

FATA Merger-Between Myth and Reality

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Abstract

This paper aims to find the changes brought by the merger of the Federally Administered Tribal Area (FATA) into the province of Khyber Pukhtunkhwa. It was expected that there would be peace and prosperity in the region after merger. The central and provincial government would initiate developmental works in the region. Having this expectation, the merger was celebrated throughout the region. But after more than four years since its merger, the hopes of the people have become elusive. The government has not initiated developmental works in the region. The economic packages which were promised to the region have not been paid sincerely. There are ongoing feuds among various tribes and the government has failed in bringing normalcy and peace in the region. Bringing this region into the mainstream is an arduous task and of course, it will take time. But the government needs to fulfill its promises and give special attention to the development of the region.

Keywords: federally administered tribal areas, frontier crimes regulations, Khyber Pukhtunkhwa, political agents.

Introduction

The British government had established tribal areas in the North, North West, and West of India to achieve its security purposes. These areas were given no development and were ruled through a notorious law called Frontier Crimes Regulations (FCR). British appoint their political agents in the tribal regions. After the division of India and the formation of Pakistan, the tribal areas became part of Pakistan but the internal structure of the area remained unchanged. The area remained away from the jurisdiction of the courts and parliament and away from formal governance. The people of the area were considered alienated from the rest of the country. There was illiteracy, poverty, and no development. There was widespread corruption in the administrative system. Furthermore, there was absence of transport, communication and

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infrastructure. Zulfiqar Ali Bhutto had promised ‘infrastructural development of the region’ but it did not bring tangible results.¹ The government in response launched different operations to root out militancy from the area. Similarly, there were feuds among different tribes in the area for years.² As there was no formal governance and judicial system, the traditional Jirga was mediating the issues since ages. In the 1980s, the area turned into training ground for Mujahidins who were fighting against the Soviet forces in Afghanistan. After 9/11, this area provided safe heavens to the terrorists who exploited the ‘absence of formal governance’ and became a danger to the whole country.³ The entrance of terrorists further aggravated the situation. It was expected that the merger would bring developmental projects, a proper legal system, and socioeconomic opportunities.⁴ Finally, the government merged FATA with the province of Khyber Pukhtunkhwa. Due to these changes, the legal status of the area has been changed. The government promised administrative, socio-economic, and developmental changes but it has remained as elusive as ever. There are ongoing feuds among the different tribes and they take arms against each other. The traditional Jirga still plays its role. The role of the modern judicial and administrative system seems far away from the area. The government has also not been successful in granting financial packages which were promised to the region. There is still no progress on developmental works.

Literature review

The former FATA has remained the focus of national and international debate through media and literature, due to its strategic location, since the colonial period. During the colonial period, it was seen as a buffer zone for the British. After the departure of the British, the government of Pakistan kept FATA intact as it was. It was not brought into the

¹ Malik Khalil, ‘The Status of FATA: Myths and Realities’, *News line Magazine*, (February, 2017). Available at: <https://newslinemagazine.com/magazine/status-fata-myths-realities/>

² Mariam Abou Zahab, ‘Kashars against Mashars: Jihad and Social Change in the FATA’, *Beyond Swat: History, Society and Economy along the Afghanistan-Pakistan Frontier*, edited by Benjamin Hopkin and Magnus Marsden (London: C. Hurst and Company, 2013), 51-60.

³ Malik Khalil, *op.cit.*

⁴ Wajeetha Malik and Shakeeb Asrar, ‘Post-merger Inaction in FATA: Expectations vs. Reality’, *South Asian Voice*, 10 July 2019. Available at: <https://southasianvoices.org/post-merger-inaction-in-fata-expectations-vs-reality/>

mainstream and was ruled through a notorious law called Frontier Crimes Regulations. The internal social, administrative and political situation was different from the rest of the country. The literature written before the merger of the FATA focuses on political and administrative aspects of the region. Mostly it was focused on the constitutional status of the area under the various constitutions of Pakistan.⁵ Similarly, others discuss the socio-economic status of the area for instance, Maryam Abou Zhab has focused on the internal tribal feuds, especially among the Mehsud and Wazir tribes of the area.⁶ Since 1980 it has remained a disturbed region of the country because of the war in Afghanistan. The government of Pakistan at various times attempted to ameliorate the condition of the FATA and bring it into mainstream but no tangible result was seen.

The little changes in the region, that government initiated were that in 1976, the then Prime Minister Zulfikar Ali Bhutto appointed a commission under the leadership of Nasser Ullah Babur. He was given task to prepare recommendation to bring these areas into mainstream. However, the government of Bhutto was toppled, in 1977 coup, and the process remained unaccomplished.⁷ Only few changes were brought to the area.⁸ In 1996, the 'universal adult franchise' was introduced in tribal areas by the caretaker government of Malik Miraj Khalid. In 2002 a plan to reform FATA was introduced by General Musharraf but it was stalled due to the war on terror. After the departure of Musharraf's government, the new government of the Pakistan People's Party initiated changes in the FCR 'to give a right of appeal against decisions of the political agents'.⁹ Eventually, an amendment was made to FCR 2011 to address

⁵ Sultan-i-Rome, *The North West Frontier (Khyber Pakhtunkhwa): Essays on History* (Karachi: Oxford University Press, 2013), 355.

⁶ Mariam Abou Zahab, *op.cit.*

⁷ Imtiaz Ali, 'Special Report on Mainstreaming the Pakistan's Federally Administered Tribal Areas: Reforms Initiatives and Roadblocks', *United States Institute of Peace*, Special Report, (March 2018), 421. Available at: <http://www.usip.org/sites/default/files/2018-03/sr-421-mainstreaming-pakistan-federally-administered-tribal-areas.pdf>

⁸ Government of Pakistan, 'Report of the Committee on FATA Reforms', Ministry of State and Frontier Affairs (August, 2016). Available at <http://www.safron.gov.pk/SiteImage/Downloads/Report%20of%20%20Committee%20on%20FATA%20Reforms%202016.pdf>

⁹ Shuja Nawaz, 'FATA-A Most Dangerous Place: Meeting the Challenge of Militancy and Terror in the Federally Administered Tribal Areas of Pakistan', *Center for Strategic and International Studies* (January 2009, N.W Washington D.C), 23.

the ‘issues of protection of women, children below 16 and citizens above 65 years from collective responsibility, arrest or detention; abolishing arrest of entire tribe under the collective responsibility clause’.¹⁰ In November 2015, PM Nawaz Sharif appointed a committee under the chairmanship of Sartaj Aziz to propose a way for mainstreaming FATA. The committee presented its report to the government on 08 August 2016, recommending the merger of FATA into the adjacent province of Khyber Pukhtunkhwa.¹¹

Internally in the region, the people were divided into two camps; one wanted the formation of a separate province while the others wanted the assimilation with Khyber Pukhtunkhwa. In 2015, the committee appointed under the chairmanship of Sartaj Aziz visited FATA and inquired about possible ways for mainstreaming the region. The committee presented its report in 2016. The report of the committee recommended the assimilation of the region into the province of Khyber Pukhtunkhwa. The report proposed on the health and education sector, reduction of poverty by provision of employment of the youth in the region, and improving infrastructure and communication development.¹² The region was finally merged into the province of Khyber Pukhtunkhwa in 2018 for the purpose to restore peace in the region and solve feuds among the different tribes. But still, there are tribal feuds among the various tribes who challenges each other.¹³ After the merger, there has not been a lot of literature through which we can understand the situation. Articles published in newspapers regarding social, political, administrative and other issues are enable to give updated information. The latest information source is social media, usually activist of the area Tweets through their tweeter accounts. Similarly, there is very little academic literature on the issues which emerged after the merger. This study is attempt to bring forth whether a real progress has occurred with the merger or not. It will bring forth the problems which were expected when the area was not yet merged. Furthermore, it also highlights the issues which were not taken into consideration that later created problems. Thus study will bring forth what has been changed with the merger of FATA.

¹⁰ ‘Report of the Committee on FATA Reforms’, *op.cit.*

¹¹ Ibid.

¹² Ibid.

¹³ Umar Daraz Wazir and Abubakar Siddique, ‘Government Inaction Fans Dangerous Tribal Disputes in Waziristan’, *Gandhara*, 26 November 2020. Available at: <https://gandhara.rferl.org/a/government-inaction-fans-dangerous-tribal-disputes-in-waziristan/30970914.html>.

Research questions

The study's main purpose is to inquire how much the government is fulfilling its promises with Ex-FATA. Is there any real shift in the policy towards FATA or only the constitutional status of the area has been changed by making it part of the Khyber Pukhtunkhwa? Secondly how much the people of the area are satisfied with these changes. Thirdly what is the judicial and administrative system after the merger? Fourthly either the purpose or the reasons which led to the merger of the region with Khyber Pukhtunkhwa has been achieved? Lastly, if the government has not yet delivered its promises, what are the reasons?

Revisiting the history of Ex-FATA

The former tribal areas (FATA) consisted of seven tribal agencies-namely South Waziristan, North Waziristan, Orakzai, Khyber, Bajaur, Mohmand, and Kurram, and six frontier regions (FR D I Khan, FR Tank, FR Bannu, FR Kohat, FR Lakki, and FR Peshawar). These areas bordered the settled districts of Khyber Pukhtunkhwa to the east and Afghanistan to the west. The British called these areas tribal areas which Pakistan renamed first as the Centrally Administered Tribal Areas in the 1972 Interim Constitution and later as Federally Administered Tribal Areas (FATA) in the 1973 Constitution. During the British government, these tribal areas consisted of five tribal agencies however, after the creation of Pakistan, three more tribal agencies were created. Malakand Agency which was part of FATA during the British government, was excluded from the rest five and was made a Provincially Administered Tribal Area.¹⁴ Due to its strategic importance, British India used these areas as buffer zones. These areas were internally autonomous but externally subordinate to the British during the British Raj and to the central government of Pakistan after the British departure. The supreme authority over an agency was a political agent.

After the division of India and the creation of Pakistan, these areas became part of Pakistan. But Pakistan did not change its status, the region was ruled by the Federal Government through executive powers invested in the president.¹⁵ As the jurisdiction of the Supreme Court, High Courts were not extended to the region, it was regulated through a notorious law called the Frontier Crimes Regulations (FCR). The people of the region were subordinate to the tribal leaders and Jirgas. There was

¹⁴ Sultan-i-Rome, *op.cit.* 235, 355-357.

¹⁵ Ismail Khan, 'The Fata Merger: Towards a Brave New World', *Dawn* 24 May 2018 (Accessed online on 15 January 2021). Available at: <https://www.dawn.com/news/1333925>.

no modern judicial, administrative, and police system as prevalent in rest of the country. There were no provincial parliamentarians who could legislate for their respective regions nor could the members of the National Assembly and Senate legislate for the FATA region. There was no socio-economic development in the region. There were occasions for merging these areas into the mainstream i.e. by making them part of Khyber Pukhtunkhwa or a separate province but the government was not willing to do so. At time, when one unit was created in 1955 on dissolution of One Unit and restoration of previous provinces, FATA's fate can be decided. Similarly, during the dissolution of one unit scheme when the previous provinces were restored. Baluchistan was made a separate province and the former states of Swat, Dir, Chitral, and Amb were merged into the province of Khyber Pukhtunkhwa.¹⁶

Some of the reasons which kept the status of FATA unchanged were, the strategic importance of the area, Afghanistan's claims over the Pukhtuns belt in Pakistan, and the promise of Jinnah to the people of FATA that the internal status of the area would not be changed without their consent, the government of Pakistan brought very few changes into the area and mostly remained as it was during the British era. Since the 1980s the region remained a training ground for Mujahidins and later for terrorist activities. In the 1980s, Mujahidins were trained in the region against Soviet forces in Afghanistan. A large number of refugees who escaped from the war in Afghanistan migrated and settled in the area. With their arrival to the tribal area, they started smuggling weapons and heroin which impacted the local customs and traditions of the region. After 9/11 incident, terrorists sought sanctuary and later formed Tehrik-i-Taliban Pakistan (TTP) and challenged the state. The absence of proper law enforcement mechanisms led to the nourishing of militants and extremist concepts contradictory to Islam. The extremist imposed a ban on women's education. Terrorists badly targeted educational institutions. Women were restricted to homes and ban was imposed on their free roaming in markets. They were also forced to adopt veils while going out of the house.¹⁷ The government in response launched different operations to curb militancy in the region. The Taliban and military operations compelled thousands of people to seek sanctuary in the settled districts.

¹⁶ Sultan-i- Rome, *op.cit.*, 356.

¹⁷ Saba Noor, Arshi Saleem Hashmi and Syeda Tehreem Bukhari, 'FATA Merger with Khyber Pukhtunkhwa: Prospects and Opportunities', *ISSRA Papers*, X:II (2018). Accessed online on 15 January 2021). Available at: <https://www.prdb.pk/article/fata-merger-with-khyber-pakhtunkhwa-prospects-and-opportuni-4653>

The houses of these people in their hometowns were either destroyed by the Taliban or the military forces due to collateral damages. These devastations led FATA economically and socially backward. Nonetheless, the people of the area were fed up due to prolonged war and lack of developments. Most people of the region wanted to have their separate entity but gave up their stance and agreed that the area should be brought to the mainstream.¹⁸

What changed with the merger?

With the merger of the tribal area its constitutional status as the Federally Administered Tribal Area came to an end. Now it has become an integral part of Khyber Pukhtunkhwa. The agencies became districts. The Frontier Crimes Regulation was replaced by FATA Interim Governance Regulation Act which is applicable until FATA is merged.¹⁹ The FATA Merger Committee had recommended that the merger would take place slowly and gradually and the time frame prescribed for it was five years. Aljazeera quotes an official at the Ministry of States and Frontier Regions (SAFRON). ‘There were a lot of functions to deal with from relevant departments, such as what to do with the judicial set up, local government, integration with KP, financial setup, funding for socio-economic development, manning the porous borders and so on’.²⁰ However, it was merged without considering this matter.

With the merger, the jurisdiction of the Supreme Court and High Courts extended into the region but in reality, it is still in transition. A report in the South Asian Voice describes that the FATA had no formal judicial system and the traditional Jirga was mediating between the conflicting segments. After the merger, the traditional system of solving problems and Frontier Crimes Regulations (FCR) was brought to an end. As there was no administrative and judicial infrastructure, the end of the traditional system created a legal vacuum. Now the leaders of tribal councils who were playing their role in criminal and civil disputes are worried that in the previous Jirga system such issues were solved within

¹⁸ Imrana Begum, ‘FATA’s Merger with Khyber Pakhtunkhwa: An Historical Analysis’, *Pakistan Perspectives*, 23:2 (July-December, 2018), 127-143. (Accessed online on 13 December, 2020). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3549198

¹⁹ Saba Noor, Arshi Saleem Hashmi and Syeda Tehreem Bukhari, *op.cit.*

²⁰ Shakeeb Asrar and Wajeelha Malik, ‘Pakistan’s Tribal Areas: Neither faith nor Union Found’, *Aljazeera* (2019). Available at: <https://interactive.aljazeera.com/aje/2019/pakistan-tribal-areas-fata/index.html>

months. The extension of the Pakistan judicial system and solving disputes within the new judicial system would take years.²¹

An article published in Aljazeera in 2019 with the title ‘Pakistan’s tribal areas: Neither faith nor union found’ stated that the people of the area had great expectations of merging the region into the province of Khyber Pukhtunkhwa. People hoped that ‘their lives would improve once they become citizens of Pakistan’. But when the area was merged, the people of the area celebrated with enthusiasm but since then their dreams remained as elusive as ever. The merger brought no change but ‘fear’ and anxiety.²² On 18 September 2020, elders in Landikotal agitated against the FATA merger. They express their anger and felt that merger has brought no concrete change in their lives. Nothing has changed in the region after its merger and the people of the area are still denied their rights. They demanded that the government should take serious steps to bring real changes in FATA.²³

The political changes brought by the merger were that the members of provincial and National assemblies were able to legislate for their respective constituencies. Previously FATA was under the executive authority of the President of Pakistan. That is why the region had separate seats in the National Assembly and Senate of Pakistan. However, these seats have been dismissed. As a result, out of total of 104 senators, after the completion of the incumbent senators, it will reduce to 96. Similarly, the seats in the National Assembly have also been finished which has resulted in the reduction of seats 342 to 336.²⁴ Now the region has been given representation in the Provincial Assembly of Khyber Pukhtunkhwa but the issue of seats in the National Assembly has not been resolved. A delegation of Members National Assembly (MNAs) from ex-FATA met Prime Minister Imran Khan and demanded that the number of seats in the National Assembly and Khyber Pukhtunkhwa Provincial Assembly should be increased to 12 and 24, respectively.²⁵

The Ex-FATA has remained historically extremely poor due to various reasons. During the British period, its significance was because of defense and security as it serves as buffer zone. There was no social and economic development. The same situation prevailed after it became

²¹ Ibid.

²² Ibid.

²³ *Daily Mashriq*, 18 September 2020.

²⁴ Saba Noor, Arshi Saleem Hashmi and Syeda Tehreem Bukhari, *op.cit.*

²⁵ *The Nation*, 18 January 2019. Accessed online on 21 January 2021. Available at: <https://nation.com.pk/18-Jan-2019/mnas-from-tribal-area-call-on-pm-imran>

part of Pakistan. The war in Afghanistan and 9/11 had also had drastic effects on the region. Local's houses were destroyed in the war against terrorism. During this time of crisis, Pakistan gave importance to its security, not to the development and mainstreaming of the region. The people of the area had remained dependent on the nearby settled districts and large cities of the country.²⁶ During the merger, the tribal districts were promised ninety million rupees per annum for ten years to be spent on the development of the region. Similarly, in the first six months after the merger of the area out of 83 billion rupees, only 0.4 per cent of the amount was spent on developmental works. This shows the inability of the government towards bringing the area into the mainstream. 'After all, it is not because of any shortage of funds that the provincial government has been unable to address the districts' needs for functioning schools, colleges, hospitals, roads, clean drinking water, and other essential services. What is sadly missing is the will, capacity, and the correct list of priorities to get this work done for the people.'²⁷ In April 2019 the government requested other provinces to financially support the area. However, there was no consensus among the provinces and no package was announced for the area.²⁸ Similarly, a representatives from the tribal districts, Mohsin Dawar, in the parliament emphasis that 'Ex-FATA was promised 100 billion per year and then three percent share in the National Finance Commission (NFC) for the next ten years. None of these promises have been kept. We demand that ex-FATA must be treated as a separate entity in NFC. Our actual share is 4.6 percent in the NFC which should be allocated to ex-FATA for 10 years'.²⁹ Prime Minister Imran Khan visited Tribal Districts on 18 March 2019, he announced a huge package for the erstwhile FATA. However, nothing has yet been done on practical grounds. No notable socio-economic change has happened in the tribal districts.³⁰ A report by Naya Daur which specifically focuses on Waziristan, one of the agencies of former FATA, highlights that the area has been ignored in all respects. There has been no change, the people of the area are living in extreme poverty.

²⁶ Saba Noor, Arshi Saleem Hashmi and Syeda Tehreem Bukhari, *op.cit.*

²⁷ Rafi-ud-din, 'Development in ex-FATA: A Step Backwards', *Daily Times*, 12 January 2020. Accessed on 21 January 2021. Available at: <https://dailytimes.com.pk/537449/development-in-ex-fata-a-step-backwards/>

²⁸ Wajeelha Malik and Shakeeb Asrar, 'Post-merger Inaction in FATA: Expectations vs. Reality', *op.cit.*

²⁹ Rafi-ud-din, *op.cit.*

³⁰ Ibid.

They cannot roam freely. Similarly, there are health issues and the governmental plans remain available on the ‘paper’.³¹

The merger of the area also aimed to bring normalcy into the region. There had been feuds among various tribes who were fighting against each other, especially is the case of Mehsood and Wazirs. An article in the Gandhara- a go-to source for local journalism in Pakistan and Afghanistan writes that there are feuds among various tribes who challenge each other. In South Waziristan, two tribes, Khadi and Machi Khel were fighting and using weapons ruthlessly. It says that the police force is not large enough and ill-equipped to intervene and bring normalcy. The people of Bannu were trying to solve the issue and persuade the belligerents to agree on a ceasefire and peacefully solve their issue. On 23 November 2020, the Pashtun Tahaffuz Movement (PTM) agitated and demanded from the government to resolve the issue between these two tribes.³² There are no modern land-related laws in the region, as terrorism is not rooted out of the region. There is a fear of resurgence of terrorism and land-related disputes in the region.

It is important to mention that, the merger brought the people of the region closer to the state of Pakistan. The authority of the Political Agents, who had remained a supreme authority and whose decision was irrevocable in their respective agencies, was replaced by the Deputy Commissioners. Now the people of the area have become the citizens of Pakistan in true spirit as they are subordinate to the laws and regulations of Pakistan. The Constitution of Pakistan now safeguards the social, political, and economic rights of the people.

Some of the people of the tribal districts are optimistic about their future. Some of the residents of FATA who were interviewed by the researcher expressed their good will for the merger. They revealed to researcher that in the previous system there was the influence of the Political Agent, Malik, and influential Khans. The merger has brought such influence and role of these Khans to an end. The government will sooner or later remove the repressive laws from the region. For locals it was a black law, the Frontier Crimes Regulation to which the people of the area were subordinate and violation of FCR resulted in repressive punishment. The end of this law, to some extent, has brought relief to the people of this area. The fundamental rights of the people are now to be

³¹ Asadullah Khan Wazir, ‘Broken Promises: The Future of Waziristan Remains Uncertain’, *Naya Daur*, 10 April 2020. Available at: <https://nayadaur.tv/amp/2020/04/broken-promises-the-future-of-waziristan-remain-uncertain/>

³² Umar Daraz Wazir, *op.cit.*

safeguarded by the constitution of Pakistan. Their expectation are high with the merger as it would improve the social fabric of the region which was badly affected by the terrorist activities and the atrocities of fundamentalist groups in the region. The educated and young people of the area are very happy. They believe that the new setup has brought opportunities for them to be appointed on different posts.³³ With poor education and low literacy rate there was no hope of respectful jobs. The learned and educated people from the nearby districts were appointed to different posts. The new generation would get proper education and opportunity to compete for the government jobs. Another interviewee said that there was high corruption and nepotism. A common person couldn't get a high rank. For low ranks, there was also a need for references or bribes. The respondent further expresses that prevailing corrupt system will destroy the region.³⁴

Conclusion

The development of the region will take years but the government needs to work sincerely on its promises and ease the frustration of the people. As the region has remained in extreme poverty due to internal feuds and extremism, the government should initiate poverty reduction initiatives so that jobs may be provided to the locals. This area is also rich in minerals, precious metals, and natural resources. The nature's wealth can be utilized for the benefit of this region. The social fabric of the region was destroyed due to internal feuds and war in Afghanistan. In the 1980s, the Kalashnikov and drug smuggling culture entered, the region. In later years extremism and terrorism which badly impacted the social fabric. The education system was not satisfactory and because of terrorism, it was further ravaged. Terrorists targeted educational institutions. Women were barred from getting education. It was expected that after the merger, the government would give special focus on the establishment of educational institutions and universities as well as focus on the health sector also.

Furthermore, the government needs to give importance on restoring peace and bringing prosperity in the region. It was the negligence of the governments that led to the growth of extremist elements which later challenged the overall security and peace of the country. The Khyber Pukhtunkhwa government needs to strengthen the police so that the law and order situation may be maintained. Those who

³³ Interview with Hidayat Ullah, resident of Bajawar, 15 January 2021.

³⁴ Interview with Khitab Ullah, resident of South Waziristan, 20 January 2021.

have suffered from terrorism should be provided compensation. The government should initiate developmental works in the region and fulfill its promises. The local bodies should be given more strength in the new setup for the development. Most importantly, in the new setup, the government of Khyber Pukhtunkhwa and the federal Government should give importance to the people in the region for the formulation of policies. They should be given freedom of speech and their voices should not be silenced. If the government fails to fulfill promises and doesn't take sincere steps for the developments it will create more problems in the region and goal of merger may not be accomplished in its true essence.