

Local Government System in FATA

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Abstract

Pakistani Pakhtun-inhabited tribal areas or Federally Administered Tribal Areas (FATA) are although part of Pakistan constitutionally, but virtually have been stateless territories. The statelessness of FATA has been due to the absence of state and governing institutions present in the rest of Pakistan. These institutions include democratically elected regional parliaments, and most importantly, local government structures or municipal corporations. Since September 9, 2001 terrorist attacks in the United States, whose responsibility was accepted by the Al-Qaeda network, FATA have been under the focus of world media. The key reason for this extraordinary world attention to FATA has been taking up of residence there by the Al-Qaeda commanders and fighters after fleeing from Afghanistan when the US-led international coalition forces invaded Afghanistan and dislodged the Afghan Taliban regime (1996-2001). The US had alleged that the Afghan Taliban regime had provided sanctuaries to the Al-Qaeda leadership in Afghanistan. Not only the Al-Qaeda but other international so-called Jihadist organizations like Islamic Jihad Union, Islamic Movement of Uzbekistan, East Turkistan Islamic Movement and hundreds and thousands of individual Jihadists from around the world including the United States and Europe got hideouts in FATA. The aim of these professedly international 'Jihadist' organizations and individuals have been to fight against the US and the NATO forces in Afghanistan justifying their action on the ground that US-NATO dislodged an 'Islamic' regime and invaded an Islamic state obligating the Muslims from around the world to wage 'Jihad' against them. Simultaneously, thousands of Pakistani youths and a large number of members of Muslim militant outfits, earlier formed by Pakistani military to fight a

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proxy war against Indian forces in the disputed territory of Jammu and Kashmir, also took up residence in FATA to join the anti US-NATO 'Jihad'. In the meanwhile, Pakistani Taliban groups comprising of residents of FATA and the contiguous Khyber-Pakhtunkhwa province¹ also emerged in different parts of the tribal areas and this culminated in the formation of an umbrella organization of these groups called Tehreek-e-Taliban Pakistan (TTP) or Pakistani Taliban Movement in December 2007 in Waziristan. The Al-Qaeda and other international so-called Jihadist organizations and individuals find extremely conducive environment in FATA to make the region their base for regional insurgency and international terrorism in the name of Islam. All these negative developments in FATA have their roots in the long-existing political and legal vacuum in these areas specifically due to absence of local government structures. This paper attempts to explain the legal, administrative structure of FATA, the problems that emerged thereof and the role and importance of local government structures in the rise of these problems specifically the statelessness of the region and how local government institutions in FATA could establish state writ there and develop the region.

Key Terms: Local Government, FATA, Establishment, FCR, Political Agent

Local Government & Legal-Administrative Structure of Fata

FATA comprise of seven big tribal districts including Bajaur, Mohmand, Khyber, Orakzai, Kurram, North and South Waziristan and collectively occupy 32000 square kilometres of land. Unlike the rest of Pakistan,² FATA, with an official population of estimated four million, have ever been without any kind of elected government or even nominated local councils or assembly that could formulate laws for the region and run its affairs. This created a huge political and legal vacuum there.

Constitutionally the President of Pakistan has the powers to promulgate laws in FATA. The president is also indirectly responsible for managing FATA through his agent, the Governor

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of Khyber Pakhtunkhwa (KPK)³ province, who in turn manages different agencies through officials called *political agents*. In this administrative structure there is no local government system. FATA to all intents and purposes have an undefined political and legal status. FATA has a 'special' status, as on the one hand it is constitutionally part of Pakistan but still 'independent' as government documents call them. Soon after Pakistan's independence in 1947 "the Government of Pakistan revised the British policy towards the tribesmen and decided to pull back all regular troops from the military posts in the areas." (Rizvi, 2009) The *independent* status of the resident of FATA means that they could decide their internal disputes of civil nature through the traditional *jirga* system.⁴ This scheme of things foreclosed the formation of local government structures in FATA; the situation which still continues.

While a *political agent* administers a tribal district he is assisted by a number of officials called as *assistant political agents*, *tehsildars* and *naib tehsildars* at the lower administrative tiers or administrative sub-divisions. The political agent and his subordinate officials have at their disposal a force or militia known as *Khasadars*, whose members are raised from local tribes. The responsibilities of political agents and other above-mentioned officials, *inter alia*, include to resolve inter tribal disputes mainly over ownership of land, regulating trade between the tribal district(s) and the settled areas of the KPK. The political agent also serves as the supervisor of the development projects in his respective agency. He also chairs the agency subcommittee, comprising of government officials of different departments. The task of this committee is to propose and approve development projects.

The Frontier Crimes Regulation (FCR) is the only legal-administrative mechanism through which FATA have been linked to the state of Pakistan. Since 1901, the FCR, which since long has been termed as black and draconian by the tribesmen and experts for its repressive and inhuman nature, has worked as a legal framework to manage the affairs of FATA. The British colonial

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rulers of India, of which Pakistan, including FATA, were once part, devised the FCR, to achieve the tasks of legal, political and social control in FATA. However, this huge task necessitated giving sweeping powers not only to the *political agent*, but also to the notables in different parts and tribes of FATA (Bjørge; Horgan, 2009: 227). However, due to the arbitrary powers which under this arrangement were provided to the *jirga* formed by the notables of the areas and tribes under the patronage of the *political agent* and his subordinates resulted in gross violations of human rights, transforming the FCR into a draconian and "black law" (Sardar Ali; Rahman, 2001: 52-54). This also rendered the desire of good governance a pipedream and the regional perennially vulnerable to multidimensional conflicts. The history of FATA has been a history of conflict whether intertribal, or international between Afghanistan and Pakistan and Czarist Russia and British India.

As profound social, political and economic changes have occurred over decades particularly in the 21st century, the legal and administrative structure of FATA which has its roots in colonial times, could not respond to the complex problems and needs of the growing population. This slowly and gradually made the existing administrative apparatus redundant that eroded whatever little state writ had had in FATA. Every kind of negative trend pervaded and thrived in the region. Local, national and international terrorist and militant groups took full advantage of the situation and cultivated their bases in the region. Criminal gangs like kidnapers and extortionists also use the territory for their activities. There is little, if any, realization within Pakistan's policymaking institutions regarding formulating a new administrative system for FATA and giving it a new and definite legal status. Even there was no serious effort to introduce a local government or municipal councils system in FATA to provide a rudimentary modern system of administration. According to Mohsin Saleem, former secretary interior of Pakistan: "After independence, we, generally failed to manage the area in the tradition successfully set-up by the British. This appears, mainly, to have been caused by lack of dedication,

objectivity, integrity and petty-minded micro-management despite some honourable exceptions.” (Saleem, 2008)

While the national leadership has had little interest, and thus, understanding of the conditions prevailing in remote FATA region, the elected members of national parliament from FATA wanted to preserve the status quo to maintain their dominant position. Likewise, the civilian bureaucracy, whose members as *political agents*, has had the near-totalitarian powers in their respective tribal district, has also wanted to preserve the status quo. Therefore, despite well cognizant of the value and critical need of the local government system, they did not promote the idea. However, the ever-deteriorating law, order and security situation in FATA due to the activities of national and international terrorist groups precipitated international condemnation and clamours for reform. The international community got somewhat apprised of the worst conditions in FATA after a section of Pakistani media and the razor-thin civil society of FATA highlighted these issues. Under compulsion, the federal government started thinking of introducing local government structures in FATA. However, till the end of 2013, having local government institutions in the tribal areas had remained only a proposal.

Significance of Local Government System for Fata

The introduction of local government bodies in FATA, unlike the rest of Pakistan, is of profound significance in many respects against the backdrop of prevailing objective and subjective conditions there. They could be instrumental in transforming the near *stateless* nature of the region. A close look at the genesis of the militancy and terrorism in FATA and the region’s becoming an epicentre of international terrorism reveals that militants and terrorists have not been facing any worthwhile resistance from the authorities. It has been because of the absence of local government institutions which could provide efficient law, order and intelligence apparatus. Then due to the absence of local government institutions in FATA, the state has not had the

mechanism and tools to socially and economically develop the areas and their inhabitants. Resultantly, both kept on immersing in ever-deep poverty and unemployment which either pushed them towards the militant and terrorist groups personally, or compelled them to provide sanctuaries to the insurgents at their homes and areas and establish nuptial ties with them after getting money. Equally important is the role that elected local government councils in FATA could play in detribalizing and developing the areas. “Local government system was vital for providing basic and modern facilities to tribal people, who were deprived of their fundamental rights.” (Bajaur alliance to move court for LG polls in Fata, 2013)

Process of Installing Local Councils in Fata

The process of installing local government system started when former Pakistani military ruler General Pervez Musharraf (1999-2008) in January 2002, promised to have elected municipal councils in FATA. (DAWN, Sep 30, 2004) However, when in 2004 former Governor, Commander Khalil ur Rahman announced the formation of ‘agency councils’ he unequivocally declared that they would comprise of nominated members and that these councils would not have any administrative powers, but would only serve as ‘advisory bodies.’ These councils were installed with tribal *Masharan* (elders) or *Maliks* taking part in voting. Resultantly, most of the members of these councils were the handpicked nominees of the government like the *Maliks* themselves. (DAWN, Sep 30, 2004) The fragile civil society bodies active to reform the colonial tribal system and to introduce democratic institutions in tribal areas had not only rejected these councils but also waged a struggle against them. (Nominated councils for Fata opposed, 2004) “The unelected and powerless councils have further strengthened the existing corrupt system in FATA,” a private association of tribesmen, Tribal Reforms Committee, said about these councils.

Moreover, the government had also hinted at forming an elected unified assembly of all the agencies and frontier regions of FATA, which never came to fruition.

Reasons for Impeding Local Government Institutions in Fata

Although for the federal government of Pakistan Muslim League Nawaz (PML-N) elected for five years in May 2013 national elections it would be very difficult to rollback the previous government programme to have local government system in FATA. But the civil bureaucracy, that is still the sole power-wielder in FATA, would try its utmost to postpone the system in place. There are various reasons for this anti-local government tendency of the establishment that also prevented General Pervez Musharraf to hold local government elections in FATA.

The most important factor for the concerned authority's inability, rather failure, to install elected local municipal councils in FATA is the vested interest of the civilian establishment. Once there are elected local governments in FATA, districts powers of local administration have to be transferred to these assemblies. This would weaken the existing so-called 'political administration,' which functions under the FCR. The civilian establishment's point of view in this regard has been that elected local councils manned by democratically and popularly-elected people in a bid to get more powers would engage in a power struggle with the political administration, which the country and government ill-afford at the critical juncture when a full-fledge military operation has been going on in FATA to defeat the insurgency of the TTP and the Al-Qaeda.

Moreover, through the tools of political administration and the FCR, Pakistan, and before it the British rulers of India have been able to govern the extremely remote tribal areas and kept them part of the country. Therefore, the establishment feared and convinced General Musharraf that in case the inhabitants of FATA are allowed to have their self-government institutions, they may develop fissiparous tendencies that would be a critical security

threat to the state. This was the reason that former KPK Governor, Khalil ur Rahman, had announced clearly that even the agency councils, which had been established by nominating members instead of electing them, would have no role in administration and their role would only be *consultative*. Instead, he intended to form peace committees in FATA to “strengthen the institution of *Maliks* (elders) and preserve the traditional system of governance.”

The present stakeholders in power in FATA have also had fears that elected local council in FATA would disturb the *Malik*-political administration nexus of collusion through which government has always been exploiting the inhabitants of FATA and kept them underdeveloped. This was corroborated from the contention of former governor, Khalil ur Rahman of “strengthening” *Maliki* system, whereas, the educated class of FATA has critically been against the system and has been demanding its dissolution.

FATA since long has been closed to the outside observers and this closeness has partially been due to the tribal social structure and partially the result of the government policy to keep the world unaware of the pathetic socio-economic and living conditions in the region. The civilian authorities were afraid that media would definitely report the proceedings of district government in FATA due to which the outside world for the first time may know the real conditions in the region. Otherwise, till now the MPs which have had got elected from FATA for the National Assembly and the Senate always became part of government after getting bribes. It would be interesting to note that before this assembly none of the tribal MP remained part of the opposition.

Another plausible cause for the government not to install elected local councils in FATA is that the region has a semi-autonomous status and has been serving as a *de facto* buffer between British India and Afghanistan, and subsequently, between Pakistan and Afghanistan. So Islamabad, who’s policy regarding Afghanistan or for that matter the entire foreign policy, has long been dictated by the civilian and military establishment, would

fully like to keep the ‘buffer’ status of tribal areas intact. But once there are elected local government in FATA the region would get into the mainstream and its buffer status would get automatically diluted.

Proposed Fata Local Government Regulation 2012

In 2012, reports started emerging that the federal government led by the Pakistan People’s Party (PPP) may introduce local government institutions in FATA. The concerned authorities⁵ were also said to have already prepared a draft law FATA Local Government Regulation 2012. The then Federal Law and Justice Minister, Farook H. Naek, had discussed the draft with the then Prime Minister Raja Pervez Ashraf. After which former President Asif Ali Zardari was all set to promulgate an ordinance on the approaching Independence Day to introduce local bodies in the tribal areas. It may again be mentioned that constitutionally the President has the exclusive authority to introduce and make changes in the existing laws in FATA. However, the president did not promulgate FATA Local Government Regulation at once and only announced a draft of it subject to changes by political parties. As the PPP government as well as its leader Asif Ali Zardari are no more in power, the proposed system of local government in FATA could not be enforced till the end of 2013. Whenever it would be put in practice it would mostly be based on the draft order of 2012.

According to the draft FATA Local Government Regulation 2012, local bodies in the proposed regulation would comprise of elected municipal councils. Each of these municipal councils would be headed by a “Chairman” to be assisted by a “Vice Chairman”. The draft reads: “For every Local Council there shall be a Chairman and a Vice-Chairman, elected in prescribed manner, by the respective local council.” (FATA Local Government Regulation, 2012)

In order to hold elections for local municipal councils, one block of population census would be considered as one ward, an

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electoral tier. The governor would be authorized to divide a local area, within different FATA agencies or districts, into one or many wards. (FATA Local Government Regulation, 2012) Obviously this would depend upon the size and population concentration of the local area.

The local council established for each of the towns would have the status of a municipal committee. According to the proposed regulation the governor would ascertain the number of general members of the local councils who would be elected through adult franchise, whereas, the governor would have the full authority to nominate the representatives of traders, women, farmers, artisans etc. on the reserved seats. (FATA Local Government Regulation, 2012)

A local council within three months after coming into existence would devise its rules of business. However, according to FATA LG Regulation, every municipal council must have at least one meeting a month. Significantly, these meetings would be public. (FATA Local Government Regulation, 2012) “This would go a long way in laying the foundation of a democratic culture in FATA. It has been behind-the-doors consultation regarding the matters of tribal areas which has been a cause of much problem,” said Imran Khan Wazir, a Peshawar based political commentator.⁶

FATA to date do not have their own public service structure and most of the top officials that have hitherto been serving there came from federal or Khyber Pakhtunkhwa bureaucracy. Keeping this in view, the Regulation envisages FATA United Group of Functionaries. Every local municipal council would have officials on its disposal from United Group of Functionaries. But the authority to form this group would rest with the governor.

Local councils in FATA would deliver a considerable range of services. This include sanitation, drainage, birth and death registration, managing slaughterhouses, quarantining, fire services. Every municipal council would also be responsible for devising master plan for the respective area, serve as building control

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authority, providing street lighting, traffic control, provision of transportation services, holding sporting, cultural and literary activities, controlling environmental pollution, price-control, looking after graveyards, growing and maintaining gardens, establishing libraries besides other social welfare services. According to Imran Khan Wazir: “These are indeed an extensive range of services which to date have been unheard of by the residents of FATA. The core issue is whether the proposed local council would deliver them. I think keeping in view the capacity issues we would always find them wanting. Still we must have to start somewhere.”

The finances of the local councils according to the proposed Local Government Regulation would be raised through funds and grants received from the federal government and taxes collected locally. Every local council would have the authority to levy local taxes like toll tax, tax on property, buildings, land, transfer of immovable property, water, vehicle parking as well as professional taxes and birth registration fee. If these taxes and fees are handled adroitly, every local council could raise a fair amount to run its affairs and make it self-sufficient.

Importantly, every local council would present its annual budget and the members could pass it through simple majority. As these councils would not be allowed to get loan, this would go a long way in making the council to look for ways and means to raise funds locally.

The finances would be spent according to the direction of the governor for special purposes that should not be at all on the direction of the governor. Because the governor KPK himself cannot pinpoint what kind of civic problems, social services and development needs a particular part of FATA may have.

The draft Local Government Regulation for FATA proposed the municipal councils to be elected on the basis of adult franchise. Electiveness is the most significant aspect of the proposed FATA. Because for the first time in history, the inhabitants of the tribal

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areas could have real self-rule as the members of national parliament from FATA ironically could not make laws for the tribal areas.

The civilian bureaucracy has always had a vested interest in FATA as in the absence of local government there, FATA have been bureaucracy's virtual fiefdom. Against this backdrop it seems that this clause(s) of getting the governor's direction for using up the funding of municipal councils have been included at the behest of the civilian bureaucracy. The apparent purpose is to somehow have its stakes in the new regulation. Therefore, the proposed FATA Local Government Regulation should have been placed before the tribal and civil society leaders. Particularly lawyers belonging to FATA, as well as researchers and experts on FATA for having their input before its formulation and actual enforcement.

Expressing his reservations on the Regulation, Ijaz Mohmand, who is the president of a civil society organization, FATA Lawyers Forum, said:

“As far as I know, in the proposed Local Government Regulation, the governor has the full authority regarding a number of matters which should not have been the case. In particular, the governor has a *carte blanche* in filling the seats of the technocrats in the local municipal councils. I don't think that independent elections are possible in the present situation in the tribal areas due to adverse security situation. Even if elections were held for the local councils, only candidates supported by the political administration or civilian bureaucracy and Members of National Assembly and Senate from the tribal areas would win. We have doubts that these local councils would be instrumental in bringing about systematic and social change in the tribal areas. The situation could only improve if the jurisdiction of the Supreme Court of Pakistan and High Courts is extended to FATA. Many of our friends think that the government has come up with the plan to introduce so-called local municipal councils to get funds from western countries and international donors.”⁷

However, Mohmand agreed that introduction of local government system to FATA is in itself a good development.

Conclusion

There might have been some reasons which has desisted successive governments from installing elected local municipal councils in tribal agencies, but this is not the solution to the problem. The situation would get worse as the government with all its administrative paraphernalia of political administration, the FCR and *Maliki* system, has been unable to manage FATA affairs. Resultantly, a huge political-legal vacuum emerged there which led to multifarious problems as everything in FATA got into mess and the region become an administrative ‘black hole’. The realization and some decision on the part of the last federal government of the PPP to install elected local government laid the foundation of the much-needed municipal councils in FATA. However, the system is still not in operation. On the one hand insurgency and militancy from national and international terrorist and militant groups, and on the other hand, the reluctance of the civilian bureaucracy are the main stumbling blocks in establishing a local government system in FATA, while the civilian establishment hesitance and opposition are based on vested interests the insurgency seems to be the main hurdle. However, as long as the installation of a local government system in FATA is delayed, the insurgents would keep on strengthening because they have capitalized on the vacuum created by the absence of the state writ which has largely been due to the absence of local government institutions in FATA. So whether it is the development, restoration of the state writ and mainstreaming of FATA, putting into place an elected local government system is a must.

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¹ Both these regions of Pakistan are ethnically Pakhtun dominated. Pakhtun or Pashtoons is the largest ethnic group of Afghanistan and

the second largest ethnic group of Pakistan. Afghan Taliban are entirely Pakhtun in make-up. The prototype Pakistani Taliban groups were also Pakhtun, however, subsequently militants from the largest ethnicity of Pakistan, Punjabis, also joined Pakhtun Taliban, who have now come to be called as 'Punjabi Taliban' to make Taliban a countrywide movement.

² Although Pakistan also does not have a rich history of elected government but elections for municipal councils have continually been taking place.

³ According to Article 247 (2) of the 1973 Constitution of Pakistan "The President may, from time to time, give such directions to the Governor of a Province relating to the whole or any part of a Tribal Area within the Province as he may deem necessary, and the Governor shall, in the exercise of his functions under this Article, comply with such directions."

⁴ The *jirga* is a traditional Pakhtun social institution and mechanism in which the notables of a tribe or tribes arbitrate and adjudicate disputes and conflicts.

⁵ In this regard it means FATA Secretariat, which acts like a central government secretariat housing headquarters of various governmental departments working in FATA. The Secretariat is located in Peshawar.

⁶ Interview with Imran Khan Wazir (Peshawar, March, 2012).

⁷ Interview with Ijaz Mohmand (Peshawar, July 2012).

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