

FATA
A SOCIO-POLITICAL
APPRAISAL

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PROLOGUE

After independence we have been religiously following the broad guidelines and policies set by the British as far as administration of Tribal areas is concerned. However, with the demise of USSR and the upheaval in Afghanistan the situation has undergone a sea change.

Over the decades we have been managing the affairs of FATA with a “Colonial mind set”. It has been a policy of ‘Reaction’ to the internal and external situations like the political system and crises in the country, the Pukhtunistan stunt, hostile Afghanistan and Russian invasion of Afghanistan in 1979.

In every society social change is inevitable and FATA is no exception.

While initiating legal and administrative reforms we must avoid legal and administrative vacuum which we experienced in case of Provincially Administrative Tribal Areas. The situation of definitely warrants reformation but such reforms should be in conformity with the norms and traditions of Tribal Areas.

This report is not a comprehensive analysis of legal, administrative and even socio-political setup of FATA. FATA and to identify the newly emerged social groups of Tribal society. The role of each segment of society has to be re-defined and harmonized to avoid open conflict and chaos.

The intention is not to give a final verdict about FATA but to identify certain socio-political factors and problems. Proper identification of symptoms is always vital and helpful for effective treatment.

Errors of facts and judgment, though unintentional, can Criticism is, therefore, eagerly awaited.

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CHAPTER – I

BACKGROUND

1. Federally Administrative Tribal Areas FATA is geographically and strategically located in such a way that it is the last physical barrier between Afghanistan and Pakistan. The invaders from the North, including Alexander the Great used these routes. Geographically FATA is a vast stretch of rugged mountains starting from Bajaur in the North West and terminating in South Waziristan in the South. It comprises of 7 Agencies and Six FRs having an area of 27220 squares Kilometers and a population of about 3.5 millions (1997 estimates). It is pertinent to note that, as a whole, our population has recorded an almost 300% increase during the last 40 years. One can imagine how sparsely populated the Tribal area was say a century ago. The environment of Tribal area has never been friendly for habitation. The areas receive little rainfall during the summer and thus rainfed agriculture is not a worthwhile proposition. Except a few patches of coniferous and scrub forests, most of the area is devoid of forests. The soil is shallow, susceptible to erosion and not conducive for agricultural crops. According to the available data the cultivated area is 6.6%; of which only 3% is irrigated. Another 6% can be brought under cultivation.

2. Till recent past the local economy was mostly livestock oriented. Abject poverty prevailed in the adjacent and far-flung valleys as the local population had to eke out a living from poorly cultivated lands receiving little rainfall during the summer season. The side valleys were almost land locked due to poor communication network. Only a few lucky tribes, inhabiting the famous passes, could engage in business and receive benefits from the invaders for allowing them safe passage or by shouldering collective responsibility for the safety of caravans carrying goods. All the rulers, who consolidated their reign in India, ensured that the entire route from Kabul to Calcutta remained safe and protected specially the routes passing through the famous gateways to India like Khyber, Tochi, Nawa and Gomal Passes. These routes were important and vital both from strategic and trade point of view, as the tribes inhabiting these valleys could create trouble for the Invaders inspiteof their small numerical strength. The Invaders, being

good strategists always planned lightning attacks and smooth and swift retreats to the mountains in Afghanistan from India due to two reasons:

- (i) The climate in the Indian plains remained bearable, from October to April and the rivers negotiable for the war hardened armies from the cold North.
- (ii) From April onwards the weather did not suit the Invaders due to intense heat and swelling of the rivers.

3. The purpose of highlighting these factors is not to dilate upon the war strategy or history of Invaders from the North but to drive home the point that their only interest in the present Tribal belt had been to ensure a smooth passage for their armies without obstruction and the safety of different routes for trade convoys travelling to and from India. Their interests were in the fertile and agriculturally rich plains of India which fetched not only enough revenue but also much needed food for their brother back in Afghanistan and beyond the Hindu Kush. Thus the Dehli Sultanate and Mughals never tried to establish an effective Land Revenue System through Land Settlement (There was hardly any land available in the mountainous stretches of FATA) or Courts for administration of justice. They only devised a system of collective responsibility in the Tribal belt which the British inherited and later codified in the form of the FCR in 1901. Thus the Jirga system and collective territorial responsibility is not a novel idea conceived by the British as it had been in vogue since centuries. The British also could not afford trouble in the Tribal belt due to the strategic position of the area. Although they generally pursued a policy of appeasement through monetary benefits but never shied away from stern reprisals against the Tribal in case of non-compliance. It was only through a dexterous use of force and manipulation which compelled the Tribal to submit to the British policy. Thus, historically, the Tribals are accustomed to both types of treatments.

4. Right upto the seventies successive Governments made no serious efforts to develop FATA. The landlocked area, due to lack of communication network, provided an ideal sanctuary to the locals when they revolted against the govt of the day. In the past the local economy has remained livestock oriented with the locals leading a

nomadic way of life. Such a population can always afford to revolt against the govt as it becomes very difficult for the govt to indulge in arm twisting where majority of the locals are not permanently settled and hardly dependent upon agriculture or Government Service.

CHAPTER – 2

CONSTITUTIONAL STATUS

1. As far as Tribals are concerned, Government of Pakistan, in pursuance of Pre-Partition treaties, has accepted the status of Tribals as a legal and constitutional entity under the Constitution of 1973. It must be kept in mind that under Article 247 (6) the status of Tribal Areas cannot be changed without the consent of Tribals. It is mandatory that to declare any Tribal territory to cease as Tribal Areas the President of Pakistan shall ascertain the consent of Tribals in a representative Jirga. The word, “JIRGA” has not been defined in the Constitution but any effort to contrive an amenable Jirga would not only be a violation of the spirit of the constitution but also fraught with dangers. Such Jirga should, therefore, be a true representative of the Tribals having a clear mandate of all the sub-tribes.

2. One school of thought strongly advocates that in the presence of Articles 246-247 of the Constitution, the change in the status of Tribal Areas is next to impossible. Therefore, the Parliament may, by amending the Constitution, delete these two articles and merge the Tribal Areas with the NWFP. Apart from the serious repercussions of such an amendment it must be kept in mind that the 1935 Act and the Constitutions of 1956 and 1962 also maintained the constitutional status of FATA. Under the 1956 and 1962 Constitutions the four provinces status of FATA was not changed. Thus FATA is not, strictly speaking, a creation of the 1973 Constitution alone.

3. The FATA Parliamentarians like other legislators of the Federating Units are “Framers” of the 1973 Constitution. They again validated the 8th amendment and Revival of Constitutional Order in 1985. FATA is a constitutional and territorial entity under Article – 1 of the Constitution. Any amendment, through brute majority, without the consent of 16 FATA Parliamentarians, would be a violation of the spirit of the Constitution. Rather it would tantamount to changing the basic framework of the Constitution. Such a drastic amendment should not be constructed as amending Article 58 (2)(b). All the previous agreements signed by the Government of Pakistan, and as

Successor-in-interest of British India, have been enshrined in the 1973 Constitution. The FATA Parliamentarians, as Framers of the Constitution, gave their consent only after ensuring their rights under Article 246 and 247 of the Constitution. It is a question of merging an area of 27220 square kilometers comprising a population of 3.5 million (1997 estimates). Any change in the status of Tribal Areas, or part there-of, is possible only after express consent of a representative Jirga under Article 247(6) and any constitutional amendment in this regard must not be made without the consent of FATA Parliamentarians. We should gauge the opinion of Tribals before venturing into any of the above course of action. Currently one can say with utmost certainty that neither the Tribal Jirga nor the FATA Parliamentarians would dare to support such a move not because that the cause of their own brethren is dear to their hearts but rather for the safety of their own lives and property.

4. Our options, as far as change in the constitutional status of FATA is concerned, are limited. Therefore, instead of wasting time and resources on such a futile exercise there is a need to critically analyse the whole socio-political situation and reform the existing system. The management or mismanagement of PATA (Malakand Division) during the last 25 years is a classic example, where the replacement of traditional administrative-legal system with the “modern” system has not yielded positive results. It is pertinent to point out that all the three former princely states of Malakand Division had remained under strict authoritarian rule and the locals are much disciplined and “docile” as compared to “savage” tribesmen.

CHAPTER – 3

Administrative system

1. The system of administration and justice in Tribal Areas is based on the concept of protective and collective responsibility. Trial is through Jirga, a system somewhat analogous to trial by jury and the Tribal traditions are regarded more or less sacrosanct.

2. Historians and other Tribal Areas experts attribute the special status of FATA under the British and the Pakistan Governments to the Russian factor and hostile Afghanistan. The treaties signed between the British and the Tribals are frequently referred to in support of this argument. These treaties give certain rights and concessions to the locals. For example, Tribals living within the five miles strip on both sides of Duran line can move freely across the border. Some argue that since tribes of the same stock straddle both sides of Durand line, therefore, these concessions were inevitable. It may be pertinent to note that the Durand line starts from Wakhan corridor in Chitral and also passes through Dir both former Princely States and now settled districts of NWFP. In the case of Chitral (Arandu area) the same tribe lives on both sides of the border. Similarly, the Mashwanis in Dir also live across the border in Afghanistan.

3. Balochistan also shares a long and porous boundary with Afghanistan. Both sides of the borders are inhabited by the same sub-tribes of Pushtuns. Why did then the British devise a unique legal and Administrative system for the FATA only? Even in the NWFP, Dir and Chitral were princely states under the overall control of British.

4. The British devised this special system of Administration keeping in view the historical background and the prevailing socio-political circumstances of Tribal Areas. Hostile Afghan Government was not the sole reason, as some may argue, and hasten to add, that because we have a friendly Government in Kabul now, therefore, the special status of FATA may be abolished. In Baluchistan the British preserved the princely states in Baloch area while declared the border Pushtun areas as British

Baluchistan. In Chitral and Dir they succeeded to install rulers of their choice and implemented the border policy through these rulers.

5. It is pertinent to ponder over this issue that while the British subjugated and ruled successfully so many nations around the globe, through strict policing, but failed to do so in case of a tiny portion of their empire. The colonial Masters ruled a major portion of India, by proxy, through creation or preservation of more than 500 princely states and enforced Roman Laws in the rest of India through an effective system of Police and Magistracy. They spent substantial amount of money on Military operations in FATA yet devised a cheap and effective system of administration and justice to avoid perpetual financial losses on direct policing of FATA. Is it feasible and viable to extend existing laws of the country to FATA and that too against the will of the locals? Is it possible to confront an hostile population through direct policing? At what cost and for how long?

CHAPTER – 4

Cost Effectiveness

1. Comparison of Administrative and Judicial System

The total area of FATA is 27220 Square Kilometer having an estimated population of 3.5 million (1997 estimates). The NWFP estimated population is 17 million (1997 estimates), while the total area is 74521 square kilometer. Thus FATA Constitutes 20% of population and 37% of area of NWFP.

2. For the year 1997-98 the total allocation for law and order, administration of justice and revenue in NWFP was as under :

TABLE – I BUDGETARY ALLOCATION FOR JUSTICE AND LAW & ORDER IN NWFP.

		(Rupees in Million)	
(A)	(i) Police	=	1589.00
	(b) Judiciary	=	141.555
	(c) District Administration	=	274.671
	(d) Revenue	=	72.160
	(e) Home Department	=	8.772
	Sub Total :	=	2086.158
(B)	<u>LEVIES</u>	<u>(NUMBER)</u>	
	(i) Chitral Border Police	(180)	= 6.727
	(ii) Malakand Levy	(1325)	= 37.893
	(iii) Dir Levy	(337)	= 09.49
	(iv) Hangu (Kohat) Levy	(168)	= 9.48
	Sub-Total	2210	= 63.59
Grant Total A + B		=	<u>21.49.748</u>

1. Government of NWFP demands for grants and current expenditure for 1997-98. Vol.III (Part-c)
2. Government of Pakistan, Finance Division, Budget 1997-98 current expenditure and development expenditure Kashmir Affairs and SAFRON.
3. For the year 1997-98 the budgetary allocation for law & order and administration of justice in FATA was as under :

Table – 2 Budgetary allocation for Administration of Justice and Law & Order in FATA (1997-98)

Number	(Rs.in million)		
(i) Commissioners	-	=	9.444
(ii) Political Agents	-	=	30.670
(iii) Peshawar Khassadars	7..4	=	136.346
(iv) D.I.KhanKhassadars	4937.	=	104.800
(v) Bajaur	1978	=	53.942
(vi) OrakzaiKhassadars	2287	=	56.707
(vii) KohatKhassadars	3394	=	68.049
(viii) BannuKhassadars	3310	=	100.762
<u>TOTAL</u>	<u>22910</u>	<u>≡</u>	<u>560.72</u>

4. The four Commissioners e.g. Peshawar, Kohat, Bannu and Dera Ismael Khan mainly contribute towards administration of settled areas (upto 60-70%).

5. In the above analysis the budgetary allocation of Frontier Corps for FATA (1059.8 million rupees for 1997-98) has not been included and only the comparison of administrative and operational staff has been made. Similarly regarding NWFP statistics the budgetary allocation of Frontier constabulary (883.228 million rupees for 1997-98) and the Frontier Corps Dir and Chitral scouts (250.20 million rupees for 1997-98) have not been accounted for Frontier Corps is no more available to Political Administration for administration of day to day affairs regarding Law & Order and is mainly used for major /

emergency operations. In addition to guarding the Pak-Afghan Border the F.C. has been assigned the task to check smuggling of contraband, weapons, Narcotics (Custom/ANF duties), Food items (Food Department assignment) and also timber smuggling (Task of Forest Department). The dispersal of force for these multipurpose duties was one of the reason of aggravation of law & order situation in Parachinar (Kurram Agency) in September 1996 when sufficient force was not available to the Political Administration to control Shia-Sunni Clashes.

3. Govt of Pakistan, Finance Division, Budget 1997-98. Current and Development Expenditure. Kashmir Affairs and SAFRON.

6. Contrary to this in settled areas of NWFP the anti-smuggling and regulatory duties are being performed by the Custom, Food and Forest Department. The budgetary allocation of Custom (NWFP) for the year 1997-98 was 58.438 million rupees while the Forest Department budget was 68.44 million rupees for the same year. (The budget of NWFP Forest Department does not include the budget for foreign assisted projects, Watershed Management and Social Forestry).

7. It is also relevant to point out that the share of Khassadars/Levies in FATA budget (1997-98) was 520.606 million rupees i.e. 93% of FATA law & order budget. From 1985 onward the Political Governments have been granting Khassadaris under political compulsions and thus without administrative justification. For the year 1995-96 and 1996-97 fifty million rupees were sanctioned for creation of 2801 posts of Khassadars. The strength of Khassadars/Levies can be decreased to 20,000 or, if not possible, there should be no more Khassadaris for another 3-5 years.

8. In spite of above mentioned factors the total administrative and operational expenditure of FATA (Table-2) amounts to 26% of the law & order expenditure of NWFP (Table-I). as already mentioned FATA constitutes 20% of population and 37% of area of NWFP. It is also pertinent to point out that only 6% area of FATA is under cultivation as compared to 25% of NWFP. Inaccessibility and ruggedness of FATA with sparse population has always been a problem for effective administration.

The comparison of allocation of Rs.560.72 million (FATA law & order budget) with Rs.2149.748 million (NWFP law and order budget) on current (annual) basis is misleading in the sense that most of the Khassadars / Levies use their own weapons for performance of law & order duties and they are not entitled to pensionary and other benefits such as compensation or family pension in case of injury/deaths or provision of residents. Thus there is no 'recurring' cost in case of Khassadars/Levies. Pension statistics for Police Force judiciary and District Administration are not readily available as a lumpsum annual provision is made for pension of all the Govt employees. Keeping in view the large number of employees and huge expenditure of Rs.2 billion per annum the annual recurring expenditure on pension and other benefits may run into millions of rupees.

9. The purpose of above comparison is to highlight that the prevailing socio-political and geographic conditions in FATA are more difficult than the NWFP and even without taking into account the political cost, the extension of prevailing judicial and police system to FATA would require substantial budgetary allocations.

10. A qualitative and quantitative comparison of output is also relevant to clarify the position. Administration of justice is the basic aim of every society. Needless to state that administration of justice should be cheap and prompt. Moreover, not only the accused should be punished but the victim should also be compensated. It is a matter of common knowledge that in settled areas justice is not only costly but also badly delayed. This is true both in case of criminal and civil litigation.

11. For the year 1996 the position of heinous cases (Includes murder, attempted, hurts, kidnapping, abduction, rioting, assault on Govt servants, decoity, robbery, burglary and theft) in NWFP was as under :

Table – 3. Registration, Investigation, Prosecution, and disposal of heinous cases during the year 1996.

STATE OF CASES	NO. OF CASES	% OF SUB-TOTAL
Cases under investigation from the previous year	1363	12%
Reported during the year	10129	88%
Sub Total :	11492	-
Cancelled	221	2%
Untraced	684	6%
Pending investigation	1870	16%
Challaned	8717	76%
Sub Total	11492	-
Courts disposal		
Convicted	1308	13%
Acquitted	8889	87%
Sub Total	10197	
Pending in the courts		
Previous	22082	52%
Current	20596	48%
Sub Total:	42678	

4. Progress Report of NWFP Police Department.

12. The above table indicates that the Police sent upto 76% cases to the courts for trial, while 24% cases were cancelled, untraced or pending investigation. The conviction rate was only 13%. It is pertinent to point out that investigation, prosecution and conviction rates indicated in the above table pertains to 11 types of heinous crimes only. These are the crimes which the Govt is supposed to investigate properly and prosecute vigorously. Besides the contesting parties also engage their own lawyers and produce witnesses. Thus these are highly contested cases. With the inclusion of other cases and petty offences the %age of sent up cases for trial and conviction rate would further

decrease. Moreover the conviction rate of 13% is for Magisterial and District Courts only and many more are freed at the level of Session Judge and High Court. The overall pendency in the courts for the year 1996 was 42678 cases. This huge pendency in various courts is four times more than the annual reporting of 10129 cases and five times more than the cases sent up to the courts. It may also be clarified that judiciary has been separated from the system may be due to the following reasons :

- (i) The complainants give false information (First Information Report) to the Police. Although the law takes care of giving such false information and the complainant can be proceeded against and punished.
- (ii) Poor investigation due to inefficiency and corruption.
- (iii) Improper prosecution.
- (iv) Inefficiency and corruption amongst sub-ordinate judiciary.
- (v) Lacunae in Procedural and Substantive laws.

13. Unfortunately we do not have a proper system of analysis and review regarding the above causes to ascertain the facts and fix the responsibility.

At the moment police, prosecution, lawyers and subordinate judiciary blame each other for miscarriage of justice. While no one is ready to accept the blame the only victim is common man.

*5. Progress reports of Khyber and Bajaur Agencies.

14. Regarding FATA the data of one big urbanised agency having high crime rate is given as under :

Table – 4 Institution, disposal and conviction percentage of cases in FATA (Khyber Agency) during 1997.

NUMBER OF CASES

Previous Balance	Instituted during 1997	Total	Decided	Balance	Convicted	Acquitted
30	267	297	262	35	97%	3%

The above table indicates that disposal was 88% with pendency of only 12% at the end of the year as compared to 400% pendency in NWFP. The rate of conviction in NWFP was just 13% as compared to 97% in Khyber. In Bajaur Agency disposal was 100% with conviction rate of 78% during the year 1997. The whole position can be summed up as followed :

In case of settled areas it is “Delayed justice or injustice” injustice” while in FATA it is “Prompt justice or injustice”

CHAPTER – 5

CAUSES OF FAILURE OF ADMINISTRATIVE SYSTEM IN FATA

The system of Political Administration in Tribal Areas has always fascinated historians, sociologists and experts of public administration alike. The bitter fact is that this time tested system of political administration has failed to deliver. Therefore, a dispassionate analysis of breakdown of political system is required. No sane person, having even a scant knowledge of history, would agree with the argument put forward, by a few in this country, that the British devised an entirely oppressive system for the Tribal Areas and ruled the Tribals through sheer use of force and coercion. Such a hastily drawn conclusion is an insult to both the bravery of the Tribesmen and Political and Administrative acumen of the British.

In fact the British devised this unique system of administration, which was quite distinct from the rest of India, when they realized that the Tribals cannot be reined through direct policing. They learned this lesson after incurring heavy costs, both of men and money, in the numerous military expeditions. The British almost conquered the entire Tribal belt and reached the valleys which even today are proscribed. Yet they very wisely decided not to engage in perpetual war with the Tribals. The present system of Administration was devised after great soul searching and worked, of course from the British point of interest, even during the tense years of Khilafat Movement, the Afghan wars and the World Wars.

When we talk of the current 'failure' of the political system in Tribal Areas we conveniently ignore that the modern system of administration and justice in comparatively developed and 'soft' settled areas is no exception either. The failure of system is thus not confined to Tribal Areas only.

Would it be prudent to replace a partially failed system with a totally failed system? One should admit that the public administration must be turned according to the changes

which occur in the society as no society is completely static but such reformation should be gradual and well designed.

We have to analyse whether the current administrative failure in FATA is due to the failure of political system or due to the fact that over the years the political system has not been allowed to operate freely. The term 'Political system' used in the context of Tribal Areas means the system of administration in FATA under the FCR and not the political system of the country.

Some of the key factors which have contributed significantly towards the degeneration of political system are as under :

1. **Policy of appeasement:**

- (i). Pukhtunistan Stunt: Even before the start of the Afghan insurrection, successive Governments in Pakistan avoided strong punitive actions against the Tribals for fear of retaliation, Afghanistan's propaganda and exploitation of Pukhtuns Sentiments. The local political administration, at times, was not allowed to act freely and strongly to punish the culprits. This only encouraged and strengthened anti-social elements and the age old system of collective responsibility weakened.
- (ii). Afghan war is the most vital factor contributing towards the deterioration of law and order and collapse of administrative system in FATA. The Govt policy from 1979 onward resulted in extinction of the already porous Durand line between Afghanistan and Pakistan. The Pakistan Government in a bid to win over the Tribals and to counter the efforts of surrogate Afghan Government and other Afghan groups ignored the follies of some anti-Pakistan Maliks and doled out benefits much to the chagrin of Pro-Pakistan Tribals. Smuggling of weapons, contributed items and narcotics increased during the last two decades.

2. **Politicisation of FATA:**

- (i). After election of 1970 Pakistan Peoples Party came into power and Late Zulfikar Ali Bhutto started holding, first ever, political rallies in Tribal Areas. Opposition parties such as JUI and former National Awami Party (NAP) also initiated political activities in FATA.
- (ii). with the advent of democracy in 1985 new political forces emerged in Tribal Areas. The nouveaux riches, by amassing wealth through smuggling of arms, narcotics and other contraband items simply outclassed the traditional Maliks/elders. Examples of purchasing votes through unabashed use of wealth are not un-common. The 1985 assembly was elected on non-party basis while the Governments formed as a result of 1988 and 1993 elections enjoyed thin majority in the Parliament. The Tribal legislators comprising of 8 MNAs and an equal number of Senators exploited such weak political Governments to gain undue advantages. Successive Governments succumbed to political pressures of Tribal legislators at the cost of traditional Maliks/elders and the Political administration. Moreover, the Federal Ministries of SAFRON and Interior became more assertive. The Federal bureaucracy, without having sufficient knowledge of FATA, forced the provincial Home Department, to frequent backtrackings on vital issues which contributed to the weakening of political system.

3. **Role of Provincial Government**

- (i). It is common knowledge that due to climatic conditions and scarcity of land the Tribals have never been able to sustain without earning from the settled areas. The increasing population pressure has resulted in large scale migration to settled areas. Under the colonial rule the Tribals were not allowed to move freely in the rest of India and purchase properties. Now due to earnings from abroad, business, and other factors the Tribals have purchased properties and settled in districts right from Dir to

K.I.Khan. With the passage of time “Defacto Tribal Areas” adjoining the Agencies of Mohmand, Khyber and F.R. Bannu have emerged. The emergence of these defacto Tribal Areas also vouch for the fact that the Tribals are not ready to accept, at least willingly, the “benevolent” system of police and justice in vogue in the settled areas. The Mohmands, Afridis, Wazirs, Shinwaris, Aurakzais and Mehsoods settled in the districts have purchased vast properties and have also become influential in the local politics. These Tribals have maintained the relationship with their parent agencies/F.R.s for fringe benefits and also as a source of identity. Most of these Tribals have dual domicile certificates and with the extension of adult franchise now also enjoy right of double voting. As voters of Provincial Assembly the Tribals exert political pressures, through the MPAs and the Provincial Government, to gain undue advantages. Thus from 1985 onward the role of Provincial Govt in Tribal Areas has increased.

- (ii). Tribals elders and parliamentarians strongly resent political interference in the affairs of Tribal Areas by the Provincial Government/Provincial Legislature. The FATA Parliamentarians consider such political interference by the Provincial Government as a direct threat to their political role and an encroachment upon their rights and authority. The Maliks/elders also have similar views.

4. **Socio-political problems**

- (i) **Cultural Lag:**

- (a) The Tribals settled in the districts are not only economically well-off but have made considerable advancement in the field of education. This has resulted in a rapid social change. This change is so distinct that it is visible within the families having residences both in FATA and the urban centres of NWFP and other Provinces. Even within Tribal Society the towns such as Bara, Jamrud, Khar, Parachinar and Miranshah have developed considerably and an

educated “urban Mini-class” of Tribals has emerged. On the other hand the social change in the rest of the Tribal society is rather slow. The present Tribal society is a classic example of cultural lag, as one part of the society has rapidly changed while the other is almost static. Such cultural lag in a society often leads to social conflicts.

- (b) The Tribal settlers, professionals and educated youth (Specially wards of Non-Maliks) resent the hegemony of Tribal Maliks/Elders and demand for abolition of their role. This class opposes the FCR without offering an alternative system of administration and justice. Moreover, they also equally oppose extension of laws of the country and taxation system. This segment of society clamour for all fundamental rights minus the obligations. Only lawyers from Tribal Areas, practicing in urban centres of NWFP, demand for extension of writ jurisdiction of the High Court and abolition of the FCR. Interestingly even lawyers do not support the idea of policing and extension of Taxation Laws.

(ii) Juvenile Delinquency

Some of the unemployed, educated but disgruntled youth of Tribal Areas, mostly from lower strata of society, vehemently oppose the role of Tribal Maliks/Elders in the affairs of Tribal Administration. They demand equal share in the ‘spoils’ and the administrative authority. In some of the Agencies such youth organizations are quite well organized. One such example is TemanTehrik Force (TTF) of South Waziristan Agency. These “Protestant” young Tribals do not conform to the Tribal norms as far as the ascribed role of Maliks/Elders is concerned.

(iii) Degeneration of Malaki System

- a. From Mid seventies onward the Government spending in Tribal Areas has increased manifold. Afghan war prompted the Government to undertake major developmental projects to develop

infrastructure facilities in FATA. To counter the Afghan Government's propaganda and to keep the Tribal elders/maliks in good humor the Governmentt generously doled out fringe benefits in the form of cash and permits. Some elders, adept in the art of playing one against the other, also "benefitted" from the generosity of Afghan

- b. Upto early seventies Maliks/elders were recognized as symbol of social status with token financial benefits. The Afghan civil war and the advent of democracy in 1985 converted the institution of Maliks / elders into a business enterprise. Most of the elders indulged in smuggling and also became share holders with the political administration in corruption. The four general elections of 1985, 1988, 1990 and 1993 further increased the 'Price' of Maliks/Lungi holders as votes were openly purchased and with much higher price. This resulted in a mad rush for grant of lungis and the Government was subjected to intense political pressure by the incumbent FATA Parliamentarians who wanted to expand their vote bank. The stakes in Malaki/Lungis became high and holders of the titles earned fringe benefits at the cost of their fellow Tribesmen. This led to development of sense of deprivation among common tribesmen and hatred against their Tribal elders who indulged in corruption, blackmailing and smuggling. Due to the factors explained above and other extraneous factors the Tribal elders no longer enjoy the moral authority over their fellow tribesmen. Resultantly, the Political Administration finds it difficult to muster support and community participation in day to day affairs.
- c. On the other hand the Parliamentarians, specially with the introduction of adult franchise, want greater role in the Tribal Administration. Since the entire system of Tribal Administration rests upon the Tribal elders, the Parliamentarians are of little help to the Political Administration. The Parliamentarians, with the help of political workers and disgruntled youth, may stir a problem but are not very effective in conflict resolution. On the

other hand the Tribal elders, inspite of their diminished political role, are still in a position to create or resolve problems.

iv. Political and Religious Parties:

- a. Religious parties like Jamiat-Ulma-e-Islam (JUI) have always enjoyed considerable influence in Tribal Areas, particularly in North and South Waziristan. Awami National Party also have some sphere of influence in Mohmand and Khyber. With the introduction of adult franchise all the political parties are desperately trying to get a foot hold in the Tribal areas. The Political Parties consider, and quite rightly, the Tribal areas as fertiles” to muster support for armed resistance and ‘Long Marches’ against any Government.
- b. The Tribals have never been completely apolitical even under the British Government. But the tribal bonds and loyalty have remained intact and stronger than the political affiliations. TNSM, J.I. (Bajaur, Mohmand, Khyber) ANCP (Khyber, PPP (Kurram) JUI (SWA & NWA) and TNFJ (kurram) have made inroads into the body politics of FATA.
- c. The people of settled areas waged a political and un-armed struggle against the British rule. The introduction of Local Bodies/Councils also enabled the people of sub-continent to manage their own affairs. After Independence the locals of settled areas remained active both against the democratic and dictatorial regimes. Thus they are “ well trained” in the ‘Art’ of Political rallies and agitation. Contrary to this the political, religious or ethnic based agitation in FATA soon assumes the shape of “Lashkar” (Raising of an armed contingent). The Tribals are not accustomed to baton charge or teargas and confrontation with the Law enforcing agencies is almost construed as exchange of “bullet for bullet”. Thus “traditional politicking” in FATA is fraught with dangers. In case of an opposition Government in NWFP the notorious “Long Marches” on the pattern of 1993 will be detrimental for the Federation as the Provincial Government may “encourage” the Tribals for such Long Marches. The

countermeasures by the Federal Government or other political parties would then lead to open confrontation.

- d. The Tribal society is already polarized on tribal (North and South Waziristan) and Sectarian (Kurram and to some extent Orakzai) lines. The introduction of Political Parties would lead to further polarization. Even religious parties would indulge in armed clashes due to divergent views. Examples TNSM VS Jamat-e-Islami (Bajaur), JUI VS ANP (Khyber, SSP VS TNFJ (Kurram), ANP VS JI (Khyber), PPP VS JI (Khyber, Mohmand and Bajaur).
- e. Adult franchise was introduced in the Tribal Areas without making corresponding changes in the Administrative and legal system. A common man in the Tribal Areas has hardly benefitted from the introduction of adult franchise. It would have been more appropriate had the system of Local Self Government preceded the extension of adult franchise.

v. Emergence of Nouveaux riches:

In the good old days, economically, the Tribal society was more egalitarian and disparity between the rich and the poor was not much. The influential Maliks or elders only excelled in muscle power, more land, a large 'Kacha' House and number of cattle head. As already discussed earlier from seventies onward the situation changed rapidly. In eighties, besides smuggling of contraband under the guise of Transit Trade, the phenomenon of arms and narcotic smuggling assumed alarming proportions. The moral values of Tribal society degenerated. Crime rate increased. Successive Governments accepted smuggling as a fait accompli. The emerging wealthy class not only encouraged outlaws but also assumed political power. The net result is sense of deprivation and frustration among the common tribesman.

vi. Social interaction with the settled area:

- a. As discussed earlier under the British rule the Tribals were not allowed to purchase properties in the settled areas. After Independence due to Government efforts, earnings from abroad and other factors, the socio-economic condition of Tribals has improved. The Tribals have purchased

properties in urban centres like Peshawar, Kohat, Bannu, Tank and D.I.Khan. Large Scale migration from Tribal to settled areas has brought substantial social change in the Tribal society. The “evils” of urban society have also permeated into Tribal society. Moreover, the engagement of Tribals in transport and real estate also lead to conflict with the locals of settled areas.

- b. The sprawling cities of Peshawar, Shabqadar and Bannu, are now touching the Tribal borders. The lands bordering tribal areas, having no agricultural value, were loosely demarcated but now everyone has discovered the value of this land. The result often is armed clashes between the locals of settled areas and the Tribals, all along the borders. In some of the cases sub-tribes from the agencies have stretched the limits of the Tribal territory either by purchasing the lands or possessing the same through sheer use of force. Such areas are commonly known as “Defacto tribal Areas”. Practically these areas are neither owned by the Political Administration nor administered by the District Administration. Such areas have become safe sanctuaries for criminals and adversely affect the laws & order in Tribal and settled areas. Any offence committed by the residents of such defacto areas is “Credited” to Tribal Areas.
- c. The Tribals have developed all sorts of business throught Pakistan. In accordance with Tribal culture all financial transactions are executed without proper documentation. Any violation of a verbal agreement on the part of a party, and such violations are not uncommon, leads to kidnapping. Kidnappings for ransom have also increased.

(vii) **Absentee Maliks/Elders:**

During the last fifteen years most of the Tribal elders have shifted to the nearest cities. Almost all the FATA parliamentarians reside in the cities. They visit their respective Tribal areas on social occasions or for political campaign only. Tribal society is a society of Gerontocracy. A tribal elder can only exercise influence and enjoy moral authority over his tribe if his “Hujra” is always “Functional”. In Tribal society no one can lead by proxy. The irony of the fact is that Tribal

educated intellectual class also prefer to settle in the cities. The officials from FATA are not ready, at least willingly, to serve in FATA. The result is that the moral authority of Maliks has eroded considerably and rudderless Tribal society has been left at the mercy of half-educated religious leaders and illiterate young having criminal propensity. The political administration, with scanty knowledge of sociology, is running the administration using hit and trial methods. The results are obvious and painful.

5. Administration

- (i) Under the Constitutions, President of Pakistan is the Chief Executive for the FATA. Governor NWFP administers the Tribal Areas as Agent to the President. With the introduction of 13th Constitutional amendment the advice of the Prime Minister is now binding upon the President regarding the appointment of Governor. Thus the power centre, as far as FATA is concerned, has shifted from the Presidency to the Prime Minister House.
- (ii) Budget for the FATAQ is passed by the National Assembly and is released through the Ministry of State and Frontier Regions (SAFRON). It is the responsibility of SAFRON to formulate and implement policies of the Federal Government, regarding FATA through Governor NWFP. Creation and abolition of posts is also within the competency of SAFRON.
- (iii) Annual Development Plan (ADP) is prepared by the Planning, Environment & Development Department (PE&DD) NWFP and approved by the Governor. Secretary Finance NWFP also acts as Secretary to the Agent (Governor) to the President. At secretariat level Home Department has been declared as Home & Tribal Affairs Department. Home Department is responsible for Law & Order in FATA. Nation Building Departments in FATA are represented at Agency, Divisional and FATA level. The Departments of Education, Health, Forest and Agriculture are headed by independent FATA Directors. Every Government official working in FATA is paid by the SAFRON> the services of all the officials are borrowed from the Provincial Government. The Political Administration

is controlled by the Home and Services & General Administration Department. The officials of Nation Building Departments are responsible to the respective Administrative Secretaries.

- (iv) In a nutshell every single person working in FATA is borrowed from the Provincial Government but they are neither answerable to the Provincial Legislature nor to the National Assembly. Governor's Secretariat, in the absence of independent monitoring machinery, has to rely upon the reports sent by the Heads of Provincial Departments.
- (v) Since all the functionaries are Provincial Government employees, therefore, the Federal Investigation Agency (FIA) cannot proceed against them. Provincial Anti-corruption Department's jurisdiction has not been extended to FATA. Tribal Areas are also outside the purview of Ehtesab Act, 1997.

Thus FATA is free from all "encumbrances". This leads to irresistible conclusion that either FATA is "free from all". Unfortunately the facts vouch for the later. Every "Through-bred" official wants to "serve" in FATA as it is not at all necessary to serve the people of FATA because they hardly matter. Someone may come up with a very valid counter argument regarding efficacy of multifarious Anti-corruption laws and agencies in curbing or preventing corruption but established failure of these Agencies in the settled areas hardly justify the lack of accountability in FATA.

- (vi) For law & order Frontier Corps is the Police Force of Political Administration and is responsible to the Governor as per provisions of FC Ordinance 1959. While the defacto position is that the FC is under the administrative control of Ministry of Interior.
- (vii) It is a miracle that FATA is being administered by some many agencies and institutions and yet the system has somehow survived and still functioning.

6. **Good Governance and Lack of clear policies:**

- (i) As explained vide Para-5 above the administration of FATA is unique as far as principles of public administration are concerned. All financial, planning and administrative arrangements have been devised to ensure that the powers of the Governor as Agent to the President are effectively checked and diluted. It is the responsibility which is Federal set up, with Parliamentary form of Government, the role of Governor to administer FATA is really complicated. For effective administration of Tribal Areas firm and quick decisions are required.
- (ii) It is being argued that moral and professional decay is not confined to FATA alone but is widespread. It is true that under the present administrative arrangements, with bare minimum accountability, we cannot create an island of transparent administration in the vast ocean of corruption but the bitter fact is that the entire political administration revolves around the Political Agent. It is a one man show. The Tribals only obey strong and honest leadership. Unfortunately our political administration by reading the daring actions of erstwhile British, try to resort to such adventures without moral leadership and freedom of action. The result is shameful retreat and further weakening of writ of the Government.

CHAPTER – 6

CONCESSIONS

1. The following segments of FATA enjoy various concessions :

(i) Maliks/Lungi Holders/Elders

Enjoy social, political, judicial and financial patronage plus all other concessions given to a common tribesman.

(ii) Common Tribals

(a) Special Seats in Services and Education Institutions.

(b) Domestic and Foreign Scholarship, Age relaxation. Social status as a “Free Tribeman”.

(c) Share in profit and loss on the basis of “Nikat”.

(iii) Non-residential Tribals:

All concessions enjoyed by a common tribesman without obligation such as territorial responsibility.

2. Apart from the above mentioned concessions the Tribals also enjoy the following privileges :

(i) No Taxation:

Taxation Laws have not been extended to FATA. Almost free electricity, free education and more or less unfettered involvement of many Tribesmen in smuggling.

(ii) Over representation in the Parliament as compared to other provinces.

(iii) Free from encumbrances of all other laws currently in vogue in the rest of the country.

(iv) Free movement to and from Afghanistan and tax free trade.

The list is by no means exhaustive.

CHAPTER – 7

PARADOXES OF TRIBAL SOCIETY

1. No society is completely free of self-contradictions but in FATA, being a homogeneous and traditional society, such paradoxes are quite apparent. The paradoxes require critical analysis as these are very crucial for reformation and formulation of future policies.

- (i) There is no denying the fact that the Tribals are practicing muslims. They are ready to wage holy war for the glory of Islam any where in the world. Yet any Islamic injunction running parallel to their vital interests is safely ignored. The Tribals, in such a case, quickly revert to their much glorified “Riwaj” (Customs/Traditions).
- (ii) Conservative yet hedonistic

Any effort by the Government to develop the society is conceived as a threat to Tribal norms. Collectively the Tribal society is conservative but individually the tribesman is not so ascetic to have disdain for worldly pleasures.

- (iii) Staunch followers of religious leaders yet Non-conformists.

Religious leadership has always exercised great influence over the Tribal Society. The religious leaders are still in a position to foment agitation against the Government. The Tribals readily follow the religious leaders against the Government but not in support of it. The same tribes, inspite of all the reverence for the religious leadership, do not allow them to adjudicate in the matters adversely affecting their social and economic interests.

- (iv) Individual action but collective reaction

Political Administration may succeed to win over individuals through arm twisting or offering carrot. Yet the whole tribe reacts collectively. They remain divided among themselves but always get united against the Government.

(v) Demand for rights albeit without obligations

The Tribals clamour for grant of all rights but not ready to shoulder any obligation.

(vi) Resist Authority yet obey honest and strong leadership.

In Tribal society there is collective leadership. No Prince or Chief has ever been able to subjugate them. The Tribals strongly resist any formal or informal authority. Till extension of British rule they had never been governed effectively. In spite of their psyche to resist authority the Tribals ultimately obey and like honest and strong leadership.

CHAPTER – 8

CURRENT STAKE HOLDERS IN FATA

In Fig-I a sketch of current stake holders has been given. A brief description of each stake holder is given as under : -

GOVERNOR

Chief Executive for FATA. Acts as Agent to the President and thus answerable to the Federal Government / Parliament through SAFRON. Shares authority with other stake holders but solely responsible for all the affairs of FATA. He has to maintain harmony among all the other nine stake holders.

(i) Maliks/Elders

Want status-quo and greater share in power and the benefits. Demand and expect the Political Administration to “work” for them and also extend state patronage. There is a Patron Client relationship between the Political Administration and the Maliks.

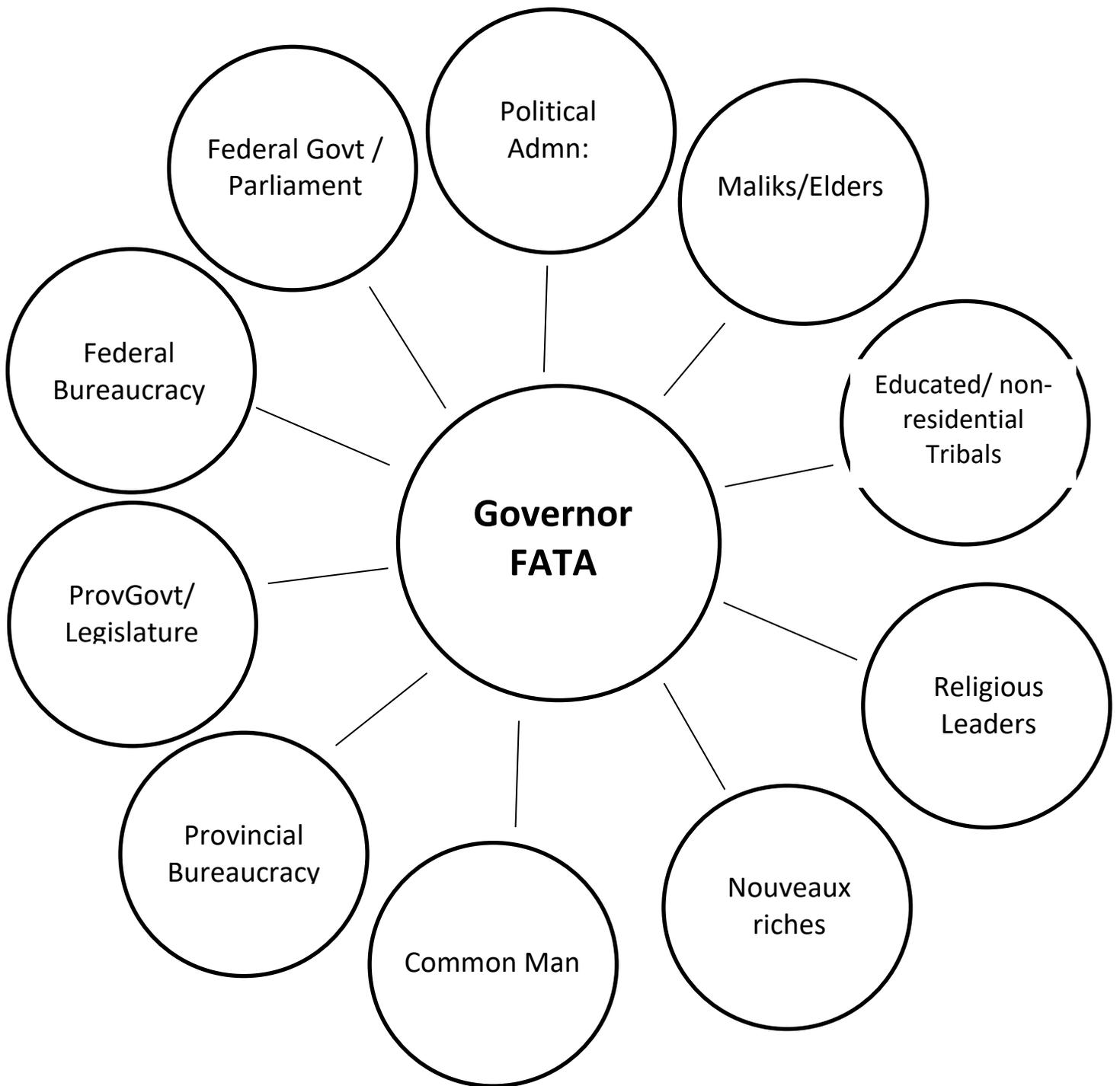
(ii) Religious Leaders

Strongly emerging class and a direct threat to the traditional and political leadership. Wants official recognition and share in the power structure. Demand repeal of FCR but equally oppose extension of Roman Laws.

(iii) Educated / Non-Residential Tribals

More vocal against the FCR, influence of religious leaders and Maliks. Advocate retention of concessions with no obligations such as taxes and territorial responsibility.

Fig – 1 Current Stake Holders in FATA



- (4) Common Man:
Silent majority with strong feelings of alienation and deprivation. Against the Maliks and the “real” victim of excesses of Maliks and the Political Administration. Most of them follow religious and political (parties) leadership to counter the influence of Maliks and Political Administration. Quite a few are followers of agitators such as TTF and various Youth Forces.
- (5) Nouveaux riches:
A phenomenon of the eighties. Promotes smuggling and anarchy. Wants to wrest more social and political power from the Traditional Maliks/Elders although they are still not in a position to openly confront them. Chaos in FATA serves their purpose. Their stakes in the present corrupt system are so high that they would, and can to a greater extent, resist and thwart any effort to reform the system of administration, specially regarding anti-smuggling measures.
- (6) Political Administration
Strongly opposes reforms. Instability and chaos suits them.
- (7) Provincial Bureaucracy
Advocates the current system of authority with no responsibility. Wants status quo.
- (8) Provincial Government / Legislature
Intends to extend the authority to the Tribal Areas. Under strong pressure from the Tribal Voters of settled areas.
- (9) Federal Bureaucracy
Wants direct control of Tribal Areas even at operational level.
- (10). Federal Government / Parliament:
The FATA budget (both developmental and non-developmental) is released by the Federal Government and passed by the National Assembly. Ministry of SAFRON is responsible to the Federal Government and the National Assembly regarding affairs of FATA. The Federal Government is under pressure both from the Parliamentarians of settled areas and the FATA representatives. The Parliament intends to extend all taxation laws to FATA. The FATA Parliamentarians strongly resist all such measures and at the same time demand

for greater say in the administration of FATA. Extension of Custom Act, assignment of Anti-smuggling duties to F.C, and recovery of WAPDA dues are some of the examples which indicate ambivalent thinking of Federal Government / Parliament versus FATA Members. FATA Parliamentarians are in a strong position to exert political pressure on Federal Government and thus, thwart any reforms perceived as against the “Vital Interests” of FATA people. As smuggling has assumed alarming proportions, therefore, the industrialist/business class of settled areas has become vociferous in demanding extension of taxation laws to FATA and strong anti-smuggling measures. Smuggling is badly hurting the National economy (although not confined to FATA only) therefore the Federal bureaucracy (WAPDA/CBR) and the parliamentarians/industrialists demand strong and quick “action” in FATA.

CHAPTER – 9

CURRENT THINKING IN FATA

We read a lot in the newspapers about the demands raised by the Tribals and other regarding repeal of the FCR and extension of jurisdiction of High Courts and other laws to FATA. At the moment there are the following three major schools of thought in FATA.

(i) **Religious Segment**

a. From 1990 onward TNSM (Tehrik Nifaz-e-Shariat Muhammadi) started its activities in Bajaur Agency. Tanzeem Ulema Qabail headed by Maulana Hadi surfaced in Khyber in the early nineties which led to a major military operation to demolish the offices and private prisons of “Tanzeem”, besides arrest of its activists in 1994-95. The Tehrik had mustered enough public support to form a parallel Government and had started adjudicating civil and criminal cases. North and South Waziristan Agencies have always been stronghold of Jamiat-Ulama-Islam (JUI). First ever elections of 1997 on adult franchise in FATA resulted in success of two JUI related MNAs from North and South Waziristan.

b. The religious elements in the entire FATA are demanding repeal of FCR specially 40 FCR and enforcement of Shariah through Qazi courts. They are equally opposed to the extension of Roman Laws to FATA and also consider and openly declare all sorts of taxes against the injunctions of Islam.

(ii) **Maliks / Elders**

With the introduction of adult franchise there has been a considerable erosion in influence and importance of the Maliki system. Under the FCR the Maliks / elders are still a legal entity. The rise of rich class, educated professionals, extension of universal suffrage and the religious elements are posing serious threat to the influence of Maliks. The Maliks/Elders are deadly against the adult franchise, extension of normal laws and any legal role of Ulema. The Maliks still exercise influence in the Tribal Areas and the FATA MNAs elected on the basis of adult franchise cannot, openly,

confront them. The Maliks are in a position to foment trouble for the Government even if FATA MNAs/Senators toe the Government line.

(iii) **Educated youth, Non Maliks and Non-residential Tribals:**

a. This third group, having more access to print media and other forums, is more vocal and desperately trying to assert itself in the Tribal affairs. Educated youth, unemployed, and members of weaker tribes (Minority tribe such as Sulemankhel&Dottani in SW Agency, Shilmanis in Khyber and Gurbaz in NW Agency) oppose Maliki system and demand more share in the developmental schemes and the "Spoils". Wealthy and political leaders associated with the Political parties of Pakistan also exploit the youth for their political gains. Deterioration of institution of Maliki and widespread corruption is the main factor which has alienated the youth from the mainstream of Tribal society. TemanTehrik Force (TTF) of South Waziristan is one such example.

b. The Tribals settled in the NWFP are enjoying the best of both worlds i.e. rights of settled areas and concessions of FATA. These non-resident Tribesmen demand repeal of certain provisions of FCR and some of them also demand extension of other laws but none of them is ready to forego special quotas/concessions. Tribesmen falling in this category are vaguely opposing the existing system but are not clear what they are supporting. Strangely enough, these tribesmen demand "fundamental rights" and extension of jurisdiction of High Court albeit without Revenue, Police and Civil Courts and extension of laws such as Taxation and Arms Act etc.

CONCLUSION

(i) A brief description of these three categories of tribesmen and their way of thinking indicates that policing of such a society even at staggering cost is extremely difficult. Similarly Civil and Criminal Courts cannot enforce public and private rights without necessary force. Execution of each

decree would require a wing of Frontier Corps. Apart from the Political and financial cost which the Nation would pay in case the status of Tribal Areas is changed against the will of locals the recurring expenditure would be exorbitant. Needless to state that in an hostile and difficult terrain, not turned to policing, the force required would be many times more than a settled district.

- (ii) At the moment the public at large is averse and critical of the exiting laws of the country. We want to extend the same laws to FATA which have failed to deliver and that too against the will of the people. The Lawyers Community of Malakand division fought and won a legal battle against PATA Regulation which resulted in extension of all the civil and criminal laws to Malakand Division in 1994. The thinking in the so called liberal intelligentsia was that the locals of Malakand Division have finally redeemed themselves but much to everyone's surprise the Government had to constitute yet another Law Reforms Commission after a lapse of 3 years to propose amendments in the exiting system.
- (iii) Law and Order situation has deteriorated and is so fragile that the Government is not in a position to establish its writ. To quote one example, the Government has succeeded to a great extent to reduce poppy cultivation in the agencies of Bajaur and Mohmand as compared to the adjacent Dir District. FCR is being maligned without suggesting a viable alternative system. The deteriorating law and order situation in the country has forced the Government to enact Anti Terrorist Act, 1997. The Act envisages time-bound decision both by the Trial and Appellate Courts and extra ordinary powers to the personnel of Law Enforcing Agencies. These powers, inter alia, include power of arrest/search without warrants and relevancy/admissibility of statement of an accused recorded before a police officer. Does the prevailing situation in FATA warrants a drastic change in laws?.

CHAPTER – 10

A CONCEPT OF LOCAL SELF GOVERNMENT FOR FATA

1. The institution of Local Government, in its modern form, was introduced by the British in India. Unfortunately, after Independence, the election of Local Bodies have not been held regularly. Similarly, little effort has been made to reform the system. The system of Local Self-Government in Pakistan is not free from nepotism and corruption. The whole institution has been “politicised” to serve the interests of only a few and not the tax payers.

2. FATA is still a traditional society with strong social norms and mores. There is a need for participatory development, yet the system of Local Bodies introduced in all the four Provinces under Local Government Ordinance 1979, is not suitable for FATA and thus it cannot be replicated in its present form. Under the present system of Local Bodies there is no proper preventive system of checks and balances against malpractices, even curative system is too cumbersome. Strong Employees Union, specially in Municipal Committees/Corporations, always thwart reformative measures. The staff of Local Bodies is politically well-connected and thus, to a greater extent, shielded from disciplinary action. Successive Governments have constituted Commissions to make recommendations regarding improvement of Local Bodies system. This paper is not meant to make a detailed analysis of Local Bodies in Pakistan. The purpose is to identify shortcomings in the existing system of Local Bodies and keeping in view the prevailing socio-political and administrative set up of FATA, suggest an outline of Local Self Government for FATA.

3. As discussed earlier the Tribal Society is a traditional society with strong primary/homogenous groups. The good customs/norms of Tribal society can be institutionalized in the form of Local Self Government. Such a system of Local Self Government should be in conformity with the Tribal traditions. The Tribals quickly response, and acquiesce to the institutions which are in conformity with their traditions. To quote one example; tribesmen pay the most exorbitant / repressive taxes on

commodities of daily use, imposed by the Political Administration but are not ready to pay nominal electricity bills to an 'outsider' Agency i.e. WAPDA.

4. While introducing the system of Local Self Government in FATA the following factors must be kept in mind:

(i) **Adult Franchise**

The system of adult franchise was introduced in FATA for General Elections in February 1997. Although the elections were held on non-party basis yet, the introduction of adult franchise has "politicized" the elections in FATA and now every political party is eager to gain a foot hold in the affairs of FATA. Local Self Government would be a novel idea for FATA and it must not be infested by the political parties. In the rest of the country, so far, elections of Local bodies have been held on non-party basis. In FATA, Local Self Government must be apolitical.

(ii) **Jurisdiction of Superior Courts:**

The jurisdiction of High Court and the Supreme Court does not extend to FATA. Therefore any issue arising out of election petitions or administrative measures cannot be adjudicated upon by the Superior Courts. A separate Election Authority and Services tribunal, under overall control of Home Department, has to be created for FATA.

(iii) **Role of Governor and Home Department:**

As far as the current Constitutional status of FATA is concerned the Local Self Government should be established under the over all control of Governor NWFP and Home Department to the exclusion of NWFP Local Government and Rural Development Department.

5. **PROPOSED MODEL OF SELF GOVERNMENT IN FATA**

(i) **Agency council:**

Each Agency Council to be headed by a Chairman Agency Council and Vice Chairman. In settled areas the Number of Councilors is determined on the basis of population. On average the number of District Council

members vary from 30 – 40. In FATA, while creating electoral wards, apart from area and population, other factors such as homogeneity of sub-tribe and geographic contiguity must be taken into account. The tribal system of “Nikat” should also be given due consideration as it is crucial for generation of revenues through local taxes and its equitable distribution for development. A member of Agency Council should be true representative identified with that tribe. Such member, apart from legal / formal control, would also be under informal control of his sub-tribe. The adoption of above mentioned criteria for creation of electoral wards may result in an increase in the number of Agency members as compared to the settled districts but the Agency council would be true representative of all the sub-tribes.

(ii) **Tehsil Councils**

Keeping in view the vast areas, sparse population, low taxation base and absence of tax culture it would not be advisable to exactly replicate the existing model of Local Government in FATA. Therefore, in the first phase, instead of Union Councils a Tehsil Council may be established. The jurisdiction of current administrative Tehsils may be adopted for this purpose with necessary territorial adjustment, if so required. Each tehsil council to be headed by a Tehsil Chairman.

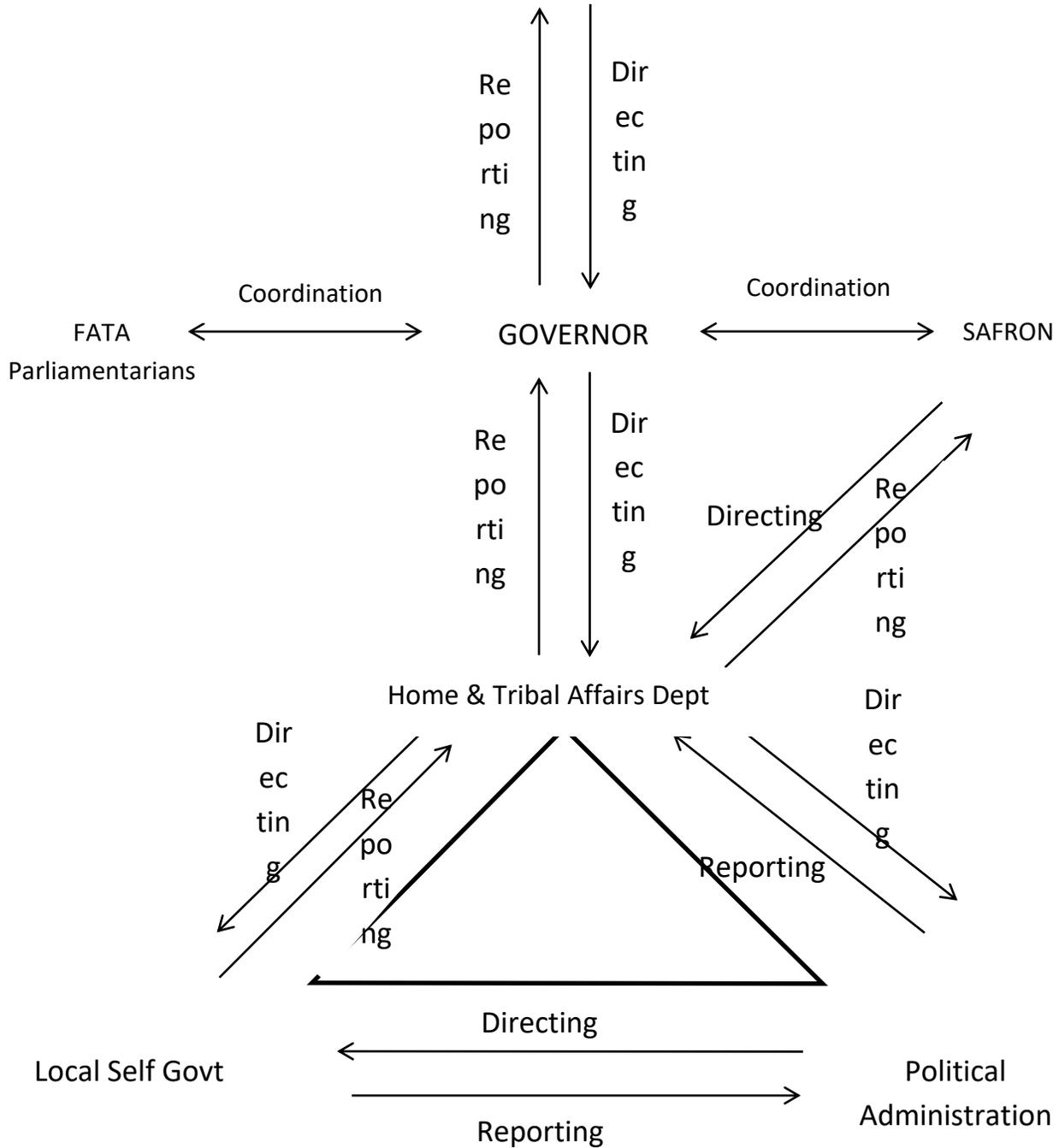
(iii) The six FRs are scattered all along the Agencies and are administered by the respective Deputy Commissioners of the Districts. The locals of FRs would not be agree to join the Local Self Government of the Adjacent Agency. Therefore, a separate F.R. Council, having all the powers of an Agency council, may be established under the overall control of the respective Deputy Commissioner/Commissioner. Town/Municipal Committee can also be established in F.Rs like F.R.Kohat (Dara Adam Khel).

6. **Administrative Setup:**

- (i) Under the Constitution of Pakistan Local Bodies is a Provincial subject. The election for Local Bodies are held under the supervisory control of a Provincial Election Authority. Local Government and Rural Development Department and the Provincial Government are the competent authorities regarding financial and administrative matters of Local Bodies including its suspension and dissolution. Since FATA is a separate legal and constitutional entity therefore the NWFP Local Government Department cannot exercise administrative powers without proper legal cover.
- (ii) Keeping in view the special status of FATA, distinct socio-political environment and the fact that, so far, the Local Self Government has not been introduced in FATA, it would not be advisable to put the proposed Local Self Bodies in FATA under the administrative control of NWFP Local Government Department. The proposed setup of Local Self Government is given at Figure-2.

FIG: 2 ADMINISTRATIVE SET-UP OF LOCAL GOVERNMENT

Federal Government



7. **Supervisory and competent authorities**

The authorities have been categorised from (a) to (g) and will be exercising the following powers regarding the respective councils and the officials :

- (i) Suspension / dissolution of councils.
- (ii) Approval of resolutions and budget.
- (iii) Approval of taxes and taxation schedule.
- (iv) Delimitation.
- (v) Arbitration of Inter-Councils disputes.
- (vi) Recruitment and removal of officials.
- (vii) Framing / approval of Rules / By laws.

The above list is not exhaustive.

Supervisory / Recommending and competent authorities for various tiers of councils and officials are proposed as under : -

a. **Agency Council**

Supervisory / Recommending Authority	-	Political Administration / Home Department
Competent Authority	-	Governor

b. **Municipal Committees / Tehsil Councils**

Supervisory / Recommending Authority	-	Political Administration
Competent Authority	-	Commissioner

c. **Town Committee**

Supervisory / Recommending Authority	-	Assistant Political Agent
Competent Authority	-	Political Agent

d. F.R. Councils

Supervisory / Recommending Authority	-	Political Administration
Competent Authority	-	Home Department

e. All Officers of BS-17 & above

Supervisory / Recommending Authority	-	Political Administration / Home Department
Competent Authority	-	Governor

f. All officials from BS-11 to BS-16

Supervisory / Recommending Authority	-	Political Administration
Competent Authority	-	Commissioner

g. Officials from BS-1 to BS-10

Supervisory / Recommending Authority	-	Political Administration
Competent Authority	-	Political Administration

8. PROS & CONS OF LOCAL SELF GOVERNMENT IN FATA

(a) Strengths

- (i) Tribal society is adept in management of local affairs as they have never been rules, effectively, by a central authority.
- (ii) Tribal Society Comprises of strong primary homogenous groups with strong traditions and social norms. Strong informal social control can be institutionalized and can act as check on formal (Local Self Government) institutions.
- (iii) Collective behavior of tribal society can be positively utilized for participatory development and administration.

- (iv) In a society of gerontocracy (Rule of elders) the Local Self Government is the ideal system of Governance.
- (v) In FATA decisions are made collectively and honoured by every individual. Delinquents, if any, are punished effectively.

(b) **Weaknesses**

- (i) Existing Tribal (MehsudVsWazirs, South Waziristan Agency) and religious (Shia VS Sunnis Kurram Agency) polarization may further widen.
- (ii) Double taxation both by the political administration and the Local Bodies.
- (iii) An escalation in intra and inter-tribal territorial disputes in collection of local taxes.
- (iv) Regressive taxation by the Town/Municipal Committee and Tehsil Councils to earn more revenue and to cause financial loss to the hostile tribe of another tehsil (Upper Kurram VS Lower Kurram). Similarly Agency councils may also indulge in such practice. (South Waziristan Vs South Waziristan). Excessive taxation and counter taxation may push the prices of essential commodities beyond the reach of a common man. High taxes on agricultural and industrial outputs may lead to High unit cost and thus ouster of the producers from the competitive markets.
- (v) Participation of political parties in the Local Bodies Elections and likely emergence of sectarian / religious parties. This may lead to political as well as religious polarization if political parties are allowed to indulge in Local Bodies Politics.
- (vi) A four pronged conflict among the Local Self government, Political Administration, FATA Parliamentarians and the Maliks/Elders.
- (vii) And last, but not the least, the Councils/Committees may “Legalise” the smuggling by charging octroi on smuggled goods.

- (c) Opportunities
 - (i) Elimination of sense of deprivation and alienation among the common Tribesman.
 - (ii) Development of tax culture and sense of participation.
 - (iii) Effective tapping / exploitation of natural resources.
 - (iv) Minimization of corruption in the National Building Departments and efficient utilization of public money.
 - (v) End of current regressive taxation, and its whimsical utilization by the political administration.
 - (vi) Minimization of current exploitation of Tribesmen by the Political Administration and the Maliks/Elders.
- (d) Threats (Risks)
 - (i) Absence of tax culture among the Tribesmen.
 - (ii) Lack of resources plus narrow tax base. Thus dependency upon the Federal Government for grants for a longer period.
 - (iii) Efforts by the Political Administration to defeat the objectives of Local Self Government. Nation Building Departments would also not like to apart with the authority and the public money. Bureaucracy always jealously guard its powers and resist change.
 - (iv) Maliks/elders and FATA Parliamentarians would oppose the emergence of a new "Elite Class" in FATA.
 - (v) Political Administration may exploit the imminent differences, among the advantage.

CONCLUSIONS

- (i) The system of Local Self Government must be tuned according to the needs and norms of FATA.
- (ii) We must build on Strengths, tide over weaknesses, avail opportunities and avoid threat / risks.
- (iii) It has to be a “Guided” democracy in the first phase. Regulatory role of the Government is must both at policy and execution level.
- (iv) The established system of ‘Nikat’ and role of Elders/Maliks regarding Territorial responsibility and Jirga should not be disturbed.
- (v) Although the ‘Democrats’ would strongly oppose such as proposal yet due to peculiar socio-political environment of FATA the Maliks/Elders may be given representation in the Councils. In the first phase 20% members of the total strength of a council may be selected from Maliks/Elders. The ‘Selected’ members may be barred from contesting for the office of Chairmanship of councils or casting vote for election of office-bearers or no-confidence move against them. However, in all other matters they may exercise equal powers with the elected members. The ‘Selection’ of elders may be discontinued, after one or two terms, once the system of Local Self Government is firmly established.

CHAPTER – 11

OPTIONS

Keeping in view the prevailing socio-political situation in FATA, the turmoil in Afghanistan and the economic crises that have beset the country what options do we have for change or reformation of the system of present administration?

(i) Change in the constitutional status

As mentioned earlier any amendment in the constitution to change the status of FATA must be with consent of Tribals.

(ii) **MERGER OF FATA**

As already discussed any amendment in the constitution to change the status of FATA, at least at this stage, without the consent of the Tribals is not feasible.

(iii) Direct Federal Control

Direct Federal control without the involvement of NWFP Government is not feasible. Factors such as Law & Order, boundary disputes, and development of FATA are closely linked with the Province. As mentioned earlier a large number of Tribals have settled in the adjoining of NWFP.

(iv) Independent Province

Some Tribals resist and resent the role of the Provincial Government and demand for creation of an independent province.

Creation of a separate province requires Constitutional amendment and equal representation in the Senate. Other Provinces would not agree to such a Constitutional amendment as it would give more weightage to the Pukhtoon Senators in the Senate. Moreover FATA is solely dependent upon grants from the Federal Government. In case of a separate Province it would be deficit province due to lack of sources of revenue and would be deprived of Federal grants. Under the present set up of Constitutions, Federal grants to the Province are given under the National Finance Commission (NFC) award and keeping in view the population percentage of FATA, with no contribution in taxes, the Federal Government grants may not be sufficient to run the Province.

(v) **MERGER WITH NWFP**

- (a) To change the current status of FATA and its merger with NWFP a constitutional amendment is required. Moreover, such an amendment would also need consent of the NWFP. In such a case the Federal Government will not pick up the financial liability of FATA.
- (b) However, with suitable constitutional amendments FATA can be merged with the NWFP provided the procedure for such an amendment is followed as prescribed in Article 247 of the constitution. With the passage of time the Tribals have settled in NWFP in large numbers and now their economic and political interests in the province are quite high. All social, historical, political and financial interests are inter-linked with the province. The Tribals may agree to such a proposal in future provided their status, laws and traditions are maintained in a Provincially Administered Tribal Areas with representation in the Provincial Assembly according to their population. However, they will be losing the current over representation in the Senate.
- (c) No time frame for such a merger can be suggested at this stage. It depends upon the good intentions and acts of the Provincial Government to effectively communicate with the Tribals. The FATA people, rightly or wrongly, consider merger with the NWFP, synonymous with the introduction of a system of Police, Magistracy and Revenue (“Patwari”) in FATA. Sincere efforts are required to dispel these fears.

(vi) **Extension of jurisdiction of High Court and the Supreme Court.**

Under Article-247 (7) the Parliament, through legislation, can extend the jurisdiction of superior courts to FATA. No constitutional amendment is required.

ARGUMENT FOR

- a. It would provide right of appeal to the Tribals against the decisions of political administration under FCR.
- b. Writ jurisdiction of High Court would extend to Tribal areas.

- c. Fundamental rights, as enshrined in the constitution would be granted to the Tribals.
- d. Due to supervisory role of Superior courts, administration of justice would be ensured.

AGAINST

- a. The common man would be subjected to protracted litigation to which the Tribals are not accustomed.
- b. The rich would be the real beneficiaries as poor Tribals do not have the resources to indulge in such litigation.
- c. Due to lack of land settlement, property disputes would arise and the political administration may not be in a position to execute stay orders/decrees of courts.
- d. Political parties may start their activities under the orders from the courts.
- e. The FATA people will not agree to extension of taxation and other laws.
- f. We may face a Malakand like situation as the locals would definitely demand Qazi Courts.
- g. Jurisdiction of superior courts and FCR cannot co-exist. So the latte will have to be repealed.

(viii) Reformation of current sytem:

The Tribals have already been given the right of appeal to a tribunal comprising of Secretary Home and Secretary Law and in case of tie a second appeal lies to the Chief Secretary. Under FCR trial is through a jury. Even Qazi Courts can be established under overall supervision of Political Administration. At the moment it would be advisable to reform the prevailing system of administration of justice. The Government may constitute a commission on the pattern of Malakand Division to propose reforms.

EPILOGUE

1. FATA has always been an enigma even for the most astute rulers. While the British conquered continents this tiny part of their vast Empire remained the proverbial thorn in their side.
2. While dilating upon complex issues of such a unique area it would be naïve to jump to conclusions or make watertight recommendations. The problems of Tribal Society are too complex to be analysed in one go and recommend single line solutions like abrupt introduction of adult franchise in FATA.
3. Half the problems would be solved if we learn proper lessons from the past experiences. Proper identification of symptoms is always vital for effective treatment.
4. It must be kept in mind that FATA was a legal entity much before the creation of NWFP as Chief Commissioner Province in 1901 and Baluchistan in 1970. It is not a creation of 1973 Constitution. Even when all the four present Federating Units were merged into one unit in 1954 FATA remained a separate entity. Its status as constitutional entity remained intact under 1956 and 1962 constitutions while all the four Province were merged into one unit.
5. All the treaties/agreements executed between the British and the Tribals and subsequently the solemn pledge given by the Quaid-e-Azam to the Tribals has been enshrined in the 1973 constitution.
6. Any change in the status of Tribal Areas is possible only with the consent of Tribals as ascertained in a Tribal Jirga and not through a Constitutional amendment even with the consent of FATA Parliamentarians. (Article-247(6) of the Constitution of Pakistan 1973). The Tribal voters have not so far given a mandate to the FATA Parliamentarians to decide about their constitutional status. Any constitutional amendment without the consent of Tribals would be violation of spirit of the constitution.

7. Hostile Afghanistan and the same tribes on both sides of Durand line were not the only reasons for granting special status to FATA. These were few of the many reasons. Had it been so then Dir/Chitral Districts and the Former British Baluchistan would have been given the same status and administrative setup like FATA.

8. Direct administration and policing is not possible even at exorbitant financial and staggering socio-political cost.

9. Whether we like it or not the Tribal elders, strong Tribal affiliation and homogeneity of primary groups is still a force in Tribal society to be reckoned with. We cannot ignore them.

The best strategy vis-à-vis Tribal elders would be not to: -

- Confront
- By pass

But associate them in the affairs of FATA. They can be associated with the participatory administration without active involvement and dominance in decision making.

10. we should not provide a common cause to all the vital segments of Tribal society to get united against the Government.

11. Tribals only obey a strong and honest leadership. They still vividly remember such strong and honest British Political Agents who severely punished them. Any adventure with the corrupt and weak Political Administration would lead to strong backlash by the Tribals and consequent backtracking would further weaken the writ of the Government.

12. Due to socio-political factors the institution of Maliks / Elders has weakened. Ironically the Political Administration is also responsible in large measure for its degeneration. Over the decades the Political Administration has been yielding to political pressures (to protect their personal interests) and joining hands with the smugglers (for personal gains) at the cost of Maliks/Elders/ due to the emergence of

new social forces the traditional elders, despite their noble intentions and willingness, are rarely able to prevent crime or shoulder territorial responsibility. The emergence of urban class in FATA, development of communication, infrastructure, possession of modern weapons, the presence of Afghan refugees, outsiders and proclaimed offenders from settled areas are some of the factors leading to promotion of complicated crimes in FATA. The Political Administration must develop affective intelligence network and train the forces at their disposal in combating crime and investigation / prosecution of cases. A beginning was made in Khyber Agency in 1996 to train the khassadars. The Anti-Terrorist squad of Frontier Police imparted six month training to two batches of Khyber Khassadars.

Mere invoking of powers of territorial responsibility may not be an effective tool, in the years to come, specially in areas like Barra, Jamrud (Khyber) and Khar (Bajaur). Lessons can be learned from gradual transformation of Malakand Tribal Levies into an effective police force. We cannot continue, for indefinite period, rewarding and bestowing perks upon the Tribals having no obligation and punishing others under the territorial responsibility. There should be an equitable distribution of profits and loss.

13. Efforts should be made to reform the Political Administration in the light of causes of failure of political administration (Chapter-5).

14. The role of various segments of Tribal society should be redefined and harmonized. We should not ignore the paradoxes of Tribal society (Chapter-7) and chapter-9.

15. There is dire need to harmonise and streamline the role and working of current stake-holders in FATA (Chapter-8).

16. The Tribals have been enjoying many concessions since the times of the British. After Independence they have been granted more. No society willingly acquiesces to sudden withdrawal of concessions and favours. At the moment such concessions are

both at individual and collective level (Chapter-6). It is an issue of common cause for the entire FATA. Withdrawal of concessions should be gradual.

17. Tribal Society, comprising homogeneous primary groups, is ideal for participatory administration. We may adopt the strategy briefly outlined at Para-9 above. As discussed, the Maliks / Elders have lost moral authority due to frequent indulgence in corruption for personal cause and absenteeism. New forces have emerged. Still the informal institutions of Tribal society and norms are intact. The share of each sub-tribe in profit and loss is clearly defined. We have to gradually withdraw the “favours” being doled out to individuals. To harmonise the relationship between the various segments of society and to reduce the sense of alienation prevailing among the common Tribals we must involve them in formulation of development policies and their execution. Only bureaucracy and the Maliks/elders would oppose such a strategy. Let us not ignore the fact that corruption in developmental works in FATA is too rampant and visible. We can achieve better results and with much less cost. There is visible change in the thinking of Tribals. Even in remote areas the Tribals demand schools both for boys and girls. It is becoming difficult for Maliks/Elders to ask for individual favours. Community is now more assertive which is a positive change.

Since centuries the Tribals have been making collective decisions. And executing the same through 100% participation. No one can afford to adopt individualistic approach in an area having unfriendly environment for human beings. The Tribals have to share common ranges, forests and water resources. They have been constantly under threat of invaders from the North and South. We may institutionalize these Tribal norms and traditions for the betterment of the Tribals. Even after fifty years of independence the Tribals do not own the Government. It is none of their fault. We have made little effort to change the colonial policies and worst of all the colonial thinking. Only through participatory development we can achieve the task of peaceful penetration and ultimate integration of the Tribal areas into the national mainstream.

Let there be integration of minds and thinking first; political, legal and administrative integration would follow.

18. Right of adult franchise per se is not a panacea for the difficulties of common man. It has only weakened the current political system. In the present set up the MNAs can hardly contribute significantly. Let the Tribals manage their own affairs at least at local level. To develop tax culture a system of Local Self Government can be introduced. Contrary to the system of Local Government in the rest of the country the political administration and the Tribal elders should be given due role in such a system. Basic concept of Local Self Government has been given in Chapter-10. A task force should be constituted to work out details.

19. There is convergence of socio-political, and economic interests of FATA and NWFP. These links are growing further. We must capitalise on these common and inseparable interests. As discussed earlier merger of FATA with NWFP is a viable option. It does not mean to declare the FATA to cease as Tribal Areas. Its status, Law and traditions can be maintained even after merger with the NWFP. It would also end the current administrative diarchy i.e. duality of authority (see current stake holders and causes of failures of FATA Administration) with diluted responsibility.

20. We should make every effort to dispel the wrong impression lurking in the back of Tribals mind that Government intends to “Conquer” the Tribal Areas. Otherwise also the Tribals are famous for long drawn battles.

21. At the moment, unfortunately, we are not in a position to offer and present out Judicial and Police/Magistracy System as an enviable model. The Upshot of the whole discussion is that FATA is not an ideal place for all sorts of adventures.

22. There is extreme polarization of thinking about FATA, besides the multi-polarization of FATA society. One school of thought strongly advocates the straight away merger and establishment of “Forward Posts” in Zarmilan (SWA) and Chora Valley (Khyber) and very ‘casually’ justify would be causalities of such an adventure.

The other stake holders want indefinite continuation of current policies. Both views are hardly helpful in solving the problems of FATA.

23. Due to lack of pragmatic and viable policy the defacto Tribal areas are expanding and have become the main source of trouble. There is dire need to take strong and effective action in such defacto Tribal Areas. Half baked measures during the last decade have only encouraged the outlaws in these areas. Let us, “Re-conquer” and “Recoup” the territory of the settled areas first. This would also send a clear message across the Tribal Areas that we mean business.

24. British passed and enforced five Acts/Charter Acts under East India company from 1781 to 1853 and six Acts from 1858 to 1935 with a view to give more share to the Indians in the Government but refrained to make hasty legislation for Tribal Areas.

25. So far we have been “Reactive” to internal and external situations regarding framing of policies and governing FATA. There is a need to become ‘ Pro-active’ and give good governance to FATA.

ABBREVIATIONS/GLOSSARY

1. ANF Anti-Narcotics Force
2. ANP Awami National Party
3. CBR Central Board of Revenue
4. D.I.Khan Dera Ismael Khan (a district of NWFP)
5. FATA Federally Administrative Tribal Areas.
6. FCR Frontier Crimes Regulation 1901.
7. HUIRA A Community House For guests and social gatherings.
8. JIRGA A Jury/Assembly in a Pukhtoon society.
9. JUI Jamiat- Ulma-e-Islam
10. JI Jamat-e-Islami
11. MALIK A Tribal Elder
12. MALAKI The institution and system of Maliks.
13. MNA Member of National Assembly
14. MPA Member of Provincial Assembly
15. NFC National Finance Commission
16. NIKAT System of distribution of profits and loss.
17. NWFP North West Frontier Province
18. NWA North Waziristan Agency
19. PA Political Agent
20. PPP Pakistan People's Party
21. PATA Provincially Administrative Tribal Areas.
22. SSP Sepah-i-Sahaba Pakistan
23. SWA South Waziristan Agency
24. TNFJ Tehrik-e-Nifaz-e-FiqahJafria
25. TanzeemUlma-e-Qabail:
An organization of religious leaders of Tribal Areas in Khyber Agency.
26. TNSM Tehrik-e-Nifaz-e-SharaiatMuhammadi
27. WAPDA Water and Power Development Authority