

Federally Administered Tribal Area (FATA) of Pakistan: Study of a Special Model of Governance



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Abstract: *The Federally Administered Tribal Areas (FATA) of Pakistan, governed under the Frontier Crimes Regulation (FCR), has long been a focal point of the country's legal and political strategies to address insurgency and extremism. The FCR, which excluded the region from ordinary judicial and administrative systems, led to significant legal and human rights issues. In 2011, the government introduced the Actions in Aid of Civil Power Regulation (AACPR), altering the legal framework with new methods to combat militancy. However, these measures often conflict with constitutional rights, raising concerns among human rights advocates. This article explores the history of governance in FATA, from the FCR to the AACPR, analyzing their impact on human rights and governance. It examines how these legislative frameworks affect the region's alignment with international human rights standards, highlighting their broader implications on governance and legal reform in the region.*

Key Words: FATA, Frontier Crimes Regulation, AACPR, governance, human rights, Pakistan, counterterrorism

Introduction

Federally Administered Tribal Areas of Pakistan (FATA) has been governed by a peculiar mix of colonial laws and tribal customs. The regime of governance in FATA as per the legal framework was provided by Frontier Crimes Regulation (FCR) enacted by the British in 1901. This implied the fact that the political agent ruled in the local tribes and he was given broad powers hence bypassed the legal procedure as well as the governing left to the tribal customs. The FCR military and political authorities continue to exercise control over the individual tribes while punishing individual tribesmen for individual tribe's misdemeanors in the absence of rights, judicial transparency as well as the individual, contractual aspect, and society. Up until the formation of Pakistan (in 1947), the governance model of khyalbadi was almost unturned, inconstructible.

However, the geographical situation of FATA altered significantly in the beginning of the 21st century for the rise of insurgency and militancy across the region due to the aftermath of the Attack on 9/11. Perceived to be a consequence of Pakistan's involvement in the U.S.-led war on terror, particularly in the establishment of strongholds by

militant groups like Tehrik-i-Taliban Pakistan (TTP), its expansion of military operations in FATA was a dire consequence of actions done by the state itself. In response, the Pakistani government substituted the FCR with the Actions in Aid of Civil Power Regulation (AACPR) in 2011 and compounded by large in its powers in order to beat insurgency to the military. This regulation, however, proceeded in a new way from the more usual development of tribal governance as it started this fight against terrorism oriented.

The introduction of the AACPR inaugurated a new age, as that of national security taking precedence over civil liberties in governance of FATA. This was supposed to prevent the disruptions caused by insurgent groups, but put a heavy halt in its violation of basic human rights. The baker's strong hold during debate did not generate such uproar, as he had amassed broad powers to the military through AACPR, such as indefinite detention without trial and suspension of constitutional guarantees, aimed at a fine balance between national security and individual freedoms. Furthermore, cries for reform came about

because there existed no transparency or accountability mechanisms to regulate itself.

Literature Review

Federally Administered Tribal Areas (FATA) of Pakistan under Frontier Crimes Regulation (FCR) has been continuously under debate on its impact on human rights, governance, and its legal framework. Another key aspect in the scholarship is the preservation of harmony between the national security directive and protection of human rights in the area. A study of FATA governance from historical, legal and political perspectives proves very useful in understanding the peculiar position of this region within the bipolarity between the security interests and constitutional guarantees (Sadiq et al., 2021).

On the list of great contributors that made a study of the historical and legal bases in which governance in FATA takes place, is Altaf Ullah that directly contributed to this understanding by way of his 'Federally Administered Tribal Area (FATA) of Pakistan: Study of a Special Model of Governance'. Ullah in this detailed account deconstructs the reasons behind the composition of the FCR during British colonial rule in 1901 and then goes on to show how the structure came to be the basis of the governance in FATA. This regulation, however, permitted the political agent as well as the military authorities to violate the rights of the individual for the enforcement of tribal customs. The FCR allowed local agents to wield vast powers of authority in the form of the 'collective responsibility' power to punish without trial. One perennial source of abuse was implied in this that whole tribes or even entire families could be punished for the crimes of a single person. It was a hallmark system where the military and political power was used to control populations with fear and repression. This system the author describes proved to be so bad for the people of FATA (Frontier Tribal Areas), to whom constitutional rights were given a back seat, that the focus of the government upon which FATA tribes no longer felt a part of, no longer a part of Pakistan's political and legal process.

Scholars often criticize the form of governance for perpetuating a feudal and hierarchical system in which the power of FATA's local military and political authorities was reinforced to the exclusion of the FATA's residents from mainstream political processes. Paula R. Newberg, 'Judging the state: courts and constitutional politics in Pakistan' (Washington DC: Woodrow Wilson Center, 2009;

http://www.wcctranscript.org/Judging_The_State.pdf), examines the role of the judiciary in Pakistan's constitutional development and how the military's impact on the affairs of FATA has affected such things as personal and civil liberties and judicial independence in that country (Khan & Rid, n.d.). As a result of the military's involvement in FATA governance, the judiciary has been completely depoliticised and the judiciary acts for the military and not the law, Newberg notes. This has arisen as threats to human rights in the region and in addition led to suspension of constitutional rights under the name of security measures.

In 2011, the FATA's Actions in Aid of Civil Power Regulation (AACPR) represented an important change in the way governance of the FATA has occurred as military power was given to the military and new counterterrorism measures had been put in place. Maryam Shahid's research about the legal protection of human rights in FATA revolves around how the AACPR influences civil liberties. Shahid further said that the law drafted in promoting militancy less in FATA and PATA (Provincial Area Tribal Areas) as such was enticing legitimate questions regarding the mistreatment of creature rights. This bestowed upon the military wide powers of internment of suspected terrorists without trial or justification (Ali, 2018). One of the set AACPRs laid out with little legal safeguards in the context of detention powers, Shahid criticizes in particular for using vague language. Indefinite detention would lead to greater human rights abuses, as there would be no access to legal representation and no possibility of mustering from the jurisdiction of court.

Aman Ullah and Samee Uzair in their article 'Derogation of Human Rights under the Covenant' examine the maze of human rights and counterterrorism. Ullah and Uzair focus on the concept of derogation from human rights treaties in times of emergency, particularly in the context of the International Covenant on Civil and Political Rights (ICCPR). Some derogations might be justifiable under extreme national crises, but then the AACPR generally goes beyond what is required to properly deal with security threats (Shad & Ahmed, 2018). According to the authors, the Muslim laws sanctioned by the AACPR that Pakistan's military power in FATA encompasses over the law bound to international law and that Pakistan's obligation to the human rights law. In this particular aspect, Ullah and Uzair challenge the provisions of the indefinite detention power of the AACPR, both as violative of

international standards of human rights and as against the constitutional guarantees of Pakistan.

Finally, the literature brings in the need for real reform in the governance as well as the legal system of FATA. However this is an important matter, but urgent for security in the region at the expense of constitutional rights and human rights duties. However, the militarization of governance coupled with a lack of legal accountability in the use of the FCR and AACPR in the logical environment provides fertile ground for abuses of human rights. Reformers to insist that the legal mechanism needs to be changed to be transparent, accountable and also under the jurisdiction of judiciary; but at the same time combat the security threat of militancy. For instance, Pakistan can lend a helping hand as FATA converges its legal frames with internationally anchored standards of human rights in order to reconcile citizen protection with the guarantees of liberty, justice and fairness, which the Constitution envisages.

Finally, it is the conclusion that the governance and the law of FATA are an intertatively complex one between the security measures, the governance and human rights in the literature. In the past and present, scholars have asked whether historical and current legal structures in FATA neglected to adhere to the right of individuals in exchange for military and political control. However, this issue has become all the worse since the introduction of the AACPR, as the concern is for an erosion of civil liberties and no seeming accountability (Shah, 2018). The second need for reform is to prevent counterterrorism policy from being at odds with Pakistan's constitutional and international human rights responsibilities while it already exists in recognizing the threat of militancy.

Research Question

This research seeks to answer the following key questions:

1. What were the Frontier Crimes Regulation and the Actions in Aid of Civil Power Regulation, how did these two laws reflect the model of governance of FATA and what due these two models vary with the changing times to suit the requirements of national security.
2. What are these legal instruments in contravention to the fundamental rights, as enshrined in the Constitution of Pakistan, reference being made to the issues of due process right, liberty from arbitrary detention and right to a fair trial.

3. Where are the legal or procedural gaps through which these international human rights standards and the norms of FATA governance under the AACPR can be followed if they are to be followed?
4. What are the necessary reforms to rectify the misrepresentation of FATA's governance model in conformity to constitutional protection and international human rights obligations?

These questions seek to probe the legal, political and human rights features of FATA's governance, considering how the AACPR has affected and contributed to the process of governance in FATA, which has minimally addressed terrorism while ensuring respect for basic civil liberties.

Research Objectives

The objective of this research is primarily to critically analyze the governance model in FATA, particularly, on the Frontier Crimes Regulation (FCR) and the Actions in Aid of Civil Power Regulation (AACPR). This research aims to:

1. Describe the history of governance in FATA through a recounting of FCR, who was its role, how the FCR has influenced FATA's politics and laws, and how governance in FATA has progressed.
2. Examine the impact of introduction of the AACPR by considering the aspects of protection of national security, rule of law and human rights protection in FATA.
3. Consider in what manner s 225 of the Act poisoned the pooling of information by removing the legal and constitutional voids inherent in the previous draft standard, including breaches to relevant fundamental rights, such as the rights to liberty, a fair trial, and immunity from arbitrary detention.
4. For FATA's governance framework to meet international human rights standards with respect, on the one hand, to counterterrorism measures and, on the other, emergency powers.
5. Increase the legal accountability, transparency, and access to justice for people of the FATA by suggesting reforms consistent with Pakistan's constitutional guarantees and international human rights obligations that are appropriate to align the governance of FATA

Research Methodology

The method for undertaking this research is based upon a qualitative, doctrinal approach in which formal legal analysis and content analysis of various documents concerning the governance of the Federally Administratively Tribal Areas (FATA) and the laws governing the region form the basis of the primary method. This will look into the how governance structures have evolved historically in FATA, the implications of the Frontier Crimes Regulation (FCR) and the Actions in Aid of Civil Power Regulation (AACPR) and to the evaluate how they fit into Pakistan's constitutional guarantees and human rights law (Khan et al, [n.d.](#)). It enables one to develop a clear notion of how the legal and political hurdles, as well as counterterrorism measures, have influenced governance in FATA.

Both primary and secondary sources of information will be used to do this research for a comprehensive analysis of FATA's governance model. The researcher will be able to seek answers to the historical, legal, and political issues surrounding the issue while also assessing the ramifications of these frameworks. In particular, the research will rely upon:

Table 1

Comparison of Legal Frameworks in FATA

Legal Framework	Origin	Key Provisions	Human Rights Concerns
FCR (1901)	British Colonial Era	Collective punishment, military jurisdiction	Lack of due process, violation of individual rights
AACPR (2011)	Pakistan Government	Military-led governance, internment without trial	Arbitrary detention, lack of legal safeguards
Constitution of Pakistan	Post-independence	Guarantees of fundamental rights and due process	Potential clash with emergency powers and military intervention

Secondary Sources

- The following are few examples of critical scholarly articles, books and reports by legal scholars like Altaf Ullah and Paula R. Newberg about the governance structures in FATA and the role of the military and political powers in shaping the legal context of FATA.
- Information from reports of human rights organizations including Amnesty International and Human Rights Watch on military led governance, and human rights violations in conflict zones including the Federally Administered Tribal Areas (FATA).

Primary Sources

- They relate to military intervention in the country in the first place in the form of Legal documents such as FCR (1901), AACPR (2011) specially the Constitution of Pakistan, Article 245.
- Case Laws of the Pakistani courts Including Pakistani Courts judgements on FATA, Military Courts and Protection of Pakistan Act (PPA) 2014. That is because as long the legal cases are on, we will know how the laws have been applied and how it has affected FATA' residents.
- Convention and treaties including the International Covenant on Civil and Political Rights (ICCPR), Geneva Conventions, etc. Analysis of compliance of FATA's legal framework with reference global human rights standards will be conducted by using these international documents to view the alignment with those international standards themselves.

- Government reports on the legal reforms in FATA and counterterrorism operations. These reports would pave official light on what is the history of FATA's governance and ways and means of tackling security issues in the region.

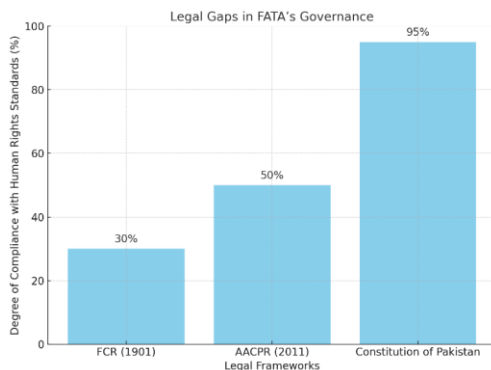
For the purpose of systematic review of legal frameworks of FATA, specifically FCR and AACPR, as a first research method, Content analysis will be used as the research method. The objective of this paper is to analyze the implementation of these laws on the inhabitants of FATA in matters of the people's civil liberties, right to due process and rule of law

(Shah et al., 2019). We will research, using the FCR and AACPR provisions, to identify gaps in legislation and as a result of which these most likely lead to human rights abuses, arbitrary detention and lack of legal accountability. In the second part of the study, it

will attempt to find out to what extent such laws conform to the constitutional guarantees and relevant international human rights obligations and identify the respective areas of reforms that need to be achieved to accord with international human rights standards.

Figure 1

The Bar chart represents the gap in the governance of FATA by considering the FCR (1901), AACPR (2011) and the constitution of Pakistan. As demonstrated, the compliance with the Constitution is highest, while that



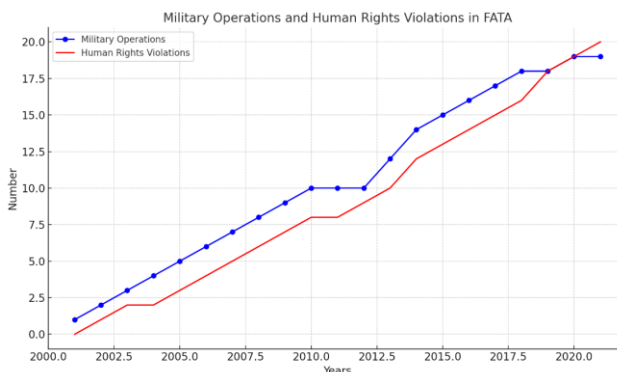
of the FCR is lowest.

The research methodology also involved comparing the way Pakistan has addressed the governance issue in the FATA against internationally recognized best practices in counter terrorism as well as governance in the cases where state laws can be suspended in scope in which the state can alter its customary laws to achieve national security interests (Sadiq et al., 2021). Comparison would help to contextualize Pakistan legal framework relative to the international law and see what options it can consider for problem of militancy and governance in conflict prone areas.

Qualitative analysis is done in order to gain a depth in the understanding of the legal framework that is currently created by FATA to explain how circumstances had led to the history and the ongoing human rights concerns in the sub region. The most rewarding aspect of the final policy recommendations will be to present policy recommendations such that the governance structure of FATA will conform to constitutional protections and international standards of human rights.

Figure 2

Military Operations and Human Rights Violations in FATA, 2001 – 2021 –



This is a line graph that represents the number of military operations and human rights violations in FATA from 2001 to 2021. Human rights violations also reach a level corresponding to this rise in the number of operations over the years.

Thematic coding will be done checking key issues regarding governance, human rights violation, and legal accountability of the data (Cheema & Yousaf, 2020). The coding process would identify the recurrence of certain themes and patterns in the legal frameworks governing FATA that could be used in drawing conclusions about the function of such laws in achieving a national security and protection of individual rights balance.

This study attempts to provide an overall evaluation of the governance model of FATA through analysis of the legal history and current legal frameworks of the region; and by proposing reforms aimed at protecting the rights of residents and guaranteeing security in this important region of Pakistan.

Result Findings

The Frontier Crimes Regulation (FCR) and Actions in Aid of Civil Power Regulation (AACPR) contain great gaps in the laws governing FATA. Results of the analysis are some key observations.

1. **Violation of Fundamental Rights:** Since its creation, the FCR and the AACPR have limited existing basic rights of residents (i.e. right to fair trial and from arbitrary detention) in FATA. Widespread human rights abuses have resulted from the FCR's provision of collective punishment and provision of due process. Although Pakistan's constitutional guarantees are being trampled by conditions on the AACPR, the wide powers to intern without trial and without cause of detention, enjoyed by Pakistan, are likewise being visited.
2. **Lack of Accountability:** Military, law enforcement and other interested parties have the ability to routinely foul the FCR and AACPR without any legal redress or judicial oversight (Abbas et al., 2020). Further, in addition to it, the indemnity clause of the AACPR, which liberates military personnel doing 'good faith' from liability, lowers the responsibility.

3. **Incompatibility with International Human Rights Standards:** The study concluded that both FCR and AACPR are not generally in line with the international human rights law, particularly the International Covenant on Civil and Political Rights (ICCPR). The application of these regulations breaches the rights such as the right to liberty, the right to fair trial and the prohibition of torture and inhuman treatment.
4. **Militarization of Governance:** Using their admittance to assume the municipality of governance capability of FATA, in spite of having other civil authorities and judicial processes Remaining, the AACPR has done the invasion of governance militarization in FATA. Erosion of democratic governance and the eroding of civilian oversight of counterterrorism efforts has been troubling such.

However, these findings indicate a pressing need for legal reform to bring FATA's governance in conformity with Pakistan's constitutional protections and the international human rights obligations, in order to achieve the objectives as enunciated by the UNORIVIA and the Pakistani judiciary.

Discussion

Governing in the Federally Administered Tribal Areas (FATA) became something new, when in 2011 the Actions in Aid civil Power Regulation (AACPR) came into force. This regulation regulated militancy and insurgency and expanded powers of the military and the law enforcement agencies, which are now armed by the basic spirit of Article 245 of the Constitution of Pakistan. But this militarized sort of governance has come under serious question about whether it erodes civil liberties and the protection of fundamental human rights.

The AACPR is also one of the major concerns because it is hard to understand when and where a person can be interned (Mehmood & Mir, 2019). The regulation, which gives broad powers to the military to detain individuals suspected of being involved in terrorism, does not define or offer criteria for detention. As a result, individuals can be indefinitely detained without trial or the formal charges, a violation of international human rights law, and Pakistan's constitutional right to a fair trial (Cheema & Yousaf, 2020).

The clause also states a further indemnity clause that allows military personnel acting in good faith to be immune (Mehmood & Mir, 2019). This effectively immunizes security forces from legal liability and consequently hinders security forces from being reminded of their obligations to heed accountability in respect of their use of force under international law. In essence, it simply would open the door to arbitrary detention, torture, extrajudicial killing and unlawful detention by human rights abusers.

The governance of FATA was related to the Frontier Crimes Regulation (FCR). One important characteristic of the legal system in the region is the FCR that was put into place during the period of British colonial rule. Local political agents were given extraordinary powers to rule over areas where laws were strung; outside of the formal judicial system, and in the routine of enforcing order by tribal customs (Yousaf, 2020). The collective responsibility provision under the FCR has also been criticized as discriminatory and punitive and has caused families or tribes to be punished for the actions of a single individual. And there have been systemic abuses, people are flogged without trial, and their rights are suspended.

Having been considered a device for maintaining order in a tribal society, the FCR has been very controversial, as it occurred in the context of the modern day human rights standards. These issues have worsened as the shift from military authority over civilian matters to military authority over civilian matters by the means of counter terrorism laws (CCPR, 2002; AACPR, 2005) as the means to replace civilian legal institutions, with military oversight.

From a human rights perspective, the governance model in FATA under the FCR and AACPR raises several concerns. The causes of detention include the denial of due process, the deprivation of liberty without reasonable ground, and the absence of any legal remedy against the detention of such individuals (Rehman, 2018). Expansion of military courts accompanied by the use of extra-legal measures against terrorism have eroded democratic institutions in Pakistan and raised a serious doubt on the harmony between national security and protection of fundamental rights in Pakistan.

The governance model in FATA is also deficient with respect to the obligations that Pakistan holds under international human rights law as compared to the international standards (Orakzai, 2018). In this regard, specifically, the provisions of the ACCPR and

FCR infringe upon the right to a fair trial and protection from arbitrary detention, which are expressly guaranteed by the International Covenant on Civil and Political Rights. Pakistan is signatory to the Geneva Conventions that prohibit torture, inhumane treatment of detainees, yet practices such continue in areas controlled by the AACPR.

Thus, reform of FATA's governance framework is important bearing in mind those concerns (Orakzai, 2018). Thus what should therefore be an overriding objective should be for special measures taken to combat terrorism to be taken in a manner, inter alia, consistent with protection of, and of Pakistan's observance, of international human rights law. However, this may include limiting the scope of military intervention, establishing more judicial control over counterterrorism operations, or changing detention procedures to conform to constitutional provisions.

Conclusion

A governance model in the Federally Administered Tribal Areas (FATA) has been taking place long through extraordinary measures to respond to insurgency and maintain the national security. This model has been based on the Frontier Crimes Regulation (FCR) and Actions in Aid of Civil Power Regulation (AACPR), wherein special powers of military and law enforcement agencies have been extended to the region. It was always in terms of those operational controls to maintain law and order in a volatile region, but these have now become synonymous with a regime of governance that does a number on basic human rights protections.

Under the FCR, which has governed FATA for a century or more, the FCR also devised a system of collective punishment and arbitrary detention in violation of constitutional safeguards. Despite its objective to ensure order in a tribal society, area of abuse included unlawful detention, forced confession, and punishment without trial. The provisions of this act continued the legacy well into the 21st century, and they shape the daily lives of FATA's residents even at this modern day.

The introduction of the AACPR in 2011 was a response to this growing threat of militancy in the region, but, instead, has only helped increase the process of militarization of governance in FATA. A big concern surrounding the AACPR is how its granting of those powers to intern people without trial will erode civil liberties and there is no recourse

for the detainee. The fears are compounded, in fact, when the indemnity clause (granting military personnel immunity from being held responsible) is closely looked at, since it essentially protects abusers from accountability.

Implications of application of the AACPR on Pakistan's obligations under human rights are far reaching. The regulation contravenes the basic guarantees of good constitution and regarding the international human rights standards to which Pakistan ought to ascribe. Now some of these rights to a fair trial, protection from arbitrary detention and freedom from torture are compromised under this governance system. Furthermore, military acts have

no accountability mechanisms and as such military actions are being perpetrated with impunity against the principles of the rule of law.

This being the case, it can be said that there is a requirement for a big legal reform in FATA. In Pakistan, there exists a need to find a means that allows the country maintain the balance between the national security interests and the fundamental rights. FATA's governing structures should be aligned with Pakistan's constitutional protections and international human rights obligations of civilian oversight in counterterrorism operations, clarification of detention procedures and that of due process of law to detainees.

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