

Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia

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Introduction

Federally Administered Tribal Areas (FATA) of Pakistan is a narrow belt stretching along the Pak-Afghan border, popularly known as the Durand Line, named after Sir Mortimer Durand, who surveyed and established this borderline between Afghanistan and British India in 1890-1894. It comprises seven agencies namely: Kurram, Khyber, North Waziristan, South Waziristan, Bajaur, Mohmand, and Orakzai along with six Frontier Regions (FRs): FR-Peshawar, FR-Kohat, FR.Bannu, FR.Lakki, FR. D.I.Khan, and FR.Tank. FATA accounts for 27220 km² or 3.4% of Pakistan's land area. Either side of FATA Pashtun tribes reside in Afghanistan and Pakistan. According to the 1998 census the population of FATA was 3.138 million or 2.4% of Pakistan's total population, currently estimated approximately 3.5 million. Various Pashtun Muslim tribes inhabit FATA. A small number of religious minorities, Hindus and Sikhs, also inhabit some of the tribal agencies.

The following are the tribes residing in FATA. In Khyber Agency: Afridi (Adamkhel, Akakhel, Kamarkhel, Kamberkhel, Kukikhel, Malik Dinkhel, Sipah, Zakhakhel), Shinwari (Ali Sherkhel), Mullagori (Ahmadkhel, Ismailkhel) and Shilmani (Shamsherkhel, Haleemzai, Kam Shilmani).¹ In Kurram: Turi, Bangash, Sayed, Zaimusht, Mangal, Muqbil, Ali Sherzai, Massuzai, and Para Chamkani.² In Bajaur: Salarzai branch of the Tarkalanri tribe (Ibrahim Khel, Bram Khel (Khan Khel) and Safi.³ In Mohmand: Musakhel, Tarakzai, Safi, Uthmankhel, and Haleemzai.⁴ In Orakzai: Aurakzai and Daulatzai.⁵ In South Waziristan: Mahsud Wazir, and Dottani/ Suleman Khels.⁶ In North Waziristan: Dawar, Wazir, Saidgi and Gurbaz.⁷ In Frontier Regions: Ahmadzai, Uthmanzai, Shiranis, Ustrana, zarghunkhel, Akhorwal, Shirakai, Tor Chappar, Bostikhel, Jawaki, Hasan khel, Ashukhel, Pasani, Janakor, Tatta, Waraspun, and Dhana.

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¹ AGENCIES/ FRS Development Briefs of FATA (2002-03). Development Briefs of Khyber Agency. Bureau of Statistics Planning and Development Department Government of NWFP, pp. 1-6.

² AGENCIES/ FRS Development Briefs of FATA (2002-03). Development Briefs of Kurram Agency. Bureau of Statistics Planning and Development Department Government of NWFP, p.3.

³ Important Agency/ F.R. Wise Socio-Economic Indicators of FATA 2000-2001. Bureau of Statistics Planning and Development Department Government of NWFP, p. 42.

⁴ *Ibid.*, p. 42.

⁵ AGENCIES/ FRS Development Briefs of FATA. (2002-03). Development Briefs of Orakzai Agency. Bureau of Statistics Planning and Development Department Government of NWFP, p. 3.

⁶ *Ibid.*, p. 3.

⁷ *Ibid.*, p. 3.

Khyber Agency was created in 1879, Waziristan Agency in 1885,⁸ and Kurram in 1892. North Waziristan Agency was constituted with its headquarters at Miranshah in 1910.⁹ Mohmand Agency was established in 1951, earlier this area had been under the administrative control of Political Agent Khyber. Prior to 1960, Bajaur was a semi-independent area like the State of Dir and Swat, under the political jurisdiction of Political Agent, Malakand. In 1960, Bajaur was declared a sub-division of the then Malakand Agency with an assistant political agent appointed with headquarters at Munda (Dir District) to deal with tribes and look after the political affairs. Bajaur was upgraded to the status of Agency on December 1, 1973. Orakzai Agency, previously a part of FR Kohat, was established in December 1973.¹⁰

All tribal agencies have a common and contiguous border with Afghanistan, except the Orakzai Agency.¹¹ The British reached borderland tribes after annexing Peshawar. Imperial powers of the time, such as the British, Russia, Germany, Persia and the Ottoman were all focusing on Afghanistan and the adjacent tribal areas in the middle of the 19th century.

Imperial Rivalry and the Construction of Tribal Areas by the British

Following the conquest of the Punjab in 1848, the British came face to face with ethnic Pashtun tribes, a difficult people, well known for resisting rule of Sikhs and Christians, inhabiting the territory between Chitral and Baluchistan. The Amir of Afghanistan, the Sikhs, and the British only wanted spheres of influence in the mountainous borderland. In 1849 onwards, during advances in Hazara, Derajat and Yousufzai, the British professed that they were not interested in the area beyond the line that closely corresponds to that which exists between the settled districts and tribal territory today (current FATA). The hill tribes were free to maintain their independence or pay allegiance to Kabul, as they chose.¹²

Initially British India lacked a coordinated and well calculated policy for its North Western borderland. Various policies, from aggressiveness to neutrality, such as “masterly inactivity” “conciliatory or peaceful intervention,” “close border policy,”¹³ “forward policy”¹⁴ and “modified

⁸ AGENCIES/ F.R.S Development Briefs of FATA. (2002-03). Development Briefs of North Waziristan Agency. Bureau of Statistics Planning & Development Department Government of NWFP, p. 3.

⁹ AGENCIES/ F.R.S Development Briefs of FATA. (2002-03). Development Briefs of South Waziristan Agency. Bureau of Statistics Planning & Development Department Government of NWFP, p. 3.

¹⁰ AGENCIES/ F.R.S Development Briefs of FATA. (2002-03). Development Briefs of Orakzai Agency. Bureau of Statistics Planning & Development Department Government of NWFP, p. 3.

¹¹ FATA Sustainable Development Plan (2006-2015). Government of Pakistan 2006, p. 3.

¹² Richard Temple, “Report Showing the Relations of the British Government with the Tribes, Independent and Dependent, on the North-West Frontier of the Punjab,” *Selection from the Records of the Government of India, 1856* (Calcutta: Government of India, n.d.) p. 57.

¹³ Pursued until the end of the 19th century, aimed to govern the plains and leave the hills as a sort of human “nature reserve.” When they became too troublesome, killing and kidnapping the dwellers in the plains, driving off their cattle, raping their women. They were subjected to punitive expeditions into a hostile tribe’s country which killed a few of the men, blew up the fortified towers, pulled down the terraces of the field extracted a fine in cash and firearms and then withdrew. This procedure was known as “Butcher and Bolt.”

forward policy” were adopted, ostensibly responding to Russia’s advances in Central Asia. Gradually, the British realized that a modified forward policy, based on the concept of peaceful penetration, gradual extension of control over the tribes may meet more appropriately their needs.

British policy in the frontier borderland comprised two phases; from 1849 to 1878 (close border policy) and 1878-1901 (forward policy). To defend against Russia the British acquired control of the Khyber, Kurram and Bolan passes, but this did not help them fully control the passes.¹⁵ Troops could protect the settled districts well. In the hills, however, casualties rose, expenses supply increased and the offending tribesmen remained elusive or out of reach. A column of several thousand soldiers, spending enormous resources, could at most destroy an empty fort or an abandoned village.¹⁶

To keep the passes open, the British developed a complex system resembling that of the Mongols. The tribes were controlled by (1) offering subsidies, (2) playing one clan against another, (3) taking hostages to ensure good behavior.¹⁷ The British came into actual conflict first with the Afridis in 1854, after annexing the Peshawar Valley. They signed various agreements with various sub-tribes of Afridis: Kuki Khel, Zakha Khel, Malikdin Khel and Qambar Khel in 1857; Sepah and Kamar Khel in 1861; and Aka Khel in 1867.

The first step in forward policy was taken in 1876 in the area currently known as Balochistan. Benjamin Disraeli, Prime Minister in 1874, promoted a policy to build a strategic line of defense against Russian penetration in Central Asia.¹⁸ Tsarist Russia rapidly expanded their holdings in Central Asia by capturing Khiva, Bukhara and Farghana. The fall of Kabul and Kandahar was palpable, especially the way Bukhara and Samarqand gave in. Lord Robert Sandeman concluded an agreement with the Khan of Qalat, securing a lease of Quetta and its environs, together with Bolan Pass for British. A British Indian force was cantoned at Quetta. Sher Ali, the Afghan Amir, resented and feared the advance of British India’s frontier to Shal. In 1878, Sher Ali responded by inviting a Russian mission to Kabul and declining entry to a British mission through the Khyber Pass. Resultantly, the second Anglo-Afghan War ensued giving impetus to bloodshed and British forward policy in the borderland. Afghan forces were expelled from Khyber and Kurram as a consequence of Treaty of Gandamak in 1879.¹⁹

In 1879, an administrative unit, known as the Khyber Agency was created, with Pierre Louis Napoleon Cavignari as its first political officer. In 1881, an agreement to keep the Khyber Pass open for trade was signed between the British government and the Afridis. The agreement stipulated: 1) the recognition of independence of the tribe, 2) an annual subsidy to various sub-tribes and, 3) the raising of Jezalchis (later Khyber Rifles) for protection of the pass.

¹⁴ Occupying and administering the country right up to the Durand Line (not followed, owing to lack of resources and the need for war games to test military training and capability).

¹⁵ Charles C. Trench, *The Frontier Scouts* (London: Jonathan Cape, 1985) pp. 1-2.

¹⁶ James W. Spain, *The Way of the Pathans: The Pathan Borderland* (Hague: Mouton & Co., 1963) p. 107.

¹⁷ *Ibid.*, p.108.

¹⁸ Olaf Caroe, *550 B.C.-A.D. 1957* (Karachi: Open University Press, 1958) p. 370.

¹⁹ *Ibid.*, pp. 373-375.

The area, presently called Kurram Agency, had been a part of Afghanistan before the second Afghan War in 1878-79. The local Turi population continuously resisted and resented the Afghan domination and during the Second Afghan War, supported Lord Roberts, Commander of the Kurram Field Force. Afghan forces left Kurram following the Treaty of Gandamak leading to continuous strife amongst tribes in the absence of a central authority. The British set up a loose form of administration in Kurram following threats by Turis of submission to Afghan rule.²⁰ In 1891, the British occupied Samana and built forts in Kurram. In 1892, the British government intervened at the request of the Turi tribe, then occupied Kurram and declared it an agency.²¹

Perturbed at the British advances, Amir Abdurrahman agreed to accept the Durand Mission.²² “The boundary line was agreed upon from Chitral and Baroghil Pass up to Peshawar, and thence up to Koh-i-Malik Siyah [the trijunction of Persia, Afghanistan and Balochistan] in this way that Wakhan Kafiristan, Asmar, Mohmand of Lalpura, and one portion of Waziristan [Birmal] came under my rule, and I renounced my claims from the railway station of New Chaman, Chagai, the rest of Waziri, Biland Khel, Kurram, Afridi, Bajaur, Swat, Buner, Dir, Chilas and Chitral.”²³ A tribal uprising, in 1897, has been considered a revolt against the British forward policy.²⁴

After 1893, it was possible to think of a tribal belt under British control between Afghanistan and the administered border of India, a belt of which the limits were defined on both sides, east and west, and well known to all concerned. In the agreement the line was not described as the boundary of India but as the frontier of the Amir’s dominions and the line beyond which neither side would exercise interference. This was because the British government did not intend to absorb the tribes into their administrative system, only to extend their own, and exclude the Amir’s authority in the territory east and south of the line.²⁵

In September 1895 the Pamir Boundary Agreement with Russia established the Russian-Afghan border in the Pamir area and completed the international boundaries of Afghanistan. The close border supporters argued that the agreement with Russia by delimiting Afghanistan had settled the position of Afghanistan as a buffer state and had reduced the chances of a clash with Russia. They also pointed out that taking over the tribal area would result in a greatly increased drain on revenue.²⁶ However, between 1897-98 a compromise policy was adopted based on three points: 1) concentration of forces, 2) avoiding unnecessary interference in the tribes and 3) control over the trafficking of arms.²⁷

In 1897, during the Tochi and Malakand disturbances, a general uprising amongst Afridis of Khyber against the British has been witnessed. British forces succeeded in capturing Ali Masjid,

²⁰ *Ibid.*, p.380.

²¹ *Op. cit.*, Spain, as per note 16, p.143.

²² *Op. cit.*, Caroe, as per note 18, p.381.

²³ *Life of Abdurrahman 2* (1900) p.160.

²⁴ *Op. cit.*, Spain, as per note 16, p.179.

²⁵ *Op. cit.*, Caroe, as per note 18, p. 382.

²⁶ *Op. cit.*, Spain, as per note 16, pp. 118-119.

²⁷ Great Britain, Parliamentary Papers 1898, LXIII, N-WF, Command papers, 8714, pp. 11-17.

Landikotal and almost the entire Pass. In 1898, the Afridi revolt was quelled and they submitted to the British. In October 1898, a representative Darbar of Tribes of Khyber was held at Peshawar. The grand Afridi Jirga (Council) accepted terms of the government and signed an agreement restoring allowances to the tribe. In 1902, the political officer was renamed as political agent and Major General Roose Keppel became the first political agent of Khyber.

When George Curzon arrived in India, in 1899 he reintroduced the old close border policy keeping tribal territory as a “marchland.”²⁸ New militias were organized in Waziristan, Kurram, and Khyber. Regular troops were withdrawn, and the security of tribal areas were given over to militia units, such as Khyber Rifles, Samana Rifles and Tochi scouts. Subsidies were increased, and the development of communication and transportation systems provided work to the tribes. The political agents were given almost complete responsibility to rule their agencies and reported directly to the Agent to the Governor General. Curzon’s modified close border policy reduced expenditure on military activity in the tribal area, ushering in a period of relative peace.

In 1919, during the Third Afghan War, a tribal uprising began. Simultaneously the new Bolshevik Russian menace also surfaced. A large contingent of troops was sent to the tribal areas in 1919-29, followed by the construction of road system linking Wana, Razmak and Miranshah. Permanent garrisons were established in Razmak, Miranshah and Wana and the militia system was reorganized.²⁹

The modified forward policy also known as Razmak Policy, in theory, was limited to Waziristan only. Large cantonments were established at Wana and Razmak, troops re-entered entire tribal areas, flexing British muscles beyond the administrative border extended throughout the tribal areas. In 1921, a railroad linking Peshawar and Fort Jamrud was pushed up to Landikotal. In 1922, the Razmak Policy was approved by the North West Frontier Enquiry Committee and it became known as “peaceful penetration,” “control from within” and remained effective until the end.³⁰ This new forward policy gave assurance that it does not aim at military conquests but shall bring hill tribes the benefits of civilization and economic improvement.³¹ However, very little changed, the prevailing climate of force and suppression continued. A few services were offered in health and education. The primitive living conditions of the tribes remained unchanged.³²

In 1922, the British summarized a century of their policy on the frontier, “the ultimate aim of our whole frontier policy is the security of India. The immediate object of our North West Frontier policy is to control the trans-frontier tribes as to secure life and property in our frontier districts.”³³ In the name of the security of India (now read Pakistan) and settled districts (now read NWFP) or defense against Russia (now read “War against Terror”), seeds of discord, hatred against neighbours

²⁸ Parliamentary Papers, 1901, XLIX, N-WF, Cd. 496, p. 72.

²⁹ *Op. cit.*, Spain, as per note 16, p.151.

³⁰ *Ibid.*, p. 153.

³¹ NWFP Administration Report, 1928, p. 270.

³² *Op. cit.*, Spain, as per note 16, p. 157.

³³ Government of India, *Report of the North West Frontier Enquiry Committee and Minutes of Dissent by T. Rangachariar and N.M. Samarth* (Delhi: Government Central Press, 1934) p.6.

and militant versions of Islam were sown. All these led to interference, war and civil strife in Afghanistan and its neighbours.

The British signed agreements with each tribe independently. They recognized tribal areas as special areas where the tribes would be allowed to live their life according to their customs and traditions. British rule was extended to government property, main roads and a hundred yards on either side of it. An office of the Political Agent was created in every agency with full administrative and judicial powers. The system of administration in the tribal areas based itself on the principle of collective tribal territorial responsibility, ostensibly enshrined in the customs and usages prevailing in the tribal areas. Under this system, if a crime originates anywhere, the section of the tribe on whose soil the crime is committed is held accountable and answerable to the government. This was the corner stone of political administration. It meant that the whole tribe or khel was held responsible for the wrong doing of its members.

Colonel John Coke, the officer in charge of the Kohat Pass Afridis, first enunciated the notion of “collective responsibility.” He prescribed the procedure in case of trouble thus: “to close the Pass at once, sieze all the Afridis to be found in the Peshawar and Kohat districts, put the men in jail, sell their cattle, stop all Pass allowances held by the Afridis, and, when the matter is settled, cause all losses to be made good, not from their confiscated allowances, but from the allowances made from the time they may commence.”³⁴ Herbert Edwardes perfected the technique of collective responsibility, after becoming the commissioner of the Peshawar Division in October 1853. Edwardes barred the offending tribes from the Peshawar market, thereby making the community suffer for its complicity in crime, or unwillingness to exert itself for its punishment and prevention.³⁵ He first exercised against Kukikhel Afridi in whose area a British messenger intercepted and robbed him of quinine bottles.³⁶ It proved to be a useful tool for the British and various successive rulers (including Pakistan) to control the tribes.

Despite subsidies, blockades and subversion the tribal areas remained intractable. From 1849-1878 there were 40 expeditions into the hills. These expeditions followed what William Barton called the “burn and scuttle” policy. Since the troops were seldom able to come to grips with the tribesmen in open battle, fields were burned, houses destroyed, fruit trees cut down, and in a few classic cases the ground was ploughed with salt. In view of the British it served to deter tribes from disregarding British regulations but in tribal eyes, the expeditions in most cases simply increased the weight of *badal* (revenge) to be exacted from the British.³⁷

(1) Creation of Pakistan

The Indian Independence Act, Clause 7, Paragraph c, provides: “There lapse also any treaties or agreements in force at the date of the passing of this Act between His Majesty and any powers

³⁴ Government of India, *Central Asia*, Part I, p. 6.

³⁵ Herbert B. Edwardes, *Memorials of the Life and Letters of Major General Sir Herbert B. Edwardes*, arranged by Emma Sidney Edwardes (London: Kegan Paul, Trench, 1886) Vol. I, p. 230.

³⁶ *Op. cit.*, Spain, as per note 16, p. 56.

³⁷ *Ibid.*, p.115.

having authority in the tribal areas, and obligations of His Majesty existing at that date to any such persons or with respect to the tribal areas, and all powers, rights, authority, or jurisdiction exercisable at that date by His Majesty in or in relation to the tribal areas by treaty, grant, usage, sufferance, or otherwise.”

On the eve of independence in March 1947 some Afridi Maliks called on Olaf Caroe at the Government House Peshawar saying, “We won’t deal with the Congress Party. We won’t deal with the Muslim League. We may deal with a government representing both sides. We own the Khyber Pass and will bargain on that basis.”³⁸ In April Malik Abdul Latif Khan, Malikdeen Khel Afridi threatened Lord Mountbatten during his visit to NWFP, to negotiate with Afghanistan unless future relations were adjusted to his satisfaction.³⁹

It is stated that tribal jirgas made agreements with George Cunningham and accepted Pakistan as their new suzerain on the same terms as had existed with the British. Prime Minister, Liaqat Ali Khan, visited tribal areas in mid-January 1948 requesting on January 15, a jirga at Landikotal for withdrawal of tribesmen from Kashmir. It is widely believed that Muhammad Ali Jinnah graced an all tribal jirga on April 17 in Peshawar in which 200 Maliks pledged their allegiance to Pakistan and requested that they be placed under the direct administration of the central government. The request was met on July 6, Jinnah created the Ministry of States and Frontier Regions and took charge personally of the tribal area.⁴⁰

Pakistan came into being on August 14, 1947 as a result of the partition of British India, comprising the provinces of East Bengal, Punjab, Sind, North West Frontier Province and State of Qalat (modern day Baluchistan). With autonomous tribes (modern day FATA) Pakistan had to reach an agreement. It is widely believed that Jinnah, the Governor General of Pakistan, gave a solemn pledge to the tribes not to interfere in the internal affairs of the tribes in exchange for joining Pakistan. Agreement with all tribes from November 15-22, 1947, was signed by the political secretary A. S. B. Shah on behalf of Jinnah, the Governor General of Pakistan. *Modus operandi* of agreements had been that various political agents held meetings with tribal individuals, at times gatherings, and signed documents promising allegiance to and cooperation with Pakistan in return for continued allowances and benefits.

For instance, such meetings in Khyber were held on January 12-15, 1948, and May 10, 1953. Faruqi for the Pakistan government signed these documents on September 30, 1955. In Kurram from November 15 to December 21, 1947, agreements of allegiance to Pakistan and pledge to assist Pakistan were concluded and signed by Shah on June 16, 1948. The tribes realized that the withdrawal of Pakistani troops was not carried out from a position of strength as in the days of Curzon but from weakness because troops were needed on the Indian border and Kashmir.⁴¹

³⁸ *New York Times*, March 20, 1927.

³⁹ *Op. cit.*, Spain, as per note 16, p.203.

⁴⁰ *Ibid.*, p.205.

⁴¹ *Ibid.*, p.191.

(2) Special status

Occupying and administering the country up to the Durand Line not only required financial resources but stationing of a large army without the benefit of annual war games much needed for the army. Compromised policy toward the North West Frontier, an administered border of British India having the blessings of civilizations, law and order, Indian Penal Code and China, while to the West up to the Durand Line area known as the tribal territory, land of the outlaw and political agents would, without attempting to administer the tribes, do what they could to wean them from their wicked ways.⁴²

(3) Frontier Crimes Regulation (FCR)

Britain introduced a special procedure, different from ordinary legal procedures, for the trial of cases in tribal areas. Under this special procedure the deputy commissioner with the concurrence of the commissioner was authorized to order the removal of villages, restricting the erection of hamlets without the sanction of the commissioner, to detain all or any members of tribes acting in a hostile manner, and the imposition of fines on villages and communities. It also authorized him to refer civil disputes and criminal cases to the council of elders for decision. The first regulation was introduced in 1871 known as the FCR 1871, the second regulation was known as the Punjab FCR of 1887 and the final version was the FCR of 1901.

The FCR of 1901 provided for the referral of civil and criminal cases to jirgas appointed by deputy commissioners, blockade of tribes as penalties, community fines, prohibition in certain cases of the erection of new villages, the removal of established villages where necessary to maintain law and order, regulation of *hujras* and imprisonment to prevent crime. Though the jirga is a Pashtun institution, “the form it took under the FCR was a far cry from its natural state.”⁴³ The members of the jirga were appointed by the Deputy Commissioner and if he did not like a decision brought in by the members of the jirga he could remand the case for further enquiry or refer it to another jirga. The decisions of the jirga were recommendatory and the actual acquittal or conviction and sentence formalized in a decree by the Deputy Commissioner.⁴⁴

After the creation of Pakistan, FCR was challenged in the High Court on the ground that sections 8 and 11, which lay down a special procedure for the decision of civil and criminal cases are inconsistent with the fundamental rights guaranteed in the constitution of Pakistan, 1956. The high Court declared it to be unconstitutional.

(4) Constitutional status during Raj.

Following the Simon Commission self government was introduced in other parts of India but not in NWFP, and tribal areas. It was decided that Pashtun were neither capable of democratic self-

⁴² *Op. cit.*, Trench, as per note 15, pp. 2-3.

⁴³ *Ibid.*, p. 146.

⁴⁴ *Ibid.*, pp. 146-7.

government nor interested in it. After independence the same continued for tribal areas i.e., denial of right to elect their representatives for national institutions.

(5) Constitutional and legal status of Federally Administered Tribal Areas (FATA)

The first constitution of Pakistan in March 1956 provided for a parliamentary form of government for the rest of Pakistan but did not bring any change in the political and administrative set up of tribal areas. In the 1962 Constitution, Article 223 keeps tribal areas outside the jurisdiction of central and provincial laws due to the peculiar conditions and problems of the tribal areas. Special powers of the legislation have been given to the governor of the province in which the tribal area is situated. The governor with the approval of the president was empowered to make, repeal and amend any regulations or could amend any central and provincial law for the whole or any part of the area. In the 1973 Constitution, Article 247 maintains the same arrangement for tribal areas.⁴⁵ The system of “basic democracy” in Ayub Khan’s era was also extended to tribal areas and representation was granted in national and provincial assemblies of Pakistan. One member each from an electoral college of basic democrats was elected to the national and provincial assembly.

Under Article 247 of the Constitution of the Islamic Republic of Pakistan the Federally Administered Tribal Areas (FATA) falls under the executive authority of the Federation. In terms of Article 247 and the linked Statutory Notification (SRO) 109 issued on June 25, 1970, the administrative powers with respect to FATA vest in the president of Pakistan who appoints the governor of the North West Frontier Province to act as his agent for the FATA to exercise executive authority in these areas, in such manner and to such extent as the president may direct from time to time. The agent to the president assisted in his functions by such officers as may be appointed for the affairs of FATA.

The right to vote for every adult male and female over the age of 21 is denied to the tribes under the President’s Order No.1 of 1975 called the “Preparation of Electoral Rolls (FATA) Order, 1975.” By this order only Maliks and Lungi holders are registered as voters by the political agent and not the people. The political agent confers the status to his favourites with the formal consent of the commissioner.⁴⁶

Impact on the Region and Defense of the Empire and British India

External reasons to grant and perpetuate special status include the defense of the Empire and British India. Imperial rivalry between Czarist Russia and Britain known as the “great game” gave birth to a culture of weakening regimes, conflicts, political intrigues, proxy and factional wars leading to division of various ethnic groups into different political boundaries. Three Anglo-Afghan wars were fought at the turn of the 19th and early 20th centuries destabilizing peace in the region.

⁴⁵ Mumtaz A. Bangash, *Political and Administrative Development of Tribal Area: A Focus on Khyber & Kurram* (Unpublished Ph.D dissertation submitted to the University of Peshawar, 1996) p.339.

⁴⁶ *Ibid.*, p. 107.

Afghanistan became independent of Britain in 1919, losing certain territories inhabited by ethnic Pukhtuns to British India, eventually becoming part of Pakistan. Ethnic Turks and Tajiks found themselves divided between Afghanistan and holdings of the Russian Empire, currently known as Uzbekistan, Turkmenistan and Tajikistan. Following the Great October Revolution, the British supported a civil war in the Russian holdings, towards north of Afghanistan, but the Russians were able to quell the rebellion and erect a formidable state known as the Soviet Union.

During the Cold War, ideological differences and mistrust increased further. Pakistan and Afghanistan found themselves in warring camps. Trade and interaction between people of the region remained minimal. Political change in one country was viewed as a gain or a loss for a camp leading to armed opposition or support of one or the other warring group.

After the April 1978 Revolution (*coup*) in Afghanistan, following the Soviet invasion of Afghanistan in December 1979 and during the ensuing Afghan *jihad* against Communism, the Afghan government and its opposition (*mujahideen*) were armed to the teeth by the Soviet Union and the so-called free world. Tribal areas were used as a conduit for illegal supplies of men and war material to wage *jihad* against Soviet infidels. A network of religious seminaries (*madrassa*) was created using matching petro dollars from the Middle East by the U.S., European democracies and Japan. These seminaries propagated a more militant version of Islam and provided military and ideological training to mercenaries and militants not only from Afghanistan but also volunteers and adventurers from the Muslim and Western world. Millions of Afghans became homeless, killed or maimed during the *jihad* and the power struggles between Mujahideen groups after the fall of the Najibullah government. A new breed of terrorists emerged in territories in and around Afghanistan. FATA became the hub of all these activities, drug and gun running became the order of the day.

Illegal practices such as: possession, carriage and use of sophisticated, heavy weapons; provision of sanctuary, arms and training of extremists, mostly hardened criminals, fugitives of law in their own states; waging an undeclared war against the Soviet/foreign infidels and their Afghan puppets (fellow Pukhtun, Muslims) were promoted that eulogized traditional Pashtun chivalry (*nang*)/ Muslim holy war (*jihad*), hospitality (*melmestia*) and revenge (*badal*).

This promoted bloodshed within tribal society and also in neighbouring Afghanistan and settled districts of Pakistan. Its effect also reached other countries fueling a civil war in Tajikistan in the 1990s, instability in Uzbekistan and increased militancy in Kashmir.

Hence, illegal trade in arms, drugs, smuggled goods and alien mercenaries became licit, the accepted norm, bringing profit, power, prestige and connection with the authorities. The tribal people, on the other hand, remained underdeveloped and deprived of their fundamental human rights.

These practices continued until the events of September 11, 2001. Following 9/11, Pakistan had to join the “War on Terror.” Non-state actors have a different agenda and the international coalition is locked in a battle with its former allies in Afghan *jihad*. The shifting interest and alliances has deeply impacted FATA, Pakistan and Afghanistan.

Pakistan is almost in a state of war with militants of various kinds. NATO and US forces are continuously stationed in Afghanistan. Cross-border intrusions and allegations occur continuously. Resistance to NATO and U.S. forces has put pressure on Pakistan, and recently an increase in troops

has been announced. There is a real danger that this conflict and ensuing instability can consume the whole of Eurasia. Increasing militancy, extremism and terrorism may lead to active war in the region.

Domestic reasons to perpetuate the special status had been: to curb Pashtun nationalism with promoting Islamism, destabilizing neighbours, corruption and embezzlement of developmental funds as well as alleged attempts at bringing down elected governments by civilian and military dictators. Nationalist ethnic Pashtun political sentiment in Pakistan had been demanding more autonomy and language as well as cultural rights allegedly having support from Afghanistan. Pakistan in the 1970s had been supporting Islamists in its northwest, FATA and Afghanistan to counterbalance Pashtun nationalism. The National Awami Party (NAP) and Pakistan Peoples Party (PPP) confrontation in the 1970s and Panjsher operation by Hikmatyar can be cited as a few examples in this regard.

Unaccountability of the political administration has been strengthened by special status of FATA and people are denied recourse to their grievances in any court of law or representative, elected officials, and government. Special status only benefits smugglers and Maliks, the rest of the population is all wary of the system. "The whole population, except the smugglers and Maliks, is the victim of the system." "We are oppressed by the system and wish to go somewhere else." In the name of Pashtun customs and traditions, Islam and noninterference in tribal autonomy, a space has been created amongst Pashtun tribes in FATA which eulogize features of *Pukhtunwali* such as *ghairat* (honour), *badal* (revenge), *melmastia* (hospitality), possession and display of firearms, *jihad* in the name of Islam and free trade in arms and narcotics. Special status of FATA sanctions and reinforces these practices and are made legal. "Illegal (illicit) activities, ascribed to the tribes, such as forging documents, car lifting, creating fake currency notes, gun and drug running, all are happening in collusion with government functionaries and their agents are involved in it." The special status has enabled the militants to operate freely in tribal areas and corrupt young minds in the name of religion. Local people consider political administration and agencies to be involved in militant activities in FATA. "Afghan war and war on terror has increased guns and narcotics smugglers and abuse of religion," and "militant groups are having links with agencies," as Major D. Zakhakhel, a former tribal law enforcing personnel, argued. Mangal Bagh and others like him are proposing the creation of secret agencies. "Armed militia of Mangal Bagh and Saif-u-Rehman provided leadership to the unemployed and the marginalized. They were able to unify and arm their followers," and "the Afghan war has adversely affected law and order in FATA and a rise in crime after the Afghan war. Afghan and international actors are also responsible for that." Though gun and narcotics and raising armed militias are illegal activities, under special status all these activities are given sanction and made legal, though tribes are against these practices. Blood feuds and armed conflicts are the outcome of the special status.

Adult franchise denied to tribesmen was finally introduced in 1996 to elect National Assembly members. However, elections are still not held on party basis and political parties are not sanctioned to operate. Extension of the Political Parties Act to FATA is still pending in the Supreme Court of Pakistan. Though, in the past tribal members of National Assembly elected on a non-party basis had been used to bring down governments of both Benazir Bhutto and Nawaz Sharif in the 1990s. Electoral representation at the union, *tehsil*, agency and the FATA level is not allowed yet. The

Local Government Ordinance of 2001 still awaits introduction in FATA. There have been various civil society/professional groups advocating the introduction of adult franchise, extension of the Political Parties Act, electoral representation at all levels, including provincial assembly/separate province/agency council, institutional reforms in FC, levy and Khasadar and abolishing/amending the FCR.

Collusion of international actors, the national security establishment, tribal political administrations and their protégés, during the Afghan *jihad*, in the 1980s and 1990s, not only used, but also expanded the existing space for illegal practices in the name of tribal/religious customs and traditions. Hence, illegal trade in arms, drugs, smuggled goods and alien mercenaries became licit, the accepted norm, bringing profit, power, prestige and connections with authorities. The tribal people, on the other hand, remained underdeveloped and deprived of their fundamental human rights.

The current expanding NATO forces in Afghanistan, Pakistani army operations and the U.S. drone attacks in FATA, dwindling law and order both in Pakistan and Afghanistan coupled with bomb blasts and attacks on law enforcements and innocent people by the extremist religious zealots presents a picture of Asia bleeding at its heart.