

Agenda for Fata reform

Introduction

The Prime Minister of Pakistan has announced his intention for bringing reforms to Fata. In this connection a high level committee has been formed to advise the government. On the other hand there is a violent insurgency in many parts of Fata. Waziristan is the center of this rebellion and smaller pockets exist in other agencies. Bajaur agency also shows signs of accelerating trouble which is also now becoming visible in Mohmand agency. Khyber agency is in the grips of war-lords who are rapidly expanding their influence and destroying the security infrastructure in Khyber, threatening Peshawar and attempting to close the Peshawar-Torkham route to Afghanistan which will have a very serious impact on Pakistan.

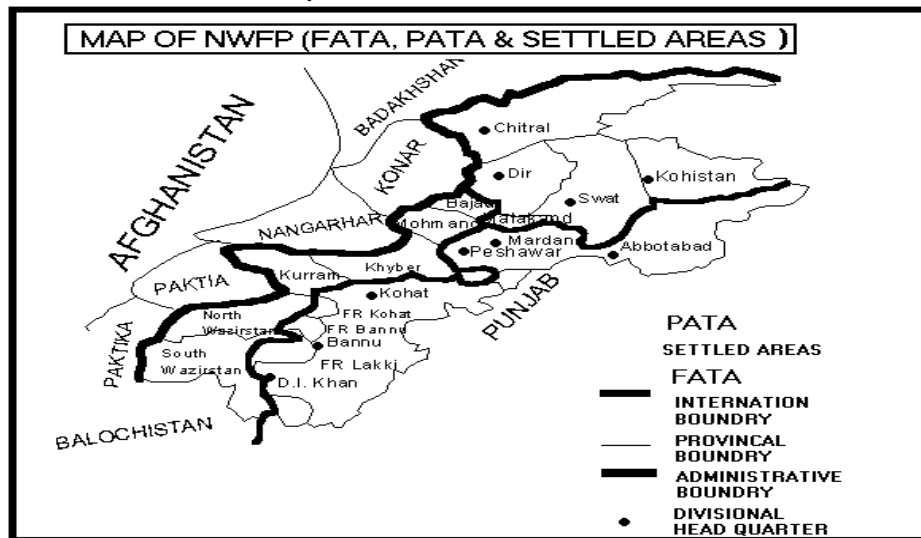
Before presenting the case for reform in Fata an analysis is presented regarding a design weakness within the basic design of the Pakistani state which is responsible for the periodic crisis endangering her security. The principle cause of Pakistani difficulties lies in the existence of large physical spaces of land in which more than 40 million people of Fata and NWFP live. They are stripped of identity and their land is considered as a geo-strategic space with names that resemble formulas from a chemistry text book – Fata, NWFP – rather than places where people dwell!

They are classified as such because they have often been used for foreign policy adventures in Pakistan's north - west. It is argued that if there were democracy and full empowerment of the people living in these locations they would have merged into the national main stream a long time ago and would have obtained human rather than acronymic identities. It would also make it difficult for the Pakistani elite to manipulate the people who had identities and push them into external adventures like the Mujahideen War in which the Russians were expelled from Afghanistan.

The map below shows large swathes of areas in Fata and NWFP which have not been fully integrated. It has led to weak administrative control and a lack of cohesion. These areas include the whole of Fata, the Malakand division and a lawless belt expanding into the district. These are the areas where the radicals are supreme. Although this paper addresses the problems of Fata yet the plight of Malakand which lies in NWFP also needs to be flagged; Pata (provincially administered tribal areas) reforms are also essential.

These regions provide a safe haven to any bigot or irredentist adventurer who wants to raise the flag of revolt. These areas also invite foreign non-state entities like the al-Qaeda and now the Kashmiri Mujahideen. The region is the head quarter of forces bent on violently changing the nature of Pakistan. The rebels in these isolated areas are now challenging the state in Fata and NWFP and are now converging into southern Punjab. That is the sum of the challenge facing Pakistan and the world. It is therefore essential to end the isolation of Fata by mainstreaming it and bringing it into the normal nation building process where the grievances of the citizens are dealt with in the ambit of human and fundamental rights. They must also be treated with justice under the rule of law.

Map of Fata, Pata & NWFP Districts

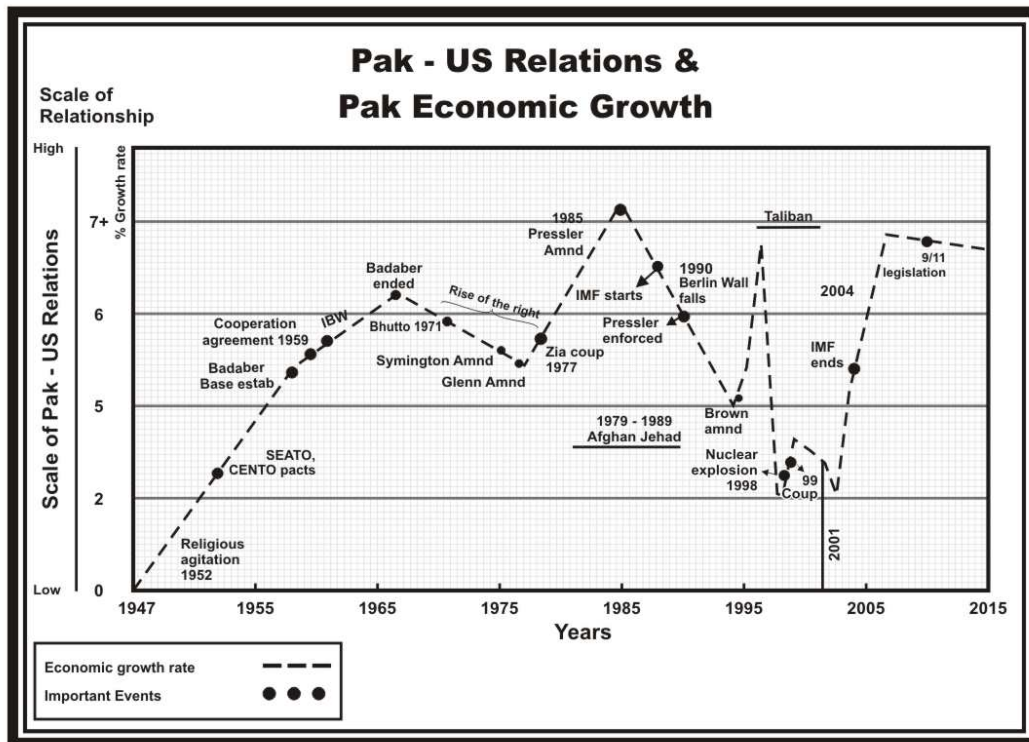


The tragedy is that this administrative anomaly is protected under Art 246-247 of the Constitution. In tribal areas special laws different from the rest of the country are applicable. Human Rights do not exist; the fundamental rights applicable to Pakistanis are not available to protect the tribesman from state or development oppression. An observer will be justified in thinking that Pakistan stopped at the left bank of the Indus! Or at best there are different varieties of the same state. This makes national integration impossible.

On another level, it is the strategic use of these areas by the Pakistani elite, which integrates itself into international agendas and extracts high rents which replace national savings. This may be the explanation why less than 2% of the Pakistani population pay taxes and creates a low saving rate of 16-18% of the GDP. At the same time the pawns in this new version of the Great Game – the people who are unlucky to be born in these places – have a marginal and a disempowered existence! This cynical exploitation of such a large group of people for more than 200 years has come to haunt not only Pakistan but the world!

During the past five years Pakistan received more than \$ 10 billion from the US for Pakistan’s contribution to the War on Terror. The sanctions imposed on her after she tested her nuclear weapons in 1998 were also lifted. Pakistan also had her loans re-structured and received fresh funds for many new programmes. It is estimated that these measures contributed at least 3% annually to the GDP of Pakistan. The main beneficiaries of this bounty were not FATA and NWFP. Pakistan allowed herself to be used as a ‘slot-machine’,¹ in a game of strategy; the graph below shows how Pakistan’s economic growth is tied to good relations with the U.S.²

Graph ³



¹ The term is attributed to Mr. Shahid Javed Burki

² The graph correlates the milestones in Pakistan’s foreign policy with its rate of economic growth. There is a direct co-relationship between high economic growth and a U.S friendly foreign policy. Economic management is thus marginal to Pakistan’s growth. The driver of Pakistan’s economic well being is its foreign and security policy.

³ Derived from **RIPORT**, “Militancy in the Pashtun Belt: Perspective of a Peace Jirga Participant,” Sept 2007, Peshawar, P.20

The other question is - how investment in people or the infrastructure can take place continuously and in a predictable manner when a sizable portion of investment is derived from tax payers of other nations? In order to attract such funds recourse is made to agendas, whose aim is to keep the US engaged. It is not the right way of managing the country. The cost of such a policy is the sacrifice of the well being of the people of Fata and NWFP. No wonder they are up in arms!

Historical background

Britain defeated the Sikhs and occupied the Punjab districts in 1849. The future NWFP province lay to the west of the Indus and was a part of Punjab. Further east was the vastness of India. The security of India was always the pivot of Britain's foreign policy whose aim was to protect it from Russia. A second range of threats more local in their nature arose out of the frequent raids conducted by the tribes on districts which now comprise the NWFP; Viceroy Curzon created the NWFP in 1901 by separating it from Punjab because of its special law and order problems.

At the end of the 19th century, Britain initiated a wave of consolidation of her Indian dominion by encouraging internationalization of borders between Iran and Afghanistan to the east, Afghanistan and Russia to the north and north east, Afghanistan and India demarcated in to the west and between India and China to the east.

A second defensive border was created between Afghanistan and India in the north-west starting from Chitral in the north to D.I.Khan in the south and where the tribes dwelled. It was converted into a tribal area, approximately the size of Belgium which today has a population of about 4 million.

One of the least acknowledged contribution of Britain towards state craft was the conversion of the geographical border land of the tribes into a shield by regulation! They kept the tribal areas underdeveloped and increased the efficiency as a killing machine of the British Indian army as well as the tribesmen by constant fighting. It was Britain's battle inoculation school!

Secondly, through this policy the tribal areas were converted into a 'prickly – hedge'; no invader could expect to have a safe passage to India through this route. To keep the manpower of tribal areas from leaving, they were kept under developed and made to believe that their system of local administration based on the Jirga was unique! If they became too educated it was feared that they would leave these territories! The British cleverly crafted a Draconian law to fix this system in time. It is called the Frontier Crimes Regulation. These reactionary devices were meant to ensure the freezing of tribesmen in an archaic social formation till perpetuity! Through clever propaganda the tribesmen were 'educated' and convinced that this system was a reflection of the essence of Pukhtunwali or the Pukhtun code of traditional conduct!

To absolve herself of the responsibility to develop and educate the tribesmen on a par with the Indians, the British created an amazing legal fiction. The tribal areas were to be considered a part India, but not a part of British India!

Instead of rectifying this involved conceptual edifice constructed for imperial purposes by Britain, we mistakenly acknowledged that the tribal areas had an exclusive identity and included this exception in the Instrument of Accession in 1947 at the time of Partition. Latter, we protected this anomaly in the 1973 Constitution by retaining the separateness under Articles 246 – 247 of the Constitution.

It was but natural that the tribal areas composed of a war like people, deprived of economic development and lying next to comparatively richer people would try to possess the same riches through raids and kidnappings. The income, legal, human rights and economic development differences between Fata and Pakistan are huge as the table below hints:

Table of comparative social sector indicators

Indicator	Pakistan	NWFP	FATA
Literacy rate (both sexes, %)	43.92	35.41	17.42
Male literacy rate (%)	54.81	51.39	29.51
Female literacy rate (%)	32.02	18.82	3.00
Population per doctor	1,226	4,916	7,670
Population per bed in health institutions	1,341	1,594	2,179
Road (per sq km)	0.26	0.13	0.17

Current situation of tribal administration

When the military moved into FATA in 2001, even the limited access system of indirect administration collapsed because the military commander out ranked the political agent. This is yet another less mentioned outcome of Martial Laws in Pakistan; it subverted the normal chain of civilian command in Fata. When the British designed this system they never thought of the iterations and consequences which a military takeover would generate for tribal areas.

The patronage system became confused, when the military began directing it towards its supporters. The political agent and the elders tied to him were eclipsed. This reduced the control of the government over the tribes. By 2004, the Political Agents in Waziristan became mere shadows of their former selves. At the same time the radicals realized that their greatest foes who could resist them would be the elders. So they began to assassinate them. To date about 275 have been killed!

Another poor outcome for Fata was generated by the Local Government Reform which afforded space to the radicals by weakening of the provincial government's executive authority. Many of the provincial government's powers were transferred to the new district governments. According to the Pakistani Constitution there are only two tiers of government - the federal and the provincial. Through the Local Government Reforms of 2002, a third tier of district government was created and the guardians of the provinces' executive authority the magistracy stood abolished.

If the district government composed of elected persons was limited to look after the provision of services and economic development only, there would be merit in this reform. On the contrary the reform abolished three tiers of administration which looked after state protection and enforced the provincial government's writ by regulating various laws!

In this process the office of the Commissioner was also abolished. He was the provincial government's senior regional coordinator ensuring peace, law and order and good governance on a regional level. He was the link between tribal area and the district. Even more unfortunate was the simultaneous abolition of the magistracy system, which was a pillar of stability in Pakistan and India where it still continues to endure. The magistracy system is pivotal in controlling crime, law and order and the healthy functioning of the state.

Both India and Pakistan were administered by a system of magistrates whose job was to enforce the regulatory and legal authority of the province. They were the custodians of the welfare the people and many of them combined under them powers derived from the land revenue act and the criminal procedure code. They also ensured maintenance of public order as well as the up keep of the canal and drainage systems.

Furthermore they supervised the working of police stations so that the population was protected against police violence and mal administration. In times of disaster they coordinated relief. This structure was abolished in a thoughtless manner as if space had to be found for the lawless bands who are now threatening the state!

A further consequence of the abolition of the magistracy was the drying up of the pool of officers for service in the tribal agencies as assistant political agents or as political agents because their training paths as assistant or as deputy commissioners stood abolished as a result of the dissolution of magistracy! It is the case today that very few good officers are now available for posting in Fata. What happens when

the few who are still serving retire? There is no system producing the next generation of tribal administrators.

Another serious blow to integration of tribal areas into the province was administered when a Governor of the NWFP won approval for a most regressive measure which was the separation of the Fata secretariat from the province. It may be noted that professional services in hospitals and schools as well as other fields in Fata are provided by the NWFP civil service. Hence the rationale for the integration of Fata into NWFP and not its separation as has been done.

This had created a transfer of experience to Fata of government servants who had learned their skills in NWFP. It also provided Fata with a much larger pool of officers to select from. Since Fata did not have its own service, the officers serving in Fata and who receive training during the course of their job when transferred back to the province take away the benefit of their experience in Fata. There is thus no continuity and capacity is not developed. As a matter of fact even the previous capacity has been lost!

All the factors enumerated above combined to reduce the effectiveness of the political agent. This was not lost on the al-Qaeda and others who had decamped from Afghanistan and were now present in FATA. They emerged and began their evangelizing mission. They enrolled tribesmen and others and also established numerous training camps. They spread their influence into the districts of NWFP. The spread of these warriors went unchecked, since there was now no designated structure of the provincial government left to challenge them. In Fata the political agent could not check their growth as he had been marginalized by the military.

Tribal areas task force on reform

It is not the case that the Pakistan government was not confronting the challenge of reform in Fata. In April 2006, the President's Task Force on Tribal Reform (Strengthening and Rationalization of Administration Report), submitted its report. This task force was formed to recommend measures for the revival of the authority of the political agent for meeting the security challenges in tribal areas.

The committee was headed by a very experienced civil servant. The report of the committee is important for what it said between the lines rather than what it said explicitly. Some of its main findings and recommendations were!

- The tribal balance in Fata was disturbed by the Mujahideen war against the USSR from 1979-88. The establishment of training and refugee camps in Fata during this period radicalized the tribes
- The movement of the military to Fata post 9/11 reduced the authority of the political agents and they were thus not able to influence the turn of events in favor of government policies.
- The political agent's supremacy in an agency must be recognized by all the stakeholders including the military, if the effectiveness of government was to increase.
- The best option for the future of Fata was its merger with NWFP, however since it could cause problems in these delicate times it could wait after examination by a Commission especially constituted for examining this matter.
- There was a need to review and amend the FCR
- Fata should be given responsible local government
- The government should re-instate the Commissioner but instead call him a Coordinator
- There should be more emphasis on development to bring at par the sorry social sector indicators of tribal areas.
- The development budget of tribal areas needed to be increased many fold. A new development authority should be created

Many of the recommendations of the Task Force have been applied. The important ones being the approval of a \$ 2.3 billion ten year development plan called the Sustainable Development Strategy. Only \$ 1 billion has been committed. The remaining amount is to be found. A development authority has been

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created. A partially empowered local government system is in place, which does not meet the aspirations of the people. There is no progress regarding political or empowerment reform, which is crucial for isolating the radicals.

However, as in the past this committee too shied away from proposing a rapid merger of Fata into NWFP. It failed because its analysis of the causes of the decline of the administration of tribal areas is flawed. The political agent has been by passed by many measures initiated in Pakistan since 2002. He is now marginal and is confronted by a radical movement. He cannot operate within the dynamics of the tribes – they have become autonomous in a sense. They need to be brought back through wide ranging reforms indicated below.

Proposed Fata reform highlights

The analysis above has explained the back ground and has indicated why reform leading to the merger of the tribal areas into NWFP is essential, if the lives of the tribesmen are to be improved and the menace of providing safe haven to war lords is to end. In order to do so the following needs to be done:

- A strong advocacy program should be launched in Fata and within Pakistan explaining why the agreed reform is important for the stability of Pakistan and the development of the people.
- Consultations with all sections of the tribes and within Pakistan should begin prior to the introduction of the reforms along with the implementation of a Peace Plan.
- Steps should be immediately taken to merge Fata Secretariat into the provincial secretariat with a strengthened capacity.
- Simultaneously, the Political Parties Act should be extended to Fata.
- FCR should be replaced by a liberal Fata Regulation providing more fundamental rights along with rights of judicial appeal and review.
- Fully empowered Local government should be introduced and elections held under it.
- Development should shift its emphasis from sectoral to a community based approach
- A comprehensive stabilization strategy should be devised by the civil and military establishment for Fata so as to reduce reaction against the government caused by anti-militant operations which are likely to continue for some years.
- In 2010, election of Fata members to the Provincial Assembly should take place.
- The nomenclature of the political agent should be changed to Executive officer.
- While undertaking Fata reforms, simultaneously Pata should be merged into NWFP.
- A Constitutional amendment will be needed to replace Art 246-247 reflecting the changes that will be inevitable after following the process indicated below.

Risks and challenges

Reforming the tribal areas is the one of the biggest challenges facing this country. Any reform process will face the following risks and arguments:

- The religious parties and the TTP (Tehriq e Taliban Pakistan) will insist that instead of mainstreaming it by amendment of FCR and other political reforms, Fata should remain under their control as in the past and Shariat should be introduced instead. The TTP which is fighting the state has made this demand already
- Many parts like Waziristan will resist the ending of tribal isolation since it helps in the creation of resistance and in fighting the war in Afghanistan.
- The tribal vested interest within its patronage based small elite will also agitate the protection of status quo.

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- The main supporters of the reforms will be the young generation and those who are educated.

Proposed reform process

- The PM should obtain the President's approval for reform
- Preliminary discussions should be held with the PM to obtain approval of the reform process framework and an indicative budget for activities under this reform process obtained
- Preparation of draft reform proposals
- Notification of a Task Force on Fata Reform, which should be small and must have members from NWFP, military (National Security Advisor?). It should have TORs based inter alia on issues indicated above under Proposed Fata reform highlights.
- Notification of Fata Reform Issues (Resolution) Committee chaired by the Prime Minister and including two other senior ministers and head of the task force as members, who will resolve reform issues.
- Identification of an organization to start moderated consultation process with tribesmen through FGDs (call them Jirgas). This organization will be an extension of the Task Force and will be holding the consultative process after mapping the likely players needed for consultation.
- After mapping the consultative process the organization will submit its proposal for approval of the TF along with a budgetary proposal.
- Holding of FGD (will take 3 months)
- Submission of findings of FGD to task force
- The TF debates and submits proposals to Fata Reform Committee for resolution of issues.
- The PM consults various organs of state; he creates a lobby of supporters for reform in Parliament
- Fata Reform Bill is presented to Parliament in a maximum of six months after the start of the 1st FGD.
- The Reform Bill is approved by parliament and becomes law

An implementation committee is formed to monitor the implementation of the reforms; the Fata Reform (Resolution) Committee remains intact and continues to remove bottlenecks in the way of reform.

Conclusion

For the reasons given one can conclude that Pakistan is likely to remain an unstable state with a weak administration and a disempowered people who are constantly at war with themselves, unless we recognize the problems and correct them. Reforms in FATA will be the most important measure that can bring peace to the region and strengthen Pakistan.

Reforms will be resisted and challenged but then no serious reform is ever smooth. It may be argued that let reforms be discussed when there is peace. It is however felt that the reform process itself will be an effective intervention which will accelerate peace building and will give a chance to the aggrieved to carry out their discourse within the confines of the Pakistani state institutions by getting elected and negotiating in the assemblies.

It is therefore proposed that this panel may debate the proposals submitted in this paper and any others that the panel members may introduce after which the structure and process of reform may be recommended for implementation.