Izzat Awan contends that ‘in present monetary terms’ the amount under this head on the disposal of the political agents

⁸³ J.G. Elliott, *The Frontier*, p. 71.

⁸⁴ Muhammad Anwar Khan, *op. cit.*, p. 7.

⁸⁵ Olaf Caroe, *op. cit.*, 350.

‘are small’ and that these funds ‘are as much accountable as the funds for entertainment or any other fund for that matter.’⁸⁶ It, however, is commonly believed vice versa. Besides, as stated earlier the khasadars also perform secret service and intelligence work.

The political agents also has at their disposal entertainment funds, their purpose ‘is partly to meet the food and lodging expenses’ of the tribesmen, in order to induce them to leave their homes and ‘come to the agency’s headquarters and apprise the Political Agent’ of their and their tribes’ ‘problems or difficulties.’ This was because most of the tribesmen were poor and living in remote areas, having no roads and other means of communication, like these days. Therefore, it induced them to come and apprise the political authorities of the problem faced by their people or of the calamity that may have occurred in their areas—without the anxiety of bearing the expenses incurred from their own resources. This tool and technique was devised and used as otherwise tribesmen would probably have never done the mentioned service and assistance. For example ‘a tribesman may have come a long distance to tell the government that small pox has broken out in his area and people need immediate visit of a doctor and a vaccinator.’⁸⁷ This has been the *kharcha* (expenditures’ sum or pocket money or sum for the expenditures incurred) referred to earlier in section ‘*malaki* and *muwajib*.’

But the entertainment funds are mostly used for other purposes, like entertaining the Malaks and other tribal dignitaries visiting the political agents, granting them pocket money at their visits—commonly considered greasing their palms—and such like other purposes at the disposal of the political agents, which—whether advertently or inadvertently—are not mentioned by Izzat Awan and other writers hailing from the civil services. In the post-2001 scenario the situation seems much more changed in this respect as well.

Law: *riwaj* and frontier crimes regulation

During the British period, the tribal areas were granted special status and were governed by special laws under the governor of the province—first Punjab and then the Frontier Province—as agent to the governor-general. In Pakistan too they are granted special lego-administrative status.

The tribal society is governed by its own customs and traditions and the government interference is least in the internal affairs of the tribes. The cases and disputes are generally decided by the jirgahs per customary law or *riwaj*. The jirgahs’ decisions are binding force, the

⁸⁶ Izzat Awan, *op. cit.*, p. 34.

⁸⁷ *Ibid.*

violator of which remains liable to penalty, which varies according to the gravity and nature of the crime, offence and act. It even sometimes is so severe like burning his house or his *sharuntya* (exile or banishment from the tribe or home place) for a specific period or forever. The significant aspect in deciding cases and disputes in jirgahs is not to pronounce guilt and punish the aggressor but to satisfy the aggrieved. Olaf Caroe rightly states that ‘the point to realize is this. Pathan custom requires the satisfaction of the aggrieved rather than the punishment of the aggressor. The law as we understand it concentrates against the aggressor, and compensation for the aggrieved hardly enters the picture. The Pathan in fact treats crime as a kind of tort.’⁸⁸

In case the parties bring their disputes by consensus to the political agent, he too has to settle them in accordance with the local customs or *riwaj*. Izzat Awan has claimed in early 1970s that ‘the ‘Riwaj’ is being replaced by the ‘Shariah laws’⁸⁹ but it is not so on the whole. *Shariah* laws, however, has gained some footing, especially as a result of the anti-Soviet war in Afghanistan—fought in the name of Islam—and the cases are also decided according to *shariat* but at the consent of the parties. Although not found in codified form in most of the tribal areas, each and every individual know the customary laws or *riwaj*. However, the Turi tribe of the Kurram Agency has codified their customary law called ‘*Turizuna*’; and the *riwaj* of Malakand Agency (Malakand Protected Area) has also been codified.⁹⁰ References are made to these codified customary laws in deciding the cases, like the Pakistan Penal Code.

It was in 1939 that ‘the administration of justice,’ in the tribal areas, ‘was brought under the procedural realm of Frontier Crimes Regulation, 1901, and the Criminal Procedure Code 1898. Concurrently, the Indian Penal Code 1860 was extended alongwith the Frontier Murderous Outrages Regulation, 1901.’⁹¹

⁸⁸ Olaf Caroe, *op. cit.*, p. 355. Also see J.G. Elliott, *op. cit.*, p. 77; Arthur Swinson, *North-West Frontier: People and Events*, p. 251; F.A.K. Harrison, ‘The British Interest in the North West Frontier,’ *Peshawar University Review* (Peshawar), Vol. 1 (1974-75, No. 1), p. 48.

⁸⁹ Izzat Awan, *op. cit.*, p. 39.

⁹⁰ A customary law book of the former Swat sate areas was also compiled and published in 1973, with the name *Riwajnama-e-Swat* (customary law book of Swat).

⁹¹ *Tribal Areas: Status, Border Control and Policy: Governor’s Committee Report*, p. 58.

The Frontier Crimes Regulation (FCR)—the first set of which was promulgated in 1872, revised in 1887 and the third set of which was enacted in 1901 after the formation of NWFP,⁹² and hence is thenceforward called the Frontier Crimes Regulation, 1901—is in force in the tribal areas for administering justice. Olaf Caroe has termed the introduction of FCR in 1872 ‘a positive attempt’ because it authorized the settlement of disputes—‘arising out of the blood-feud, of disputes about women, and questions generally affecting Pathan honour’⁹³—by customary method. He, however, criticizes the method used practically, as he contends that it ‘was a failure, for, as so operated, it satisfied neither the law nor the custom. It became merely an easy means of punishing crime as from the State, without being a recognition of the Pathan idea. It failed to administer custom on the basis of local tradition, and it fell between two stools.’⁹⁴ He, nevertheless, asserts that when in 1890s ‘a loose administration in certain tribal areas’ was imposed, the regulation showed positive results ‘in these places,’ as here it ‘was operated not as a parallel system, to be applied when the ordinary process of law was expected to fail, but as the sole and substitute code, whenever the parties were tribesmen.’ The regulation ‘was indeed in these’ tribal ‘territories regarded mainly as a means of adjudication on custom, and not as a procedure for enforcing the sanctions of the State. Thus in a criminal case penalties would ordinarily not exceed those imposed by custom, unless the crime had outraged both custom and the authority of the government.’⁹⁵

Infamous and repressive in certain aspects, the FCR is followed in FATA and works well to a greater extent. Applicable to the whole of FATA, the FCR has its own system and provisions of trials, on the whole inline with tribal traditions. It also has a set of provisions that suit and safeguards government interest in relation to affairs related with law and order and other spheres. Although amendments have been made in the FCR in 1997, there is still hue and cry, in some circles, against the regulation: especially its preventive sections which grant unfettered powers to the political authorities, the fines imposed in case of failure in fulfilling obligation of territorial responsibility, bulldozing houses of offenders and their nearest relatives, the political authorities appointed *jirgah* members’ subservience to the concerned authorities dictates in

⁹² James W. Spain, *The Pathan Borderland*, reprint (Karachi: Indus Publication, 1985), p. 145.

⁹³ Olaf Caroe, *The Pathans*, p. 353.

⁹⁴ *Ibid.*, p. 354.

⁹⁵ *Ibid.*

cases dealing with criminals, and negative attitude of the political authorities in granting bail to those arrested under article 40 of the regulation. These, however, 'are some of the ground realities,' asserts Sher Muhammad Mohmand, 'that are not looked at righteously by the public at large and condemned outright by terming it as Black Law, unjudicious and against the spirit of Islam and sharia.'⁹⁶ He, moreover, contends:

To many a lawyer, the FCR may be a 'black law' but to victims of violent crime, nothing provides justice more readily and never is the guilty so adequately punished as under it. Those having an intimate knowledge of the actual workings of the civil and criminal jirga trials would readily conclude that if the Political Officers act honourably, no system of justice is cheaper, quicker or more deterrent.

The fact that the law and order and the crime situation in the tribal area is invariably better than the settled districts, is because of the efficacy of the FCR.⁹⁷

He continues that 'of course, a suggestion can be made that in order to further improve the law and order situation in the Settled Districts, a limited applicability of the FCR be considered at least in murder, kidnapping, abduction, dacoity and robbery cases where direct evidence is not readily forthcoming.'⁹⁸

Any act and law passed by the parliament does not apply to FATA, unless specially directed by the president as ordained in Article 247 of the Constitution of 1973. The article also authorize the president to 'make regulations for the peace and good government of a Federally Administered Tribal Area or any part thereof'—'with respect to any matter.'⁹⁹

The offences committed on the roads, camps and other government property are 'dealt with under the normal law' and many Pakistani laws are extended to the areas 'with the consent of the tribesmen.'¹⁰⁰

⁹⁶ Sher Muhammad Mohmand, *op.cit.*, p. xvi.

⁹⁷ *Ibid.*, p. xvii.

⁹⁸ *Ibid.*

⁹⁹ See Muhammad Munir, *Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan, 1973*, ed. Mian Bashir Ahmad, Vol. 2, [Art. 185 – Subject Index], pp. 1361-62.

¹⁰⁰ Izzat Awan, *op. cit.*, p. 32.

Line departments

The writing of those who remained in the Pakistan administration, portray that the British did not do much in other spheres like education, communication, health and agriculture. Although all that the British did in this respect was not enough and up to the expectations, they, nevertheless, did some sort of work in these fields, which keeping in view their position in the tribal areas, attitude of the tribesmen towards them and the physical nature of the area could not be underestimated. They in fact laid the foundation for future progress.

The Pakistan government's attitude and progress in this respect too was not up to the mark, at first. However, the policy of peaceful penetration worked to an extent and much headway has been made. The policy and course adopted by the Pakistan government in the 1970s, proved a great success. But much is still needed to be done. The administration and developmental functions are carried out by the concerned line departments of the Frontier Province, but 'under overall policy directions and controls of the Federal Government.'¹⁰¹

Officers and staff of the Frontier Province line departments, which also have the tribesmen in their rank and file, man the line departments in the tribal areas. However, as stated earlier, in the agency the political agent concerned heads and coordinate works of all the line departments.¹⁰²

Cost effectiveness

The Governor's Committee has also looked into the cost effectiveness of the tribal administration. Stating that 'the FATA Administration under a political representative of the Government is most suited to the genius of the people,' the committee asserts that 'its cost on administrative structure is minimal as compared to settled districts, with one Political Agent, assisted by a couple of Assistant Political Agents, a few Tehsildars, a small outfit of Khasadars and Levies. Similarly the strength of Attached Departments is also negligible as compared with settled districts.'¹⁰³ The committee has, moreover, drawn 'a random comparison' between four districts and agencies 'as an illustration' which is as under.

¹⁰¹ Sher Muhammad Mohmand, *op.cit.*, p. iii.

¹⁰² For details about the aspects like education, health, communication and agriculture see Mohmand, *ibid.*

¹⁰³ *Tribal Areas: Status, Border Control and Policy: Governor's Committee Report*, p. 67.

District[s]		Agencies	
Swat	11.725 M	S.W. Agency	4.920 M
Abbottabad	8.483 M	Khyber Agency	3.840 M
Swabi	8.570 M	Bajaur Agency	3.789 M
Haripur	5.712 M	Orakzai Agency	2.294 M ¹⁰⁴

On the basis of this comparison, the committee states that ‘the present cost effectiveness of these agencies is more than half of the expenses incurred on the Administration of the District.’ It, moreover, contends that ‘this is true of entire FATA when compared with settled districts.’¹⁰⁵

The difference in cost of administration in the settled districts and tribal agencies, however, may also be because all areas of the agencies are so far not open to administration, due to which no expenditures are incurred in those areas on administrative measures as well as education, health, communication, agriculture and so forth. Besides, as the number of educational institutions, health facilities—like hospitals, basic health units and dispensaries—roads, irrigation canals and so forth in the tribal areas are less compared to the districts due to which not only number of the employees in the line departments in the agencies are comparatively less, and to that effect the budget of their salaries etc., but the other non-developmental costs incurred in the agencies also comes less.

Conclusion

The above are the main blueprints of the pattern of the administration system of the tribal areas and how it operates and works. There, however, is slight variance in the minutes in different areas and agencies. Interestingly, the system, at a time, is both simple and complex. It entails and possesses the ingredients of the stresses and struggles created, in the area, by other powers, through the centuries.

Barring jurisdiction of the Supreme Court in FATA, non-interference with the special status of the tribal areas without prior ascertaining consent of the people, and retaining it outside the domain of the laws made and passed by the central and the provincial legislatures—but could be extended only through a special procedure under Article 247—the constitution guarantees and maintains the special status, and mode of governance and administration in the tribal areas.

‘The system of Khasadaris, FC [Frontier Corps] and Levies for controlling law and order in the Agency together with FCR had stood the

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

test of the time,' asserts Sher Muhammad Mohmand, 'and despite its inherent weaknesses, it has proved an effective means of enforcing Government will in the interior of the Agency and in the areas which are not easily accessible to officials.' He, however, accedes that 'the system is not fool proof and there is great scope for improving and building on what presently exists.'¹⁰⁶

The efficacy of the tribal administration system, evolved by the British and followed and maintained by Pakistan, has been referred to—in different unfavourable contexts ranging from 1961 till late 1990s—and highlighted by the Governor's Committee in its report in 1997. The committee has expressed the view that 'it was the efficacy of the system of administration [in vogue] which withstood all the pressures and no military solution was resorted to,' and has asserted that 'we can ill-afford any move which weakens or disrupts the erstwhile policy of indirect dealing with tribes through Political Administration.'¹⁰⁷ The committee has also stated that the 'policy of integration,' adopted by Pakistan government, 'by development and alluring tribesmen to develop business stakes in settled areas,' has been 'proved highly successful and now more than 70% of tribal area is open to tribal administration as compared to about 30% during the British Rule.'¹⁰⁸

The so far results and off shots of the military intervention and use of force in the post-US invasion of Afghanistan in 2001 with resultant casualties on the government side, let apart from to keep aside the destruction in the area and the casualties on the other side, the treaties with the tribesmen as face saving devices for retreats are testimony to the soundness of the view held by the Governor's Committee, speaking for indirect dealing with the tribes through the political administration and for abstaining from and avoiding direct intervention and military action.

¹⁰⁶ Sher Muhammad Mohmand, *op.cit.*, p. xiii.

¹⁰⁷ *Tribal Areas: Status, Border Control and Policy: Governor's Committee Report*, pp.14-15.

¹⁰⁸ *Ibid.*, p.2.