

**Violation of Social, Political and Economic Rights of the
People of Federally Administered Tribal Areas (FATA)
recognized by International Human Rights Law with special
reference to Frontier Crimes Regulation, 1901**

A thesis submitted in partial fulfillment of the requirement for the award of the
degree of LLM in Human Rights Law



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1. Political crimes - law
2. Trials (Political crimes and offenses)

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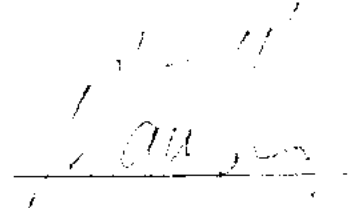
FINAL APPROVAL

It is certified that we have read the thesis submitted by Mr. **Mazhar Ali Khan** and it is our judgment that this thesis is of sufficient standard to warrant its acceptance by the International Islamic University, Islamabad for the L.L.M, Human Rights Law.

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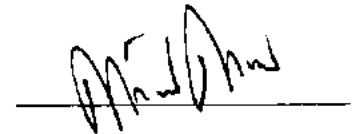
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Dedication

I dedicate this piece of work to peace and freedom loving people of Federally Administered Tribal Areas (FATA) who make sacrifices for the elimination of terrorism from their homeland.

DECLARATION

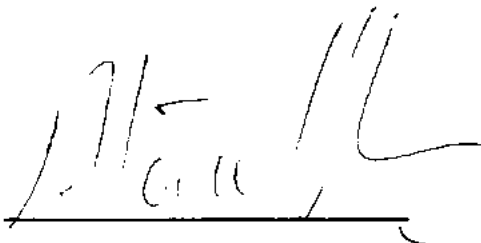
Mazhar Ali Khan, hereby declare that this dissertation is original and has never been presented in any other institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

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Acknowledgment

I am grateful to Almighty Allah who gave me strength, health and thoughts to enable to achieve this work.

I am sincerely appreciative and in complete gratitude to my Father, for his patience, encouragement, and support. I also owe special thanks to my parents whose prayers and words of wisdom were always there to encourage me.

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Abstract

This paper aims to analyze the violation of social, political and economic rights of the people of Federally Administered Tribal Areas (FATA) recognized by International Human rights law with special reference to Frontier Crimes Regulation 1901, with a view to make suitable recommendations. The paper briefly discusses the historical background of FATA and evolution of FCR and provides a short overview of the administrative, judicial, social, political and economic aspects of FATA. In assessing the underlying causes of the FATA problem, this paper suggests significant changes to the FCR as an essential and effective measure. This paper also leads to the study of the constitutional status of FATA since 1901 up to date. The FCR provisions are being briefly analyzed in the context of modern International human rights law. Short analyses of the newly introduced reforms to the FCR which are mostly of judicial and administrative nature have been taken. Frontier Crimes Regulation being a codified law, mostly based on the traditional values of the indigenous tribes of FATA, has various implications on the social, political and economic aspects of the society in question.

Guarantying human rights to the individuals, irrespective of sex, age, race, religion and nationality is a global issue. International human rights laws and domestic laws provides for the fundamental human rights while FCR lacks provisions regarding the human rights which are globally recognized for individuals. There is a want of strong legal regime which must be established for the protection of social, political and economic rights as to improve the life standards of the individual of FATA. This study recommends the social, political and economic reforms to the existing laws in FATA as to meet the international human rights law.

List of Abbreviations

FATA	Federally Administered Tribal Areas
PATA	Provincially Administered Tribal Areas
FCR	Frontier Crimes Regulation 1901
PA	Political Agent
APA	Assistant Political Agent
DCO	District Co-ordination Officer
UN	United Nations
UDHR	Universal Declaration on Human Rights 1948
ICCPR	International Covenant on Civil and Political Rights 1966
ICESC	International Covenant on Economic, Social and Cultural Rights 1966
SAFRON	Ministry of State and Frontier Regions
IDPs	Internally Displaced Persons
NATO	North Atlantic Treaty Organization

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CHAPTER-1

INTRODUCTION

1.1 INTRODUCTION

The Frontier Crimes Regulation 1901 provides such an administrative and legal framework for FATA that deprives the tribes Social, Political and Economic rights, recognized under the International Human Rights law and the protection of courts.

Federally Administered Tribal Areas (FATA) lie along the Durand line of 1893, the 2,640 kilometer line drawn by the British Colonial rulers between British India and Afghanistan (today Pakistan and Afghanistan) and comprises a whole belt of mountainous territory, stretching nearly for hundred miles and merging into the Pashtoon belt of Baluchistan.¹ It is an area of 27220 square kilometers. One sixth area of FATA about 5180 square kilometers is plain while 22040 square kilometers is mountainous.² The tribal belt with population of 3.5 million (1998 census) are grouped into organized Pashtoon tribal communities: the chief being Bajauri, Mohmand, Afridi, Turi, Orakzai, Shinwari, Wazir, Mehsud, Dawar, Bettani, Barki and Sulemankhel. Each is separate and individually marked off from the others by minor shades of differences ranging from social mores to dialect, but all intermingle by common language, culture and traditions.³ Keeping the population increase rate of the FATA in mind, the unofficial sources maintain it to be over five million in 2009.⁴ In the nineteenth century, the British chalked out the tribal areas and used this

¹ Dr Claude Rakisits, "Pakistan's Tribal Areas: A Critical No-Man's Land", Consultant, Webster University, Adjunct faculty, Paper delivered at Webster University Forum, Geneva, 25 April 2008.
http://www.geopoliticalassessments.com/Pakistan_s_Tribal_Areas.pdf

² Afridi, Latif, *The Federally Administered Tribal Areas and reforms*, Publisher Barkat Ali, Peshawar, 1996, p.2.
³ Abdul Quddus, Syed, *The North West Frontier Province of Pakistan*, Royal Book company, Karachi Pakistan, 1990, 79.

⁴ Ghafoor, Muhammad Tayyab, "Impediments Involved In The Integration Of Federally Administrated Tribal Areas (Fata) In The National Mainstream Of Pakistan", U.S. Army Command and General Staff College, Fort Leavenworth, Kansas, 2009. P.6. <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA512301>

strategic point as a buffer zone against Russian advancement from Central Asia to assert control over Afghanistan.⁵

1.2 LITERATURE REVIEW

Frontier crimes regulations and its impacts on human rights is the subject of various studies in academia, nonetheless the approach to the problems facing by the people of FATA is different. The criteria for considering FCR remain general while any specific work has not been done on its ascertainment. Nevertheless, in order to facilitate the appraisal of the issue, we deem it essential to review the available literature.

The study titled "FCR: a bad law no body can defend" by the human rights commission of Pakistan, Peshawar chapter indicates the FCR and its impacts on socio-political and socio-economic but the study remains incomplete regarding the solution to the problem. The issue is not tackled here according to the needs of 21st century. The study is the outcome of group discussion among the tribes' men and leaders of political parties. Thus the problem needs to be solved in legal manner to bring in conformity with International human rights law.

Muhammad Maqbool Khan Wazir in his research paper FATA under FCR (An imperial black law) shed lights on the administrative and judicial portion of FCR and claims it inhuman and unconstitutional but has not touched fundamental human rights in his research work. Therefore, specific work needed to be done in the human rights arena.

⁵ Obrai, Diwan Chand. *The Evolution of the North West Frontier Provinces*. Saeed Book Bank & Subscription Agency, Arbab Road, Peshawar cant, 1983, p.11.

Similarly Zulfiqar Ali in his L.L.M thesis FCR (Frontier Crimes Regulation 1901) in constitutional, judicial and human rights perspective, but he emphasized mainly on FCR provisions. His work in general is mostly about administrative setup of FATA and human rights are not covered specifically by him.

It however, should not be taken as if the issue of FATA is not yet studied from a human rights perspective as Abdullah khoso in his “ Frontier Crimes Regulation— Infringing Human and Child Rights” asserts that child rights are violated due to the existence of black law, like FCR. He mainly focuses on the child right and there is no work for the individuals irrespective of age and sex. However, a reader is not fully satisfied with Abdullah’s approach to the problem as the human rights obligations that they must meet are not discussed in enough detail.

To sum up, I conclude that a study which focuses on the violation of social, political and economic rights due to the existence of black laws like FCR in IHRL, perspective is the need of the day whereby the region is going through instability. This study will endeavor to fulfill the lacuna in the social, political and economic area which is missing at large in the region.

1.3 HISTORICAL AND CONSTITUTIONAL BACKGROUND

The Pashtoon/Afghan nation and Afghanistan was an independent State in the beginning of the 19th Century, right from River Amu (Oxus) to Abasin (Indus) and their empire stretched from river Abasin (Indus) to Sulej and from Kashmir to Sindh. In the same period, the British colonizers, with the support of Sikhs from Punjab and

Persia, launched a series of invasions with an objective to topple the Afghan empire and occupy its land.⁶

First, with an active patronage and support of British colonizers, the winter Capital of Afghanistan (Peshawar) was occupied by Sikhs from 1818 to 1823. The English then formally launched a large-scale offensive against Afghanistan in 1838, which came to be known as the first Anglo-Afghan War (1838 to 1842). Even though British were defeated, they were yet able to get control of areas of Hazara, Peshawar, Kohat, Bannu and Dera Ismail Khan. Instead of send-off these occupied lands to Sikh, British this time preferred to retain the control in their own hands. Several tribes including Yusufzais, Ghorikheils, Gigyanis, Khweshgis, Mohrmmadzais, Khattaks, Marwats, and Kohatis fell under the direct rule of British colonizers.⁷

In the second phase, a number of attacks were launched by British against the tribes of Buner, Swat, and Malakand which finally led to a large-scale combat with the Yusufzai tribe in Afghanistan. The Yusufzais bravely resisted the British aggression at Ambela in Buner in 1861 and forced them to retreat.⁸ Meanwhile, as a result of a number of assaults started in 1861 and continued till 1876, one of the important provinces of Afghanistan - Brauhi speaking areas of Kalat, which is today's Balochistan - in the south came under direct subjugation of British and was thoroughly colonized.⁹ "Both the major cities of Quetta (Shalkot) and Peshawar had by that time fallen to British colonizers which they effectively used as a launching pad to instigate yet another large-scale assault on Afghanistan, which turned out to be second Anglo-Afghan War (1878 to 1880)."¹⁰ This time the British troops invaded

⁶ *Olas Yar, British Imperialism and Afghanistan, Pashtoonkhwa Literary society, Quetta, 1989, p.142.*

⁷ *Ibid.*

⁸ *Caroe, Olaf, Sir: The Pathans, Oxford University Press, Karachi, 1996.*

⁹ *Bruce, R.L., The Forward Policy and its results, Longman, Green & co., London, 1900.*

¹⁰ *Olas Yar, British Imperialism and Afghanistan, Pashtoonkhwa Literary society, Quetta, 1989.p.236.*

Kabul. During the same era, Amir Yaqub Khan replaced Amir Sher Ali Khan as the king of Afghanistan under an infamous imperialist treaty known as Gandamak Treaty of May 1879.¹¹

Under the treaty, the British had took administrative control of Pishin, Sibi and Chotiali Tehsil that comprise the present-day districts of Sibi, Ziarat, Barkani, Pishin and Qilla Abdullah Khan, as well as Tehsil Dukki in the south and Khyber Pass, Michni and district Kurram in the north in Pakistan.¹² Under the same treaty, English were permitted to collect revenues from these areas in order to meet their governmental expenses and were to hand over remaining of the money to the king of Afghanistan.¹³ “In September 1879, Major Sir Pierre Cavagnarie, who had negotiated the treaty and was the commander of the British residency in Kabul, was assassinated and in the uprising of July 1880, the Afghan *laskhkar*¹⁴ headed by Ghazi Mohammad Ayub Khan afflicted a historic defeat on the British army in the battleground of Maiwand.”¹⁵

The disorder that had followed after the second Anglo-Afghan War was settled down by *Amir* Abdur Rehman Khan who took over the reign and became the *Amir* of Afghanistan, re-establishing the writ of the Government. In barter for his official acknowledgment as *Amir*¹⁶ and assistance in arms and money in case of gratuitous foreign attack, he decided to line up his foreign policy with that of British.¹⁷ Kandahar was handed over to the new *Amir* by the Britishers. Due to British

¹¹ Habibi, Abdul Hai, *Afghanistan An Abridged History*, Fenestra Books Tucson, Arizona, U.S.A, 2003.p.139.

¹² *Treaty of Gandamak, 1879, Treaty between the British Government and His Highness Amir Mohammed Yaqub Khan Amir of Afghanistan and its Dependencies. concluded at Gandamak on 26th May 1879, by His Highness the Amir Mohammed Yaqub Khan on his own part and on the other part of the British Government by Major (afterward Sir Louis) P.L.N. Cavagnari, C.S.I.*

¹³ *Ibid.*

¹⁴ *Lashkar is the term used for the non-regular Afghan army fighting on the basis of nationalism.*

¹⁵ Habibi, Abdul Hai, *Afghanistan An Abridged History*, Fenestra Books Tucson, Arizona, U.S.A, 2003.p.142.

¹⁶ *Amir, the term used for the head of the state.*

¹⁷ Habibi, Abdul Hai, *Afghanistan An Abridged History*, Fenestra Books Tucson, Arizona, U.S.A, 2003.p.146.

modern armaments and ongoing onslaughts, the *Amir* was forced to align its foreign relations with the British. British by that time had captured the present day districts Loralai, Zhob, Musa Kheil and Qilla Saifullah in Pakistan.¹⁸

The British were incessantly aggressive from Chitral to South Waziristan on one or the other pretexts. At last, on November 12, 1893, the famous English colonizer, H.M. Durand, accumulated all the hostile gains that were achieved by the British army during the 19th Century and forced Abdur Rehman Khan to abandon Pashtoon parts of Baluchistan and the present FATA and annexed these areas from the then Afghanistan to the British India.¹⁹ The British had not only brought the foreign affairs of Afghanistan in order with their demands but had also gained control of what today constitute parts of NWFP(now Khyber Pakhtunkhwa).

It would need volumes to put forth about the social, economic, commercial, political and cultural damages incurred upon Pashtoon/Afghan as a consequence of colonial occupation and political divisions, brought into their areas by their treatment. The inflexible determination and incessant struggles of Pashtoon/Afghan for the liberation of their homeland and to have a self-governing Afghan State with full territorial integrity is however acknowledged by all the historians.²⁰

Such were the situation under which the Afghans of Malakand, Chakdara, Mohmand, Khyber, Orakzai, Kurram, and North and South Waziristan started rebelling against the colonial imperialist occupation of late 19th Century.²¹ The Independence War of Afghanistan under the leadership of King Amanullah Khan and the resulting turmoil of the Pashtoon/Afghan people which inflicted innumerable

¹⁸ *Ibid.* Pp.147.

¹⁹ *Agreement between Amir Abdur Rahman Khan of Afghanistan, G.C.S.I., and Sir Henry Mortimer Durand, K.C.I.E., C.S.I. representing British Government. The Agreement Concluded on November 12, 1893.*

²⁰ *Abdur Rahim Mandokhail, ex-senator, lecture in Southern FATA workshop, 19-20, Oct. 2008. P.3.*

²¹ *Ibid.* p.3, Para. 3

defeats upon the British troops has dominant historical meaning. As the result of the same, all the imposed treaties of British were done away with. Under the August 18, 1919 agreement of Rawalpindi and November 22, 1921 agreement of Kabul, the independence of Afghanistan was recognized including the areas of present-day frontier tribes.²² On the one hand, the imperialist occupation of British were reenacted with military exercises, but the occupied Pashtoon land within British India, from Peshawar to D. I. Khan in today's Khyber Pakhtunkhwa and the province of Baluchistan as well as tribal areas sustained the interests of Afghanistan. In this connection, in a letter dated November 22, 1921 Henry R. C. Dobbs writes to his Afghan counterpart Mahmud Tarzai²³ :

*"as the conditions of the frontier tribes of the two governments are of interest to the government of Afghanistan, I inform you that the British Government harbors the feelings of goodwill towards all the frontier tribes and has every intention of treating them generously, provided they abstain from outrages against the Inhabitants of India."*²⁴

In addition, one of the articles of November 22, 1921 Agreement stipulates *"the two high contracting parties having mutually satisfied themselves each regarding the goodwill of the other and especially regarding their benevolent intentions towards the tribes residing close to their respective boundaries, hereby undertake each to inform the other in case of any military operation of major importance which may appear necessary for the maintenance of order among the frontier tribes residing*

²² Habibi, Abdul Hai, *Afghanistan An Abridged History*, Fenestra Books Tucson, Arizona, U.S.A, 2003.p.150.

²³ *A Collection of Treaties, Engagement and Sanads Relating to India and Neighboring Countries (Revised to 1929), Volume Persia and Afghanistan*. Compiled by C.W. Aitcheson's, Millat Publications Delhi, Reprinted in India 1983.

²⁴ *Ibid*

within their respective spheres before the commencement of such operations.”²⁵

While Article 14 of the same agreement states;

“the provisions of this treaty shall come into force from the date of its signature and shall remain in force for three years from the date, in case neither of the high contracting parties should have notified twelve months before the expiration of the said three years the intention to terminate it, it shall remain binding until the expiration of one year from the day on which either of the high contracting parties shall have denounced it.”²⁶

On the Eastern side of the Pashtoon areas, the political and military struggle was getting rising wind under its sails against the British rule. All Pashtoon were united in the independence movement and finally forced the British to evacuate their colonized areas and announced the transference of power on June 3, 1947 to the people of the Subcontinent.

Under paragraph four of the June 3 Plan,²⁷ the British colonized eastern Pashtoon areas constituting the today's Khyber Pakhtunkhwa and southern Pashtoon areas that we now know as Baluchistan, formed the federation of Pakistan as its integral parts along with other units and constituted a Constituent Assembly in order to have their own social agreement while having their rights of self-determination and means to frame a Constitution. In accordance with Section 1-B of Indian Independence Act 1947, on the other hand, the limited rule of the British over the tribal areas came to an end and as a result they became independent areas.²⁸ The

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ 3rd June 1947 Plan was a partition plan of the sub-continent and was drafted and prepared by the British government of India.

²⁸ *Historic Documents of the Pakistan Movement*, G. Allama, Islamic books Lahore, 1988.
B) Akbarjee's Articles.

Section 1-7 of the Indian Independence Act 1947 states “the suzerainty of His Majesty over the Indian States lapses and with it all treaties... towards Indian States or rulers thereof,” and further “there lapses also any treaties or agreements in force at the date of this Act between His Majesty and any person or any persons having authority in.”²⁹ In regard to tribal areas, the Act states:

*“any obligations of His Majesty existing at that date to any such persons or with respect to the tribal areas and all powers, rights, authority or jurisdiction exercisable at that date by His Majesty in or in relation to the tribal areas by treaty, grant, usage, sufferance, or otherwise: provided that notwithstanding anything in paragraph (b) or paragraph (c) of this sub section shall effect as nearly as may continue to be given to the provisions of any such agreement as is there in reference to which related to custom transits and communication posts and telegraphs, or other such like, until the provision in question are denounced by the ruler of the Indian state or person having authority in the tribal areas on the one hand or by the dominion or province or other part thereof concerned or the other hand or are superseded by subsequent agreements.”*³⁰

In addition to the Indian Independence Act, the Afghan Government through a Loya Jirga (Grand Council) cancelled the November 22, 1921 Anglo-Afghan Treaty.³¹

Further, according to paragraph 17 of the June 3rd Plan and in harmony with Sections 1-7 of Indian Independence Act 1947, nowadays FATA and other frontier tribes became completely free from the British rule and thereof started living independently under the administrative, legislative and judicial system of the tribal

²⁹ *Ibid*

³⁰ *Ibid*

³¹ *Abdur Rahim Mandokhail, ex-senator, lecture in Southern FATA workshop, 19-20, Oct, 2008. Pp.5.*

Jirga (Council of Elders).³² The tribal areas remained independent under the national and tribal *Jirga* system during the era which started from August 14, 1947 and lasted till June 27, 1950. The decision to accession to Pakistan was then reached between the trustworthy representatives of these areas and Governor General of Pakistan. The inclusion of tribal areas in Pakistan was made on the basis that their particular status which they had enjoyed during the British rule will be maintained. The following three notifications shed sufficient light on this special status despite the fact that Pakistan has also restrained the political, economic and social enlargement of the tribal areas under the Frontier Crimes Regulation, similar to what the British had.

"whereas the inhabitants of the areas situated within the external frontier of Pakistan which are not included in any of the provinces or in the Chief Commissioner's Province of Baluchistan or in any of the acceding states or in the capital of the federation have, through their accredited representatives, declared their territories to be a part of the federation of Pakistan as constituted on the 15th day of August 1947. And where as the Governor-General had accepted their request and given his consent to these areas being included in the Federation of Pakistan. Now therefore in exercise of all the powers enabling him in that behalf the Governor General is pleased to declare as follows:

1. This notification shall be deemed to have taken effect from 15 day Of the August 1947;

³² *Historic Documents of the Pakistan Movement*, G. Allana, Islamic books Lahore, 1988.
B) Akbarjee's Articles.

2. *the areas aforesaid shall be deemed to have been included in the Federation with the consent of the federation, as from the 15th day of August 1947.*"³³

The above notifications of the government of Pakistan are notified on 27th June 1950. These notifications concern those states or territories which were not the integral part of Pakistan, their status were autonomous or semi-autonomous. The notification states that those territories which are not part of Pakistan can join the federation of Pakistan through their trustworthy representatives and same was for the Federally Administered Tribal Areas (FATA). Under section 1-7 of Indian independent Act 1947 the Tribal Areas known as FATA became independent and free till 1950. After that it was decided between the tribal elders and the Governor General of Pakistan on the basis that the status which the tribal areas maintain in British regime would be the same in Pakistan. Under such circumstances the notifications were issued by the Government of Pakistan.

*"Whereas the Governor General is empowered by the provisions of the paragraph (2) of article (1) of the extra provincial jurisdiction order, 1949,³⁴ hereafter referred to as the said order, to declare any territories to be territories in which jurisdiction is exercised by him under that order. And whereas the Governor General has, with the consent and at the request of the inhabitants of the areas described in the government of Pakistan Ministry of States and Frontier Regions notification No. F 9 (170) – F/48, dated 27th June 1950, acquired jurisdiction, in the aforesaid areas as from the 15th day of August 1947"*³⁵

³³ Government of Pakistan, Ministry of States and Frontier Regions, Notification No.F-9 (170) –F/48 dated the 27th June, 1950.

³⁴ Extra-Provincial Jurisdiction Order, issued by Pakistan's Governor General on March 31,1949, having retrospective effect from the date the British transferred power in August, 1947.

³⁵ Government of Pakistan, Ministry of States and Frontier Regions, Notification No.F-9 (170) –F/48 dated the 27th June, 1950.

In the above mentioned provision the Governor General of Pakistan was empowered under the extra-provisional jurisdiction order, 1949³⁶, whereas the Governor General can with the consent of the inhabitants of any territory declare the territory as a part of Pakistan. The Extra-Provisional jurisdiction order, 1949, was given effect in the Government of Pakistan Ministry of States and Frontier Regions Notifications of 27th June, 1950.

"Now therefore in exercise of the powers conferred by the said order and of all other powers enabling him in that behalf the Governor General is pleased to declare as follows:

- 1. This notification shall be deemed to have taken effect from the 15th day of August 1947.*
- 2. The areas described in the aforesaid notification shall be territories in which the Governor General exercises jurisdiction under the said order.*
- 3. All administrative jurisdiction exercisable by the Governor General in the aforesaid territories shall be discharged by the following agents to the Governor General appointed for these areas, namely:*
 - a) By the governor General of the North West Frontier Province and Agent to the Governor General, in respect of the areas within the external frontiers of Pakistan and beyond the borders of the North West Frontier Province:*
 - b) By the Governor General of the Punjab Province and Agent to the Governor General in respect of the areas beyond the western borders of the Dera Ghazi Khan*

³⁶ *The Extra-Provisional Jurisdiction Order, 1949.*

of that province, not included within Baluchistan, until such time as the said areas become, or have become a part of the Punjab Province; and

c) By the chief Commissioner in Baluchistan and Agent to the Governor General, in respect of the areas within the borders of Baluchistan.

*4. All notification, rules or other instruments made before the 15th day of August 1947 in respect of the aforesaid areas under sub section (1) and (2) of section 313 of the Government of India Act 1935, shall be deemed to have continued in force after the 14th day of August 1947 and to have been duly made in exercise of the jurisdiction conferred by the said order.*³⁷

In the said notification, it is obviously clear that the Frontier regions were brought under the direct administrative control of the Governor General and Agent to the Governor General Known as the Governor of the province. The FATA became semi-autonomous according to the Notifications of 27th June, 1950. In such notifications, there are no such provisions under which the government writ can be extended. It is also notable that the Chief Commissioner province formerly Known as British Baluchistan, was to be governed by the Frontier Crimes Regulation. And the notifications of 1950 include the areas of British Baluchistan stated as;

"In exercise of the powers conferred by the sub section (1) of section 95 -A of the Government of India Act 1935 and of all other powers enabling him in his behalf, the Governor General is pleased to direct that all enactments made in or applied to the Chief Commissioners Province of Baluchistan on or after the 15th day of August 1947, and all notifications, rules, orders or by-laws made under those enactments, which are for the time being in force in the aforesaid Province of Baluchistan, shall,

³⁷ Notification No.F-9(170) -F/48 -I

unless it is otherwise declared by the Agent to the Governor General in Baluchistan, with the previous sanction of the federation, be deemed to be in force in the territories within the borders of Baluchistan being the areas described in the Government of Pakistan, Ministry of States and Frontier Regions' Notification No. 9 (170) – F/48, dated the 27th June 1950.

Provided that for the purpose of facilitating the application of any of the aforesaid enactments, notification, rules, orders or by-laws, any court may construe them with such modification not affecting the substance as may necessary or proper in order to adopt them to the matter before the court.

*Provided further that each of the aforesaid enactments, notifications, rules, orders or by-laws shall be deemed to have been in force in the aforesaid territories from the date from which it has been in force in the aforesaid Province of Baluchistan.*³⁸

On October 13, 1955 when the West Pakistan province was formed in accordance with the Establishment of West Pakistan Act 1955, then along with NWFP, famous back then as Khyber Pakhtunkhwa, the Chief Commissioner' at Province of Baluchistan, Pashtoon areas of Baluchistan, were also categorically mentioned in the notification.³⁹ In the Constitution of 1956, the tribal areas are named as Special Areas and referred in Article 218:

“Special Areas means the areas of the province of West Pakistan which immediately before the commencement of the establishment of West Pakistan Act 1955 were:

a) The tribal areas of Baluchistan, the Punjab and the North West Frontier, and

³⁸ Notification No.F-9(170) –F/48 -11

³⁹ Government of Pakistan, Ministry of States and Frontier Regions. Notification No.F-9 (170) –F/48 dated the 27th June, 1950

b) *The states of Amb, Chitral, Dir and Swat*⁴⁰

Similarly, in the Constitution of 1962, tribal regions have been mentioned in Article 242:

"Tribal Areas means the areas of the Province of West Pakistan, which on the 13th day of October 1955 were:

a) *The tribal areas of Baluchistan, the Punjab and the North West Frontier, and*

b) *The states of Amb, Chitral, Dir and Swat.*⁴¹

On June 15, 1969, the Regulation of Dir, Chitral and Swat was enacted and all the powers of rulers of states came to conclude and administration of these states devolved upon the provincial government of West Pakistan. On July 1, 1970, in consonance with the Presidential Decree 1970-1, the West Pakistan province was devolved and according to Articles 3 and 4 of the same decree new provinces were created. In accordance with the Constitution of 1962 the tribal regions which were not incorporated in new provinces, were called Centrally Administered Tribal Areas. In the Constitution of 1973, the tribal areas and their status are affirmed in articles 246 and 247.

Similarly the Supreme Court of Pakistan noted in "The Superintendent, Land Customs, Torkham (Khyber Agency) V. Zewar Khan and others 1969" judgment, "it is true the tribal territories were never a part of British India as such. The Crown had acquired jurisdiction therein by grants, usages, sufferance, and other lawful means ... although they were territories outside the dominions of the crown." "Hence, the British Parliament passed in 1890 a foreign jurisdiction act to exercise and enjoy this

⁴⁰ Article 218, Constitution of the Islamic Republic of Pakistan, 1956.

⁴¹ Article 242, Constitution of the Republic of Pakistan, 1962.

jurisdiction 'in the same and as ample a manner' as if the territory had been obtained by cession or conquest".⁴²

1.4 CONCLUSION

From the above discussion it is clear that FATA historically was a part of Afghanistan and was occupied by British through wars and imposing various kinds of agreements on the people of the region. Currently FATA is being administered under the Frontier Crimes Regulation 1901. After the partition of the Sub-continent, the Pakistan government extended the colonial policy towards the tribal areas which has various impacts over the fundamental rights of the people of the FATA. FCR which will be our main concern in the remaining chapters of the dissertation FCR doesn't meet with the needs of 21st century and needs various amendments. FCR is lacking substantive provisions which cover the human rights at large. In 2011, various reforms were brought into the FCR but have limited practical implications.

⁴² *PLD 1969 Supreme Court 485.*

Chapter 1 discusses the Federally Administered Tribal Areas (FATA), its Location, and population, legal and historical background in detail. In the subsequent chapter our main concern will be Frontier Crimes Regulation 1901, the provisions related to FATA in the Constitution of Pakistan 1973. In particular the nature of social, political and economic rights in International human rights law perspective will also be discussed.

The tribal set up of the North West Frontier's tribes has its in-built system for the settlement of tribal affairs without any assistance and help from the agencies of the state. The tribal society, being a self-governed society governed by their unwritten code of conduct known as the *Rewaj* (tribal customs and traditions) developed and flourished over thousands of years.⁴³ "The *Rewaj* is a body of law developed as a result of customs and *Jirga* decisions, as distinct from the law laid down by the legislative assemblies". It may be compared to the Common law that forms the basis of all law that is applied in England and most of the United States.⁴⁴

The Frontier's tribes are traditional people and they in their individual and collective life are strictly adhering to their customs and traditions and therefore resist any external interference through use of force. They fought against Alexander the Great, Mughals and finally the British who tried to occupy their land.⁴⁵ The British at last took control of the region and the area became semi-autonomous territory of the British India. First, the tribes retained their socio-economic and political independence and used to follow their own *Rewaj*.⁴⁶ Later on, the British Government

⁴³ Rashed, Abdul, *Civil Service on the Frontier*, Khyber Printer Peshawar, 1977, p.58.

⁴⁴ Zulfiqar Ali, "Frontier Crimes Regulation 1901: In Constitutional, Judicial and Human Rights Perspective", LLM thesis, 2009, unpublished.

⁴⁵ Afridi, Latif, *The Federally Administered Tribal Areas and Reforms*, Barkat Ali Publishers, Peshawar, 1998, p.2.

⁴⁶ Zulfiqar Ali, "Frontier Crimes Regulation 1901: In Constitutional, Judicial and Human Rights Perspective", LLM thesis, 2009, unpublished.

was able to extend certain laws to the area. The British India Government governed these areas through Frontier Crimes Regulation 1901 which was a code of criminal laws. The purpose of British Government behind the FCR was to counter crimes and attacks of the people of Tribal areas.

The British Government had no further intention to change the basic structure of the Tribal society. It has been discussed in chapter I that after the partition of British India the Tribal Areas remained independent till 1950 under the India Independent Act 1947. Afterwards the Tribal Areas were declared the territory of Pakistan and granted semi-autonomous status. Pakistani Government is administering the FATA under FCR. Later on in 2011 certain reforms were brought regarding the Federally Administered Tribal Areas which will be discussed later.

2.1 FRONTIER CRIMES REGULATION 1901 (FCR)

“FCR dates back to the occupation of the six Pashtoon-inhabited frontier districts by the British in 1848, FCR was re-enacted in 1873 and again in 1876 with minor modifications, with the passage of time, FCR was found to be inadequate and new acts and offences were added to it to extend its scope”⁴⁷. “This was done through promulgation of FCR of 1901”⁴⁸. The British formulated FCR as a legal instrument for the repression of crimes and to establish the writ of the colonial rule in certain frontier districts. “In drafting FCR, the British relied upon some customs and traditions prevailing in the area but these traditions were distorted to suit the government’s plan of securing convictions at will”⁴⁹. It aimed to advance the

⁴⁷ Mohammad Khan, Amir, *Justice Denied-Children as little as two years have been convicted under the draconian FCR that contravenes all principles of human rights*, Dec 2004, <http://www.worldsindhi.org/relatedpress/dec04.html>.

⁴⁸ Pirzada, S.Sharifuddin, *Fundamental Rights and Constitutional Remedies in Pakistan*, All Pakistan Legal Decisions, Nabha Road, Lahore 1966, p. 395.

⁴⁹ Wazir, Badshah Gul, *The Futuristic of Tribal Administration*, Pakistan Academy for Rural Development, 1995, p.8.

objectives of the British, thus it was merely a law of “convenience” or “expediency” than a law to ensure just and fair decision of cases in the respective areas.⁵⁰

When Pakistan came in to being, FCR remained as usual in NWFP (Khyber Pakhtunkhwa), British Baluchistan and all the Tribal areas. It applied to the whole NWFP but was abolished in March 23, 1956 when the Constitution of 1956 was promulgated. FCR was abolished in Baluchistan apart from some areas by the Constitution of 1973 where too it ceased to be effective when the Sharia’at Bench of Quetta High Court declared it contrary to the fundamental principles of Islam in the case of the Quran-Sunna v. FCR.⁵¹ FCR ended in Malakand Division in 1975. It is in vague in FATA till date with slight and very unimportant changes brought in it so far.

The FCR a century old code of law consisted of seven chapters, sixty four sections and three schedules. But in 2011 several amendments were brought into FCR by the President of Pakistan Order. FCR is the supreme law in FATA and serves all purposes both of procedural as well as substantive law. The feature distinguishing FCR from other laws is that it is an administrative regulation and not a “pure law” per se. Another fact is that more than hundred local and special national laws stand extended to FATA including the Pakistan Penal Code, Criminal Procedure Code, and the Custom Act etc.⁵² In 2011 FCR has been amended and now FCR consists of 64 sections and three schedules.

2.2 FRONTIER CRIMES (AMENDMENT) REGULATION 2011

The major initiative taken by the government in the areas of judicial and governance reforms was the promulgation of the Frontier Crimes (Amendment)

⁵⁰ Nickson, Robert, *Settling the Frontier*, Oxford University Press, Karachi, 2001, p. 248.

⁵¹ PLD 1979 Quetta 217.

⁵² Ali, Ishfaq, *Laws extended to the Tribal Areas with Jirga Laws*, New Fine Printers, Peshawar, 2003, p.438.

Regulation, 2011.⁵³ The amendment so brought in the legislation of colonial era limited the random powers of Political Administration, with the stipulation of a check-and-balance framework in the judicial litigations and executive power of the Political Agents in FATA, in particular through the revisional jurisdiction of a 3-member FATA Tribunal, with powers alike to those vested in a High Court under Article 199 of the constitution of Islamic Republic of Pakistan.

But these reforms are nominal and have limited impact over the social, political and economic life of the inhabitants of FATA. Because the judicial authority vested in whom haven't judicial mind while for the adjudication of legal matters one should have a positive legal mind. The set of political reforms so far introduced in FATA are being heralded as a new dawn for the area, though preceded by another disturbing law i.e. "Actions in Aid of Civil Power,"⁵⁴ that gives sweeping powers to the military in FATA.⁵⁵ It is yet to be seen whether this new piece of legislation subscribes to or negates the spirit and intent of the long-awaited reform process in FATA.

2.3 STATUS OF FATA UNDER THE CONSTITUTION OF PAKISTAN 1973

Before 1956, FCR covered the whole of Khyber Pakhtunkhwa, but through an amendment, the settled districts of the province were excluded from FCR. FCR was eradicated in 1973 from Baluchistan. "The rest of the tribal areas, namely the agencies of Mohmand, Kurram, Khyber, Bajaur, Orakzai, North Waziristan, South Waziristan and the adjoining areas of Kohat, Peshawar, Bannu, Lakki Marwat, Tank and Dera

⁵³ www.riport.org/update/RIPORT-FORUM, last visited on 5th, June 2012. At 4.00pm.

⁵⁴ *Action in Aid Civil Power Regulation, 2011.*

⁵⁵ www.riport.org/update/RIPORT-FORUM, last visited on 5th, June 2012. At 4.00pm.

Ismail Khan were declared as FATA and was covered by FCR".⁵⁶ The administration of Provincially Administered Tribal Areas (PATA) of Khyber Pakhtunkhwa and Baluchistan is under the direct control of these two provinces. FATA is under the responsibility of the Federal Government. The FATA is divided into two administrative categories 'protected areas' and 'non-protected areas'.⁵⁷ "First, the 'protected areas' which come directly under control of central government through political appointees/agents, they are vested with judicial powers as well, secondly, the 'non-protected': areas those are governed through the local tribes indirectly".⁵⁸ At

⁵⁶ <http://fazalurrehmanafriidi.wordpress.com/2010/08/25/the-frontier-crimes-regulation-fcr-pakistan/> last visited on 7th June, 2012.

⁵⁷ "FATA is divided into two administrative categories: 'protected' areas are regions under the direct control of the government, while 'non-protected' areas are administered indirectly through local tribes. In protected areas, criminal and civil cases are decided by political officers vested with judicial powers. After completing the necessary inquiries and investigations, cognizance of the case is taken and a jirga is constituted with the consent of the disputing parties. The case is then referred to the jirga, accompanied by terms of reference. The jirga hears the parties, examines evidence, conducts further inquiries where needed, and issues a verdict which may be split or unanimous. The political agent, or an official appointed by the political agent for this purpose, examines the verdict in the presence of parties to the case and members of the jirga. If the verdict is found to be contrary to customary law or tainted with any irregularity, the case may be remanded to the same jirga for re-examination or the verdict may be rejected and a fresh jirga constituted. Where the verdict is held to be in accordance with customary law and free of irregularities, it is accepted and a decree is issued accordingly. An aggrieved party may challenge the decree before an appellate court, and a further appeal may be lodged with a tribunal consisting of the home secretary and law secretary of the federal or provincial government. Once appeals are exhausted, execution of the verdict is the responsibility of the political administration. In non-protected areas, cases are resolved through a local jirga at the agency level. Local mediators first intervene to achieve a truce (tiga) between parties in a criminal case, or to obtain security (muchalga) in cash or kind for civil disputes. Thereafter, parties must arrive at a consensus concerning the mode of settlement-arbitration, riwaj (customary law) or Shariah (Islamic law). Once the mode of settlement is agreed upon, mediators arrange for the selection of a jirga with the consent of the parties to the case. Where arbitration is selected, a jirga is nominated by consensus and given an open mandate (waak), with the understanding that its decision will be accepted by all parties. Here, the decision of the jirga cannot be challenged. In cases decided according to customary law or the Shariah, however, an aggrieved party may challenge the jirga's decision before another jirga of their own choice. The new jirga does not hear the case afresh but only examines the original decision to see whether it deviates from customary law or the Shariah. Further appeal may be referred to a third jirga and its decision is final.

Implementation of jirga decisions in non-protected areas is the responsibility of the tribe. The jirga may mete out punishment to an offender, imposing a heavy fine. Occasionally, more serious measures may be taken such as expelling an individual or a family from the area, and confiscating, destroying or setting fire to homes and property. In such cases, the entire tribe bands together as a lashkar (army) to enforce the decision. While most disputes are settled internally, more serious matters may require the calling of a larger jirga made up of maliks, elders, the political agent, members of the National Assembly and Senate, and occasionally even representatives from neighbouring agencies or FRs. Although the jirga mechanism enjoys widespread favour, corruption has begun to enter the system. It is reported that the poor and more vulnerable segments of society cannot afford to convene a jirga. There are a number of requirements for a jirga to be held, including hospitality, which are increasingly beyond the reach of most ordinary people. There is also the grievance, now voiced more frequently, that in most cases jirga decisions favour the richer or more influential party."

⁵⁸ Global Security.org, Military. Pakistan's FATA policy", <http://www.globalsecurity.org/military/world/pakistan/fata-pak.htm> accessed on 20th July, 2012.

Federal level, the Ministry of State and Frontier Regions (SAFRON), at Islamabad is given the responsibility to look after the development, management, and related matters of the FATA. Article 246 and 247 in Chapter 3 of part XII, of the Constitution of Pakistan 1973, deals with the FATA.

The Article 246 states that in the Constitution:⁵⁹

“(a) ‘Tribal Areas’ means the areas in Pakistan which, immediately before the commencing day, were the Tribal Areas, and includes:-

(i) The Tribal Areas of Balochistan and Khyber Pakhtunkhwa;

And (ii) The former States of Amb, Chitral, Dir and Swat.

(b) “Provincially Administered Tribal Areas” means

(i) The Districts of Chitral, Dir and Swat (which includes Kalam) [The Tribal Areas in Kohistan District], Malakand Protected Areas, the Tribal Areas adjoining Mansehra district and the former state of Amb, and

(ii) Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai district and Marri and Bugti Tribal territories of Sibi district⁶⁰;
and

“(c) ‘Federally Tribal Areas’, includes;

(i) Tribal Areas, adjoining Peshawar district

(ii) Tribal Areas adjoining Kohat district

(iii) Tribal Areas Bannu district

(iv) Tribal Areas adjoining Dera Ismail Khan district

(v) Tribal adjoining Lakki Marwat district

(vi) Tribal Areas adjoining Tank districts

⁵⁹ Article, 246, of the Constitution of Islamic Republic of Pakistan, 1973.

⁶⁰ Ibid.

- (v) *Bajaur Agency*
- (vi) *Orakzai Agency*
- (vii) *Mohmand Agency*
- (viii) *Khyber Agency*
- (ix) *Kurram Agency*
- (x) *North Waziristan Agency, and*
- (xi) *South Waziristan Agency*"⁶¹

In article 246 the tribal areas has been defined, that where these areas are located and which areas shall be called tribal areas. In the article 246, two types of tribal areas has been defined, the tribal areas under the control of Federal government and the tribal areas under the control of provincial governments.

The Article 247 states concerns the "Administration of Tribal Areas" and states:⁶²

*"(1) Subject to the Constitution, the executive authority of the Federation shall extend to the Federally Tribal Areas, and the executive authority of a Province shall extend to the Provincially Administered Tribal Areas therein".*⁶³

It means that the Federally Administered Tribal Areas will be in the direct executive control of Federal government (President), and Provincially Administered Tribal Areas will be in the direct executive control of respective provinces (Governor).⁶⁴ Federal and provincial governments can exercise their executive powers in the respective areas known as tribal areas.

"(2) The President may, from time to time, give such directions to the Governor of a Province relating to the whole or any part of a Tribal Area within the Province as he

⁶¹ *Ibid.*

⁶² *Article 247 of the Constitution of Islamic Republic of Pakistan, 1973.*

⁶³ *Clause 1 of the Article 247 of the Constitution of Islamic Republic of Pakistan, 1973.*

⁶⁴ <http://fazalurrehmanafriidi.wordpress.com/2010/08/25/the-frontier-crimes-regulation-fcr-pakistan/> last visited on 7th June, 2012.

may deem necessary, and the Governor shall, in the exercise of his functions under Articles, comply with such directions".⁶⁵

The President of Pakistan under Art.247 clause 2 has the powers to issue directions to the Governor of the respective provinces regarding the tribal areas of an executive nature. And the governor shall follow such a direction of the President and shall act upon any such a direction.

"(3) No Act of Majlis-e-Shoora (Parliament) shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs, and no Act of Majlis-e-Shoora (Parliament) or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof unless the Governor of the Province in which the tribal area is situated, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exception and modifications as may be specified in the direction".⁶⁶

The President may make a regulation with respect to any matter for the peace and good governance of FATA. FATA is represented in the Lower (National Assembly) and the Upper (Senate) Houses of the parliament by 12 and 8 members, respectively.⁶⁷ The Parliament has no jurisdiction over FATA and the representative of FATA in parliament has no powers of legislation for the region. Only the President of Pakistan and Governor of the province by the approval of the President can make directions for the FATA.

⁶⁵ Clause 2, of the Article 247, of the Constitution of Islamic Republic of Pakistan, 1973.

⁶⁶ Clause 3, of the Article 247 of the Constitution of Islamic Republic of Pakistan, 1973.

⁶⁷ Shinwari, Naveed Ahmad, *Understanding FATA, Volume IV, Community Appraisal & Motivation Programme (CAMP) publications, Islamabad, 2010, p.6.*

“(4) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter within the legislative competence of Majlis-e-Shoora (Parliament), and the Governor of a Province, with the prior approval of the President, may, with respect to any matter within the legislative competence of the Provincial Assembly make regulation for the peace and good government of a Provincially Administered Tribal Area or any part thereof, situated in the province.

(5) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter, make regulation for the peace and good government of a Federally Administered Tribal Area or any part thereof.”⁶⁸

In clause 4 and 5, the President can make regulation for the peace and good governance of FATA or any part thereof. Such powers are vested in the president and no act of parliament shall apply to the FATA unless the president so direct.

“(6) The President may, at any time, by Order, direct that the whole or any part of a Tribal Area shall cease to be tribal area, and such Order may contain such incidental and consequential provisions as appear to the President to be necessary and proper: Provided that before making any Order under this clause, the President shall ascertain, in such manner as he considers appropriate, the views of the people of the Tribal Area concerned, as represented in tribal Jirga”.⁶⁹

“Most of the Laws-civil, criminal, electoral and fiscal-have been extended to FATA and the president may, subject to ascertaining the views of the tribal Jirga, abolish the status of a given FATA region/Agency and convert it into a settled area”.⁷⁰

“(7) Neither the Supreme Court nor the High Court shall exercise any jurisdiction under the Constitution in relation to a tribal area unless Majlis-e-Shoora

⁶⁸ Clause 4,5 of the Article 247 of the Constitution of Islamic Republic of Pakistan, 1973.

⁶⁹ Clause 6 of the Article 247 of the Constitution of Islamic Republic of Pakistan, 1973.

⁷⁰ Shirwari, Naveed Ahmad, *Understanding FATA, Volume IV, Community Appraisal & Motivation Programme (CAMP) publications, Islamabad, 2010, p.6.*

(Parliament) by-law otherwise provides. Provided that nothing in clause shall affect the jurisdiction which the Supreme Court or a High Court exercised in relation to a tribal area immediately before the commencing day".⁷¹

Clause 7 of Art.247, bars the extension of superior courts, including Supreme court and High court, to FATA unless the parliament so provides under law.⁷²

2.4 RIGHTS GUARANTEED UNDER THE CONSTITUTION OF PAKISTAN

Article 8 to 25 of the Constitution of Pakistan, 1973, deals with the fundamental human rights. It covers the civil, social, political, economic and cultural area. "For instance, the right to life and liberty in Art.9, the safeguards as to arrest and detention in Art.10, prohibition of slavery, forced labour, etc. in Art.11, protection against retrospective and double punishment in Art.12&13, dignity of man in Art.14, Freedom of movement in Art.15, Freedom of assembly and association in Art.16&17, Freedom of trade, business or profession in Art.18, Freedom of speech and right to information in Art.19 & 19A, Freedom to profess religion and to manage religious institutions in Art.20, right to property in Art.23, Equality of citizens in Art.25 and Right to education in Art.25A".⁷³

The above mentioned articles protect the civil, social, political, economic and cultural rights of the people of Pakistan. While the Frontier Crimes Regulation 1901, being a codified law consists of penal laws as it is obvious from the name of the law 'FCR'. There are no specific rights mentioned in the FCR as it seems from its text which are guaranteed by the International Human Rights law to every human being. "And the human rights is that it is universal rights held, belong to individuals by

⁷¹ Clause 7 of the Article 247 of the Constitution of Islamic Republic of Pakistan, 1973.

⁷² Shinwari, Naveed Ahmad, *Understanding FATA, Volume IV, Community Appraisal & Motivation Programme (CAMP) publications, Islamabad, 2010, p.6.*

⁷³ *The Constitution of Islamic Republic of Pakistan, 1973, Part II, Chapter 1, 2011.*

virtue of their being human, encompassing civil, political, economic, social, and cultural rights and freedoms, and based on the notion of personal human dignity and worth".⁷⁴ The Constitution of Pakistan as a supreme law of the state is not applicable to the FATA, because of its semi-autonomous status. There are certain laws and statutes which are extended to FATA, but their scope is very limited. Therefore, the rights guaranteed in the Constitution of Pakistan, 1973, have no application in the FATA. Hence, our area of concern is the social, political and economic rights, and what are these rights? It will be discussed in the International Human Rights Law context.

2.5 SOCIAL, POLITICAL, AND ECONOMIC RIGHTS UNDER INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Human Rights are those rights which are vested in all humans irrespective of age, sex, color, race, nationality, religion, etc. by the virtue of their being human and which are fundamental, universal and inalienable.⁷⁵ Social, political and economic rights are the fundamental rights guaranteed by the International Human rights Instruments as well by Regional human rights instruments. In General the Universal Declaration on Human Rights 1948 (UDHR), while International Covenant on Civil and Political Rights 1966, (ICCPR) and International Covenant on Economic, Social and Cultural Rights 1966, (ICESC) particularly recognized the social, political and economic rights.

Human rights are considered the part of *Jus Cogens* which is an international peremptory norm and the derogation of which leads to the violation of International

⁷⁴ Basu, Durga Bas. *Human Rights in Constitutional Law, Wadhwa and Company Nagpur, New Delhi, India, 2005, p.3.*

⁷⁵ *Talwar, Prakash, Human Rights, Isha Books Publishers, Delhi, India, 2006, P.6.*

peremptory norms.⁷⁶ Human rights are fundamental, universal and inalienable that's why it can't be violated or snatched and are strongly protected under the cover of international peremptory norms Jus Cogens and recognized by international, regional and domestic legislative sources.⁷⁷ There is no question left regarding the legality or authenticity of Human rights. All the constitutions of the modern nation states, international law and regional instruments recognized human rights as fundamental for humans and have global implications.⁷⁸

2.6 SOCIAL RIGHTS

“Social rights are those rights which arises from the social contract, in difference to natural rights which arise from the natural law, but before the establishment of legal rights by positive law”.⁷⁹ “Fundamental social rights in this context mean rights to which the individual citizen is entitled, which he can exercise only in his relationship with other human beings as a member of a group and which can be made effective only if the State acts to safeguard the individual's environment”.⁸⁰

Social Rights are recognized by International Covenant on Economic, Social and Cultural rights, 1967 and as well by European Social Charter 1961, which emerged from the Council of Europe. “The ‘European Social Charter’ can be seen as the ‘social counterpart’ of the European Convention on Human Rights (ECHR)”.⁸¹

⁷⁶ Whiteman, Marjorie M., *Jus Cogens In International Law, With A Projected List*, 7. G. J. Int'l & Co. L., 1977, Pp 609, 625-26.

⁷⁷ Brunno Simma & Phillip Alston, *The Source Of Human Rights Law: Custom, Jus Cogens & General Principle*, 12 Aust. Y.B. Int'l Ltd., 1992, Pp 82, 94.

⁷⁸ Lee M. Caplan, 'State Immunity, Human Rights, And Jus Cogens: A Critique Of The Normative Hierarchy Theory', 97 *American Journal On International Law*, 2003, Pp. 741.

⁷⁹ Kumar, Vijay, *Human Rights: Dimensions And Issues. Volume I*, Anmol Publications Pvt. Ltd., New Delhi, India, 2003, Pp. 224.

⁸⁰ BAUER, Lothar, *Working Paper On Fundamental Social Rights In Europe, Social Affairs Series, SOCI 104 EN*, Publishers: European Parliament L-2929, Luxembourg, 1999, P.9.

⁸¹ *Ibid.* P.12.

Article 22, 23, 24, 25 and 26 of Universal Declaration on Human Rights 1948, deals with Social rights. Social Rights are also recognized by the Constitutional Laws of the states to a maximum level.

“In a market economy, for example, the state is de facto unable to guarantee many rights, one such being the right to work because it cannot offer enough jobs.”⁸²

“The right to work, the right to just, safe and healthy working conditions, the right to fair remuneration, the right to organize, the right to bargain collectively, the right of children and young person’s to protection, the right of employed women to protection, the right to vocational guidance and training, the right to protection of health, the right to social security, the right to social and medical assistance and to benefit from social welfare services, the right of disabled persons to vocational training and integration, the right of the family to protection, the right to education, the right of mothers and children to protection, and rights relating to the freedom of movement, combined with the right to protection and assistance are the types of social rights listed in various International and Regional Human Rights Instruments”.⁸³

Theoretically and legally social rights get the status of internationally recognized fundamental rights in the contemporary world, but the practical implications of the social rights are questionable, especially in FATA. Social rights being fundamental human rights of the people of FATA has not covered under a legal framework as to make improvement in the social sector of the people of the region.

⁸² BAUER, Lothar, *Working Paper on Fundamental Social Rights in Europe*, Social Affairs series, SOCI 104 EN, publishers; European Parliament L-2929, Luxembourg, 1999, p.10.

⁸³ White, Stuart, “Review Article: Social Rights and the Social Contract – Political Theory and the New Welfare Politics”, *British Journal of Political Science*, Cambridge University Pressmark, U.K., 2000, p.512.

Frontier Crimes Regulation, 1901 being a criminal code of law doesn't contains a single express provision for the protection of the fundamental social rights of the people of FATA.

2.7 POLITICAL RIGHTS

“In an abstract sense political rights are, justice, ethical correctness, harmony with the rules of law, or the principles of morals, In a concrete legal sense a power, privilege, demand or claim possessed by a particular person by virtue of law.”⁸⁴
“Generally political rights entail the power to participate directly or indirectly in the establishment or administration of government, such as the right of citizenship, the right to vote, and the right to hold public office”⁸⁵.

“Political rights are recognizable from historic bills of rights such as the French Declaration of the Rights of Man and the Citizen (1789) and the U.S. Bill of Rights (1791, with subsequent amendments). Contemporary sources include Articles of the Universal Declaration, and such treaties as the European Convention, the International Covenant on Civil and Political Rights, the American Convention on Human Rights, and the African Charter on Human and People's Rights”.⁸⁶ Universal Declaration of Human rights 1948, in Articles 19, 20 and 21 recognized the political rights as fundamental human rights. In Article 13.1 American Convention on Human Rights, 1969, “Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice”.

⁸⁴ <http://legal-dictionary.thefreedictionary.com/> last visited on 16th June, 2012.

⁸⁵ *Ibid*

⁸⁶ Nickel, James, “Human Rights”, *The Stanford Encyclopedia of Philosophy* (Fall 2010 Edition), Edward N. Zalta (ed). <http://plato.stanford.edu/archives/fall2010/entries/rights-human/>

In Article 11 European Convention on Human rights, 1950, "Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests". In Article 13(1) African Charter, 1981, "Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law".

The Constitution of Islamic Republic of Pakistan, 1973, also recognized the Freedom of assembly and association in Article 16 and 17, and the Freedom of Speech and information in Article 19 and 19-A. Political rights are recognized by both the International and regional instruments of Human Rights and as well by the Constitution of Pakistan, 1973. The Political Parties Act, 2002 has been extended to FATA on August 14, 2011 by the President of Pakistan but have no practical implications and still in question. Frontier Crimes Regulation, 1901, lacks provisions regarding the fundamental political rights recognized all over the world, and has no express provisions for the facilitation of the people in their political life. Due to tribal system the people of FATA are enjoying a semi-autonomous status since a century, but the political rights in a real sense which leads to autonomy of the people are missing at large.

2.8 ECONOMIC RIGHTS

Economic rights can be defined as follows: "Economic rights are rights of access to resources—such as land, labor, physical, and financial capital—that are essential for the creation, legal appropriation, and market exchange of goods and services. Economic rights are self-evident. However, for their full recognition, economic rights require at least three conditions: (1) they require knowledge of basic

CHAPTER 3

ANALYSIS OF FRONTIER CRIMES REGULATION PROVISIONS

Frontier Crimes Regulation 1901 has various impacts over the social, political and economic life of the people of FATA. Various amendments are brought into the Frontier Crimes Regulation in 2011 by 'The Frontier Crimes (Amendment) Regulation 2011'. Political Parties Act, 2002 has been extended in 2011 to FATA, as to keep the region in mainstream political development. The problem still exists in the region while the region is going through instability and no sign of progress and development exist so far. In the last chapter the constitutional and legal status of FATA and the nature of human rights in legal and constitutional perspective have been discussed. In this chapter brief analysis of Frontier Crimes (Amendment) Regulation, 2011 will be taken. This is an amended version of the FCR 1901.

Frontier Crimes Regulation 1901 was drafted along with the cultural and traditional norms of the people. Its provisions are mostly of administrative and judicial nature. Fundamental Human rights guaranteed under the Constitution of Islamic Republic of Pakistan, 1973/Int'l Human rights law doesn't exist in the FCR and no legal remedies against the derogation of these rights are available in FCR. The people of FATA are put in a situation as they cannot raise their voice for rights and no legal procedure is available to protect their rights against the state and non-state actors. As to accommodate fundamental human rights into the Frontier Crimes Regulation, it needs serious efforts on the part of government.

There is a want of strong legal regime to be established for the protection of the fundamental human rights of the people. A bulk of work i.e. articles, dissertations and seminars have been conducted over FATA and FCR, but most of them focuses on the administrative perspective of FATA. For the establishment of a strong legal regime where the fundamental human rights must be accommodated into the Frontier Crimes Regulation as to protect the people, from a gross human right violations needs

more amendments in FCR. However these amendments must be in the human rights perspective not in the judicial and administrative manner. It is obvious that analysis of the existing provisions of FCR must be taken which will lead us to a solid view point and such analysis should be in the human rights context.

3.1 ANALYSIS OF FRONTIER CRIMES REGULATION 1901

Frontier Crimes Regulation 1901 along with amendments brought into it in 2011 will be briefly analyzed in the human rights perspective for the purpose of making FCR valuable through curative amendments. Originally, FCR contains sixty four sections, seven chapters and three schedules. In the Frontier Crimes (Amendment) Regulation, 2011 most of the provisions are amended in shape of substitution, insertion and omission of its sections by the President of Pakistan by virtue of his authority vested in Article 247 of the Constitution of 1973.⁸⁹

3.2 CHAPTER-I OF THE FRONTIER CRIMES REGULATION 1901

In this chapter short title and commencement contains in sec. 1 of the regulation, and the preamble contains the wordings "further to provide for the maintenance of peace, law and order, and good governance in the Federally Administered Tribal Areas" which is substituted hereby in the new amendment regulation 2011. Section 2 contains definitions namely Appellate authority, Council of

⁸⁹ Article 247, of the Constitution of Islamic Republic of Pakistan, 1973 deals with the governing of FATA, and its contains clear wording about the President powers to make regulation for the maintenance of peace and good governance for FATA. The article also bars parliament, Supreme Court and high court jurisdiction in FATA. In clause 3 of article 247 it is mentioned that: " no act of Parliament (Majlis e Shoora) shall apply to any Federally Administered Tribal Area or to any part thereof, unless the president so directs, and no act of Parliament (Majlis e Shoora) or Provincial Assembly shall apply to Provincially Administered Tribal Areas or to any part thereof, unless the Governor of the Province in which the tribal area is situated, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President, or as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effects subject to such exception and modifications as may be specified in the directions."

Elders, FATA Tribunal, Governor, *Qaumi Jirga, Rewaj*.⁹⁰ Section 3 deals with application and relation of regulation to other laws. It is hereby notable that some sections of Pakistan Penal Code, Custom Act, 1969, Employment of Children Act, 1991, Prohibition (Enforcement of Hadd) Order, 1979, and Control of Narcotics Substances Act, 1997 are extended to the FATA which are mentioned in the second schedule of FCR. Otherwise, no law of Federation or province is applicable to the FATA in the existence of FCR.

From chapter I and preamble of the regulation, it is now observed that it is mere a law for the good governance of the region which facilitates the government in its respective duties assigned by law, nothing is there to protect, fulfill, or to promote human rights which can improve the life standard of the people according to the wants of contemporary world. It was said as; "It aimed to advance the objectives of the British, thus it was merely a law of "convenience" or "expediency" than a law to ensure just and fair decision of cases in the respective areas".⁹¹ The situation has not changed yet and the same policies of British era are perceived by the present government in the FATA.

3.3 CHAPTER-II OF THE REGULATION

In chapter II the powers of Assistant Political Agent or District Coordination Officer has been mentioned. APA or DCO has the administrative, executive and judicial powers at a local level assigned by section 4 and First schedule of the regulation. Political Agent has the unlimited powers under FCR and has no check system over it due to non-existence of any elected representative council of the

⁹⁰ *Frontier Crimes (Amendment) Regulation, 2011, published by Ministry of States and Frontier Regions; Qaumi Jirga means hereby council consisting of respectable elders and representatives of the tribes, and Riway means usages, traditions and customs of the tribes in vogue in Federally Administered Tribal Areas.*

⁹¹ *Nickson, Robert, Settling the Frontier, Oxford University Press, Karachi, 2001, p. 248.*

FATA. "There have been varying estimates about FATA's rapidly growing population, which range from 3.5 million (1998 census) to 7 million according to various experts".⁹² The people of FATA are at the disposal of political administration.

In section 5, PA has the power to transfer the case and in sec. 7 the PA has the power of tender of pardon to accomplices. To establish government rule at grassroots level, the administrative and judicial institutions in the tribal setup of the FATA pivot on the system of Political Agent and the Political Agent has been granted unlimited powers and authorities. "The system of PA in the FATA was the novelty of the British regime which proved helpful to them in governing the FATA".⁹³

3.4 CHAPTER-III OF THE REGULATION

Chapter III of the regulation deals with the Council of Elders (*Jirga*), powers and functions of the council of elders. Sec. 8 of the regulation deals with civil reference to the council of elders. It provides the criteria about when a civil dispute arises between the inhabitants of respective agencies; the PA has powers to refer the case to the council of elders within fifteen days. The council of elders, for finding in accordance with *Rewaj*, shall give its findings within ninety days on the issues in dispute after making necessary inquiry and hearing the parties and their witnesses.

PA has also the powers under the said section to appoint the council of elders, and to nominate the members of the *Jirga* for the settlement of the disputes between the parties. Sec. 9 of the regulation deals the effect of decree on finding of council. In the said section it is mentioned that the finding of council has the same effect as a decree of civil court. And such a decree is enforced by the PA by the virtue of his office. Section 10 of the regulation puts restriction on the jurisdiction of civil courts.

⁹² Riaz, Umar, "The Most Dangerous Place on Earth", Case study of the FATA area, Pakistan, National Strategy Forum Review, journal, Summer 2011, Volume 20, Issue 3, P.1, www.nationalstrategy.com.

⁹³ Khan, Humayun, *The Role of the Federal Government and the Political Agent, Tribal Areas of Pakistan: Challenges and Responses* (Islamabad: Islamabad Policy Research Institute, 2005), P. 107.

Sec. 11 of the regulation deals with the criminal reference to the council of elders. In criminal matters the PA or DCO is competent to take cognizance of the offence and after the arrest of the accused, the accused shall be produced within twenty four hours before the APA having jurisdiction. And for the same criminal matter the PA has the power to appoint council of elders for the findings of the facts.

Sec. 11A is about the bail and sec. 11B provides rulings about the reference of case by *Qaumi Jirga* to the PA and the PA shall take cognizance of any civil or criminal dispute in exceptional cases. In accordance with the rules, the PA has to refer every case invariably to *jirga*; he also considers any objections of the parties involved to the nomination of members of the *jirga*.⁹⁴ The PA has to accept the decision of the *jirga* or else refer the matter to a fresh *jirga* if he does not feel inclined to accept its findings and recommendations.⁹⁵ Contrary to the provisions of law, now the PA mostly decides matters through executive orders, without hindrance.⁹⁶

From the above said sections it is observed that PA acquires unlimited judicial, administrative and executive powers. Section 12 and 13 provides for the punishment on conviction of findings of council and the manner of enforcing sentence respectively. Sections 14, 15, 16, 17 and 18 are omitted by the amendment regulation of 2011. Sec. 19 of the regulation provides for the maintenance of the record by PA or DCO. And sec. 20 deals with the attendance of parties and witnesses before PA or DCO or council of elders. Sec. 19 and 20 are almost the procedural law contains in the FCR.

⁹⁴ Mateen A. Mirza, "Taming The 'Wild West' – Integrating The Federally Administered Tribal Areas Of Pakistan", Master Thesis, Dudley Knox Library, Naval Postgraduate School, California, U.S.A., 2005, P.27, www.nps.edu/library/ accessed on 14th July, 2012.

⁹⁵ "Frontier Crimes Regulation (FCR) Black Law", <http://www.parachinar.com/> accessed on 24th June, 2012.

⁹⁶ Mateen A. Mirza, "Taming The 'Wild West' – Integrating The Federally Administered Tribal Areas Of Pakistan", Master Thesis, Dudley Knox Library, Naval Postgraduate School, California, U.S.A., 2005, P.27, www.nps.edu/library/ accessed on 14th July, 2012.

3.5 Chapter-IV of the Regulation

Chapter IV deals mainly with the collective penalties for tribes of FATA since the British Raj and till now. As per the FCR, the administrative system was and still is based on the principle of “collective responsibility”.

“When a crime takes place in an area within an agency, it becomes the collective responsibility of the tribe to turn over the culprits to the administration or to face punishment and suspension or stoppage of allowances and salaries as a tribe”.⁹⁷ The tribe’s economic interest can be prevented, by closing their business places or by the confiscation of their transport. “Depending on the nature and seriousness of the crime, the salaries of the school teachers, government or other public employees can be stopped and the houses of the tribal people can be demolished”.⁹⁸ Under sec. 22 of the regulation the political administration can put heavy fines on whole tribe due to failing in the discovery of offender to the government.

Under the said section the government can arrest whole tribe except children of age less than sixteen years, women and persons over age of sixty-five years. In such cases political agent can forfeit remission of land-revenue or allowances. Section 21-29, deals with the penalties based on collective responsibility. Section 30, is about adultery and its punishment. It is obvious that FCR is mainly based on the social norm ‘collective responsibility’ which is well established custom in the tribal structure of the FATA. The customs and usages are the primary sources of law and the fact can’t be denied that the people of FATA entered in the agreement with the British India government and later with Pakistan, on the grounds that they will not interfere in the tribal social structure. Collective responsibility could be modified along with keeping in view the traditions of the people of FATA.

⁹⁷*Ibid*. P.21.

⁹⁸ *Ibid*.

3.6 CHAPTER-V OF THE REGULATION

Sec. 31 of the regulation provides for the power to prohibit erection of new villages or towers on frontiers. Under the regulation the PA or DCO has the power to prohibit or stop the erection of hamlet, village-habitation, tower or walled enclosure and such villages or buildings can be erected at any place within one hundred and twenty yards from the centre of the road. In sec. 32 the government has the power to direct remove the villages on military grounds by the order of the Federal government which are situated in close proximity to the frontiers of Pakistan.

Here the right to property which is exclusively a fundamental human right is violated. In historical context the tribal living on both sides of the Durand line has cultural, linguistic, historical, and religious similarities which can't be denied. These tribes have blood relations with each other from a long time ago and there is regular movement of these tribes with each other on both sides of Durand line. For instance, Wazirs living in North & South Waziristan, and Wazirs are also living in Paktika, Paktia, Ghazni, Qandahar and Helmand provinces of Afghanistan. Shinwaris are in Khyber Agency and shinwaris are living in Ningrahar province of Afghanistan. Safis are in Mohmand Agency and as well in Kunar province of Afghanistan. These are the bitter facts regarding FATA people. "These tribes were separated during British Raj by the well-known Durand line Agreement and while the Durand Line has been the *de facto* border between British India (later Pakistan) and Afghanistan".⁹⁹ In sec. 32 the term frontiers of Pakistan which is the Durand line is a disputed one¹⁰⁰ and on such ground the historical tribes can't be put beyond from the access to their rights.

⁹⁹ Dr. Claude Rakisits, "Pakistan's Tribal Areas: A Critical No-Man's Land", P.1, www.geopoliticalassessment.com/pakistan_s_tribal_areas/ last accessed on 28th July, 2012.

¹⁰⁰ Safdar Hussain & Muhammad Ijaz Latif, "Issues and Challenges in Pakistan-Afghanistan Relations after 9/11", *A Research Journal of South Asian Studies* Vol. 27, No. 1, January-June 2012, p. 95.

There are compensation for the loss occurred by the removal of the villages, but the question here is that, that more than 60% of population of the FATA lives below the national poverty line¹⁰¹, and in such a case a person who doesn't owe more than a single house should in what manner be compensated? No due process of law is there to adopt. Sec 34-47 of the regulation are of procedural matters like punishment in case of breach of bonds/security, attachment of property used by robber, imprisonment, etc.

3.7 CHAPTER-VI OF THE REGULATION

Sec. 48 of the regulation deals with the right to appeal which is released in the new amendment regulation of 2011. Before reforms in FCR the right to appeal was barred and now it is available in the new regulation which is appreciating one. But here the problem is that, it negates the international theory of the separation of powers. Judicial powers are vested in a person having no judicial or legal mind. Supreme court of Pakistan held in the well known judges case and in that, "this landmark was not only attended to, but also a brilliant effort was made to interpret the relevant provisions of the Constitution in such a manner that threats to independence of judiciary posed by their muse were minimized".¹⁰² Independence of judiciary is not ensured in the FCR. Sec. 50 of the regulation provides for the powers of appellate authority in exercise of criminal appellate jurisdiction.

In the said section the appellate authority may exercise the powers to direct tender of pardon conferred by section 338 of the Code of Criminal Procedure 1898.¹⁰³ The appellate authority has the powers to enhance any sentence after issuance

¹⁰¹ http://www.adb.org/documents/tars/pak/tar_pak33268.pdf. Accessed on 9th July, 2012.

¹⁰² PLD 1996 SC 324.

¹⁰³ "Sec.338, of Code of Criminal Procedure. Power to grant or tender of pardon, At any time before the judgment is passed, the High Court or the Court of Sessions trying the case may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence.

of show cause notice to the convict. Sec. 51 of the regulation deals with the type of sentence that appellate authority can't pass a sentence in the exercise of its appellate jurisdiction which the PA or DCO, as the case may be, could not have passed under this regulation. Sec. 52 provides for the powers exercise in the civil appellate jurisdiction. In civil appellate jurisdiction appellate authority may on appeal confirm, set aside, vary or modify the decision, decree or order appealed against or remand the case.

Sec. 53 provides for the record of reason in exercising of civil appellate jurisdiction by the appellate authority in any proceedings under this regulation, varies or set aside or confirms any decision, decree, sentence or order, it shall record its reasons for so doing. In sec. 54 Bar of review has put on the decision made by the PA, DCO or appellate authority in any decree, sentence or order given, passed or made by it. Sec. 55 deals with enforcement of orders made on appeal by appellate authority and the PA or DCO shall take all measures to give effect to the order made on appeal. Sec. 55A provides for the revision which shall lies to the FATA Tribunal within ninety days. In the said section the appointment of the members of Tribunal their powers and functions has been mentioned.

Sec. 55AA is about the review of the decision. Sec. 55AAA provides for the malicious prosecution or false prosecution where an adequate compensation to the person who was falsely charged is available. For false prosecution a person can complaint against the informant and can claim an adequate compensation. Same right is available in civil cases where a person who was falsely indulged in a civil proceeding can grant compensatory costs corresponding to the false claim or defence.

tender, or order the District Magistrate to tender, a pardon on the same condition to such person. [Provided that no person shall be tendered pardon who is involved in an offence relating to hurt or qail without permission of the victim or, as the case may be, of the heirs of the victim".

3.8 CHAPTER-VII OF THE REGULATION

Chapter VII of the regulation deals with the supplemental provisions. Sec. 56 of the regulation provides for the 'Protection of Property Rights', that no person shall be compulsorily be deprived of his property unless he is paid adequate compensation with consensus rate or Government assessed value as in vogue in settled areas. There is no judicial remedy available to the people against the violation of property rights. Sec. 56 is substituted in the new amendment regulation of 2011 and to some extent the protection of property right is guaranteed but limited in scope. Article 17 of the Universal Declaration on Human Rights 1948, states as;¹⁰⁴

"1. Everyone has the right to own property alone as well as in association with others.

*2. No one shall be arbitrarily deprived of his property."*¹⁰⁵

In article 17 of UDHR, puts no condition upon the property rights, it is an exclusive right vested in a person by the virtue of his/her human being. And the derogation from it leads to the gross human rights violation.

Sec. 57 of the regulation provides for the powers of PA or DCO to order for the disposal of certain fines imposed under Sec. 12 and 22 of the regulation. Sec. 58 deals with maintenance of register for the government record. Sec.58A provides for the inspection of jail by the FATA Tribunal, Appellate Authority, PA or DCO. Sec. 60 of the regulation is of procedural matters. Sec. 61 deals with application provisions of Limitation Act of 1908.

Sec. 62 provides for the Governor Powers to make rules to carry out the purposes and objects of this regulation. Sec. 62A of the regulation deals with Federal Government powers to make rules for the issue and safe custody of rifles and

¹⁰⁴ Universal Declaration on Human Rights, 1948, www.un.org/

¹⁰⁵ Universal Declaration on Human Rights, 1948.

ammunition for border village defence, and for the imposition and recovery of fines for any breach of such rules. Sec. 63 of the regulation deals with the indemnity that, no suit or other legal proceedings shall lie against any person for anything done or intended to be done in good faith under this regulation. Sec. 64 is omitted in the amendment regulation of 2011.

3.9 FIRST SCHEDULE OF THE REGULATION

The First schedule has two parts. Part I provides for the powers and functions with which APA may be vested by PA or DCO. It is stated as;

- a. *“All or any powers and functions of a PA or DCO, as the case may be; and*
- b. *Without prejudice to the generality of the foregoing clause, with the-*
 - i. *Power to make orders of reference to council of elders under section 8(1);*
 - ii. *Power to appoint the members of Council of Elders with the consent of parties under section 8(2) when an order of reference to a council of elders is made under section 8(1);*
 - iii. *Power to nominate the members of Council of Elders when an order of reference to a Council of Elders is made under section 11(1);*
 - iv. *Power to consider and dispose of objections made by the accused or the complainant to the nomination of the members, and after the disposal of the objections, appoint the members of Council of Elders under section 11(2) and*
 - v. *Power to take surety bond under section 40.”¹⁰⁶*

In the First schedule of the regulation Part I have granted all the powers to the Political Agent regarding the judicial matters which cannot be called ‘Due Process of

¹⁰⁶ First Schedule of the Frontier Crimes Regulation, 1901.

Law' and be termed as 'One Man Show'. Regarding judicial matters Political Agent which is exclusively an administrator appointed under the Civil Services lacks all characteristics which are necessary for adjudication.

Part II of the First schedule provides for the powers and functions with which Magistrates may be invested in Governor. The same powers are here which are mentioned in Part I Clause (b) (II) (III) (IV).

The Second schedule of the regulation provides for the offences punishable under various acts. The Third schedule states the territory of FATA.

Many questions arise from the brief analysis of the FCR regarding the protection of fundamental human rights which are exclusively at the disposal of Political Agent. These individuals are government-sponsored elders, federal civil bureaucrats, who serve as the official intermediaries between the government and the tribes.¹⁰⁷ They impose the government's will to the best as they can in FATA and to a lesser extent represent the desires of the Pashtoon tribes to the government.¹⁰⁸ Political Agent disburses, at his discretion, various allowances and secret funds to tribesmen for political work.¹⁰⁹ He also approves scholarships, rations and domicile certificates. Under his signature, the charcoal and timber permits are issued.¹¹⁰ Contrary to the provisions of law, the PA mostly decides matters through executive orders, without obstruction. The present administrative system is the main obstacle to the social, political and economic development of the region. Mainly the provisions of

¹⁰⁷ *Suburban Emergency Management, Project Published online, January 10, 2009, http://www.semp.us/publications/biot_reader.php, accessed on 29th June, 2012.*

¹⁰⁸ *Brain R. Kerr, "A Progressive Understanding of Pashtun Social Structures amidst Current Conflict in FATA", Conflict and Peace studies, Volume 3, Number 4, Pak Institute for Peace Studies, 2012, Pakistan, <http://www.san-pips.com/> accessed on 24th May, 2012.*

¹⁰⁹ *Mateen A. Mirza, "Taming The 'Wild West' – Integrating The Federally Administered Tribal Areas Of Pakistan", Master Thesis, Dudley Knox Library, Naval Postgraduate School, California, U.S.A., 2005, P.26, www.nps.edu/library/ accessed on 14th July, 2012.*

¹¹⁰ *Ibid.*

Frontier Crimes Regulation granted unlimited powers and authorities to the political administration which are mostly based on discretions vested in the PA.

In the contemporary world mostly political system is based on positive legal norms and the supremacy of law is the shining principle under which subjects are governed and facilitated. But the case of FCR is somewhat different from the rest, because it is just a governing body of rules and is lacking all the legal characteristics which must be found in the governing set of principles for the welfare and facilitation of subjects. FATA, the most undeveloped and ignored one region cannot be let at the disposal of a single public servant who is just an agent to the Federal Government rather than a representative of the people of FATA. The amendments brought in the FCR in 2011, as we have analyzed it are mostly of judicial and administrative nature.

These amendments are not sufficient in the human rights perspective because they lack all the fundamental human rights which should must be guaranteed in a supreme governing law of a state or any region. "Although the FCR is more progressive than the law of the settled districts in isolated areas, for example in precluding the death penalty, it is notorious for its penalties".¹¹¹ "These include the power to blockade hostile or unfriendly tribes (section 21); demolition and restriction of construction of hamlet, village or town on frontier (section 31); and removal of persons from their places of residence (section 36)".¹¹² These penalties imitate the British objectives to hold their subjects responsible for the empire's security.

Through application of Article 8 of the Constitution¹¹³, which provides that any law or customs or usages having the force of law is void if inconsistent with fundamental rights, FCR-prescribed penalties are arguably void. "They violate,

¹¹¹ Haider, Ziad, "Mainstreaming Pakistan Tribal's Belt: A human Rights and Security Imperative." *Belfer Centre Student Paper Series #09-01*, Belfer Centre for Science and International Affairs, Harvard Kennedy School, Cambridge, MA, January 2009, p.6.

¹¹² "The Frontier Crimes Regulation, 1901", *FCR A Bad Law Nobody Can Defend*", Human Rights Commission Of Pakistan (Peshawar Chapter), (Lahore Human Rights Commission Of Pakistan, 2005), p.31.

¹¹³ *The Constitution of the Islamic Republic of Pakistan, 1973.*

among other articles, the right to be dealt with in accordance with the law (Article 4); security of person (Article 9); safeguards as to arrest and detention (Article 10); protection of property rights (Article 24) and inviolability of the dignity of man (Article 14)".¹¹⁴ Most of the FCR provisions are in contradiction with the international human rights principles and as well with national human rights guaranteed in laws.

3.10 FCR IN INTERNATIONAL HUMAN RIGHTS PERSPECTIVE

Human rights being a hot issue in the 20th and 21st century became a global issue in the view of various human rights school of thoughts. It is not so easy to fulfill the gap created in guarantying the human rights commonly to the people in different parts of world. We have serious human rights violations issues in some parts of world but these problems are not the lacuna in laws or constitutions. In case of FATA the main hurdle to ensure the basic human rights to the people is the provisions of FCR which doesn't meets the needs of the today's world. UDHR, 1948 can be declared to some extent a unanimously agreed human rights documents. The specified area of human rights is somewhat covered by ICCPR (1966) and ICESCR, 1966. Here the social, political and economic rights will be analyzed guaranteed by International Human rights law with reference to FCR.

Article 2 of the UDHR, 1948 states as;

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Furthermore, no distinction shall be made on the basis of the political,

¹¹⁴ Haider, Ziad. "Mainstreaming Pakistan Tribal's Belt: A human Rights and Security Imperative." *Belfer Centre Student Paper Series #09-01, Belfer Centre for Science and International Affairs, Harvard Kennedy School, Cambridge, MA, January 2009, p.6.*

*jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self governing or under any other limitation of sovereignty”.*¹¹⁵

Article 2 of the UDHR clearly states in express words that no distinction shall be made on the basis of any kind of discrimination. It indicates that all human beings are without all kind of distinctions are entitled to their rights. In the second Para it is obvious that no distinction regarding the ensuring of human rights shall be made on any political or any jurisdictional grounds which are seems to be in FATA. Distinctions on the basis of international status of the country or territory regarding human rights has completely prohibited under the declaration.

Article 12 of the declaration states;

*“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”*¹¹⁶

In Article 12, there is a complete protection of honour, family, privacy and home and have also the right to protection of the law against interference or attacks, in case of FATA the people are at the disposal of PA. In the same manner legal protection against any interference in the private life of the people, they are at the mercy of the Political Agent because the judicial authority is vested in PA under the FCR and lacking the procedure of ‘due process of law’.

Article 20 of the UDHR states;

“1. Everyone has the right to freedom of peaceful assembly and association.

*2. No one may be compelled to belong to an association.”*¹¹⁷

¹¹⁵ *Universal Declaration on Human Rights, 1948.*

¹¹⁶ *Universal Declaration on Human Rights, 1948.*

¹¹⁷ *Ibid.*

Despite the fact that Political Parties Act, 2002 has been extended to the FATA and the people of FATA has given the right to be a part of political association but such rights are limited, the Political Agent has given the powers to allow political activities or not inside the FATA at his own discretion. Article 23 of the UDHR provides for, "Right to work, the right to equal pay, the right to form or join the trade unions for the protection of his interest and the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection". And such rights do not exist in any legal framework as to benefit the people of FATA.

Article 25 of the declaration states;

"1. Everyone has the right to a standard of living adequate for the health and Wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".¹¹⁸

In Article 25 of the UDHR the right to a standard of living which shall sufficient for the health and welfare of one and his family, which possibly includes food, clothing, housing and medical care and necessary social services. The article also guarantees the right to security in the situation of unemployment, sickness, physical or mental disabilities, widowhood, or old age. FCR still exist the lacuna for these rights which are extremely necessary to be ensured to the FATA's people.

Article 26 of the declaration states;

"1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

¹¹⁸ *Universal Declaration on Human Rights, 1948.*

Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.”¹¹⁹

The right to education is well established by the UDHR and the states parties are bound by the preamble of the declaration to protect, fulfill and promote these fundamental rights. The education from primary level to the higher is made compulsory under the declaration. But the situation of FATA is somewhat different regarding the education because the main causes of insurgency which took place from a decade in the FATA are the lack of educational services. “FATA is of course the poorest and least developed part of Pakistan with a literacy rate of only 17% (3% among women), with per capita income of approximately \$250, and about 66% of households below poverty line”.¹²⁰ There are no obstacles for the education in the FCR but on the other hand the right to education is not established as a right in FATA. And no legal remedy is available to the people of FATA against the attacks on the right to education.

Hundreds of schools have been blown up in FATA, depriving a large number of school-going kids of their basic right to education. A rough estimate put the figure at 458, with more than a hundred only in Bajaur Agency.¹²¹ According to a report issued by Human Rights Commission of Pakistan (HRCP) titled as ‘State of Human

¹¹⁹ *Universal Declaration on Human Rights, 1948.*

¹²⁰ *“World Development Indicators Database.” World Bank: July 1, 2009.*

¹²¹ *Dr. Ashraf Ali, “The FATA Situation”, Article in Daily ‘The News’, July 31, 2012, The writer is the head of FATA research centre. Islamabad.*

Rights in 2011', about 650 schools for boys and girls remained dysfunctional in FATA due to threats from militant organizations. These destroyed educational institutions are either blown up in military operation or by militants. The people of FATA are facing threats to their right to education by the state and non-state actors and have no legal choice to acts upon it.

Other International and regional human rights also recognized fundamental social, political and economic rights. The International Covenant on Economic, Social and Cultural Rights (ICESCR) is the primary international legal source of economic, social and cultural rights. The Covenant recognized and protects the right to work and to just and favorable working conditions in Article 6 and 7, the right to join trade unions and take collective labor action in Article 8, the right to social security in Article 9, the right to protection of the family, including protection for mothers and children, in Article 10, the right to an adequate standard of living, including the food and the right to housing, in Article 11, the right to health in Article 12, as well as the right to education in Article 13. "The International Covenant on Civil and Political Rights, adopted at the same time as the ICESCR, recognizes and protects a number of core economic and social rights, including the right to join trade unions in Article 22".¹²²

A number of other major international human rights instruments contain provisions relating to economic and social rights. The Convention on the Rights of the Child recognizes and protects many of the economic and social rights recognized in the ICESCR in relation to children. Including the right to health in Article 24, the right to social security in Article 25, the right to an adequate standard of living in Article 27, the right to education in Article 28, and the right to protection from

¹²² *International covenant on Economic, Social and Cultural rights, 1966.*

economic exploitation in Article 32.¹²³ The Convention on the Elimination of All Forms of Discrimination against Women affirms a range of economic and social rights to women.¹²⁴ The ILO Conventions of the International Labour Organization (ILO) protect a range of work related economic and social rights.

The African Charter on Human and Peoples' Rights protects the right to work in Article 15, the right to health in Article 16, and the right to education in Article 17.¹²⁵ The European Social Charter protects a wide range of economic and social rights, including the right to work, to favorable working conditions, the right to join trade unions and to take collective labour action in Article 1 to 10, the right to health in Article 11, the right to social security, including the right to medical assistance and the right to social welfare services, in Article 12 to 14, and protection of especially vulnerable groups are enshrined in Article 15 to 17 and 19.¹²⁶ The Protocol of San Salvador protects a range of economic, social and cultural rights within the Inter-American human rights system etc. some of these statutes are applied universally to all human beings likewise. The international law put duties upon all states to bring their laws in conformity with the international human rights law standards.

The international covenant on civil and political rights recognizes political rights of individuals. In Article 1, the right to self-determination, in article 19, the right to freedom of expression, article 21, the right to Peaceful Assembly, and the right to Freedom of Association in article 22 is recognized by ICCPR.¹²⁷ Article 20 of UDHR recognizes the right to freedom of assembly, Article 15 of the Convention on

¹²³ *The convention on the rights of the child, 1989.*

¹²⁴ *Convention on the Elimination of All Forms of Discrimination Against Women, 1979.*

¹²⁵ *The African Charter on Human and people's Rights 1981.*

¹²⁶ *European Social Charter, 1961.*

¹²⁷ *International Covenant on Civil and Political Rights, 1966.*

the Rights of the Child provides that States shall assure the right to express their views freely and in all matters affecting the disabled, especially disabled children.

Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedom provides everyone the right of peaceful assembly and association, and to protect his / her interests.¹²⁸ Article 15 of the American Convention on Human Rights states the right of peaceful assembly and forbids any restrictions as far as it is not imposed in conformity with the law. Article 16 states the right of association for any purpose, and with the exception of legal restrictions necessary in democratic societies.¹²⁹ Article 11 of the African Charter on Human and Peoples' Rights provides for the same right of assembly.

3.11 CONCLUSION

Unfortunately, the people of FATA have been remained deprived from those fundamental human rights which are guaranteed to all individuals all over the world. It is also astonishing that the rights guaranteed under the constitution of Islamic republic of Pakistan 1973 are also denied to the people of FATA. The prevailing situation in FATA regarding these rights needs to be addressed immediately. Therefore, it is strongly needed to bring more amendments in FCR which should be in conformity with international human rights laws so that to preserve the social, political & economic rights of the people of FATA.

¹²⁸ *European Convention for the protection of Human Rights and Fundamental freedoms, 1950.*

¹²⁹ *American Convention on Human Rights, 1978.*

CHAPTER 4

SOCIAL, POLITICAL AND ECONOMIC IMPLICATIONS OF FRONTIER CRIMES REGULATION 1901, IN FATA

It has been discussed in detail the Frontier Crimes Regulation, 1901 provisions and has a brief analysis in the previous chapter of this dissertation. The main area of concern has been remained the social, political and economic rights of the individuals in FATA. From the brief study of FCR provisions it has been observed, that FCR being a codified supreme law for the FATA has no more place without amending it as to change its objectives. Because its objectives are not clear in a sense, that whether it is a law for the welfare of the people/protection of fundamental rights or just a law of governing the subjects either rightfully or arbitrarily.

The law must have some legal and positive characteristics, which covers both the governmental procedure and too have the provisions of rights and duties. While FCR puts only obligations on the people and lacking all fundamental human rights that must be guaranteed to the citizens in the civilized world. Here the implications of FCR provisions over the social, political and economic life of the people of the FATA will be discussed.

4.1 SOCIAL IMPLICATIONS

The provisions of FCR have various impacts on the social life of the people of FATA. As there is no legal mechanism for the protection of social rights of the people of FATA therefore the social rights of the people have been severely curtailed. For such a purpose a short analysis of the social scenario of the FATA must be taken into consideration.

FATA has been a victim for the last 65 years in health services which is the primary responsibility of the government to provide it without any discrimination. The people are facing so many problems regarding health facilities. A survey conducted by the NGO 'Community Appraisal & Motivation Program' regarding the

in which 52.1% were the foremost governmental services required in FATA, identified by more than a half of respondents.¹³⁰ There is a lack of legal protection against the violation of the right to safety and health. The right to health and safety is the compulsory and essential right without which a person's life remains in threat.

The current situation of the health services in FATA is very poor and was severely affected by militancy or military operations. "In June 2009, the United Nations Population Fund (UNFPA) reported that 69,000 pregnant women were also among the people displaced as a result of the military operations against the insurgents in FATA and PATA and were living in camps in extremely bad conditions due to the non-availability of health facilities".¹³¹ The right to health and safety of the person needs an immediate legal solution.

Like health, education in the development of human life and behavior is an essential component. The current situation of education in FATA is very poor because of the non-protection of the right to education. "FATA is of course the poorest and least developed part of Pakistan with a literacy rate of only 17% (3% among women)".¹³² Hundreds of schools have been blown up in FATA, depriving a large number of school-going kids of their basic right to education. A rough estimate put the figure at 458, with more than a hundred only in Bajaur Agency.¹³³ According to a report issued by Human Rights Commission of Pakistan (HRCP) titled as "State of Human Rights in 2011"¹³⁴, about 650 schools remained dysfunctional in FATA due to threats from militant organizations. Educational institutions in general and girls

¹³⁰ Shirwari, Naveed Ahmad, *Understanding FATA, Volume V, Community Appraisal & Motivation Programme (CAMP) publications, Islamabad, 2011, p.3.*

¹³¹ Dawn, June 5, 2009, (<http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/ocha-says-running-short-of-funds-for-idps-569>).

¹³² "World Development Indicators Database." World Bank: July 1, 2009.

¹³³ Dr. Ashraf Ali, "The FATA Situation", Article in Daily 'The News', July 31, 2012, The writer is the head of FATA research centre, Islamabad.

¹³⁴ Human Rights Commission of Pakistan.

schools in particular were attacked, bombed and destroyed by insurgents.¹³⁵ And the remaining educational institutes are functioning with a limited number of facilities. Education plays a vital role in the building up of a society. Henceforth, the right to education needs a strong legal protection because the right to education is not established yet as right for the people of FATA.

Same is the situation of right to organize and to bargain collectivity which is severely affected by the provisions of FCR and at the disposal of political agent. The right to organize and bargain collectivity is traditionally inherited in the Pashtoon tribal social structure, which the tribes of FATA were exercising from a long time ago without any legal protection. But under the rule of PA these rights are severely curtailed and having no legal protection in FCR. The military operations by the Pakistan Army have resulted in strong dislike among many people against the army and the Pakistani government.

“According to a survey conducted by the Pakistan Institute of Peace Studies (PIPS), about 18 per cent of Pakistani Madrassas have affiliations with Jihadi and sectarian organizations; about 80 per cent of the people are against military operations in tribal areas; and the 20 per cent of them consider the existing militancy a direct reaction to Pakistan’s role in the War on Terror”.¹³⁶ The military operations in FATA are perceived by the inhabitants of the region as a threat to their ethnicity and identity. “Moreover, the military intervention into FATA is being viewed by tribal leaders as a threat to their authority and traditional tribal values”.¹³⁷

¹³⁵ Dr. Suba Chandran, *Violence against Women in Swat Why Blame only Taliban? In IPCS Issue Brief, No. 97, April 2008.*

¹³⁶ Rana, Muhammad Amir, “Mapping the Madrassa Mindset: Political Attitude of Pakistani Madaris”, *Conflict and Peace Studies*, 2(1), 2009, pp.31-35.

¹³⁷ Mazari, Shareen, “Rethinking the National Security of Pakistan, Margalla Papers”, *National Defence University Islamabad 2004.*

In October, 2009 the operation launched by the military in South Waziristan resulted in the displacement of nearly 293,000 peoples, and by the end of 2009, the total number of Internally Displaced Persons from the South Waziristan area had reached around 428,000.¹³⁸ Another gigantic challenge is the return of IDPs to their homes. The fear of the militant groups and the poor economic conditions made the IDPs unwilling to return to their homes.

The above mentioned social impacts on the people of FATA can be linked with the non-existence of an accurate legal framework under which the fundamental human rights must be in a legal protection. FCR is just a law for its subjects to be governed under a strict legal regime which creates no legal opportunities for its subjects. FCR needs such reforms which can make the people able to live their lives in a healthy social environment.

4.2 POLITICAL IMPLICATIONS

Political rights determine the principles of self-determination which bears no question at all. "Self-determination may be defined as; the right of all peoples to determine their political future and freely to pursue their economic, social and cultural development"¹³⁹. In the modern legal world the right to self-determination is established and cannot be defeated. Article 1 clause 2 of the UN charter states that; *"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace"*.¹⁴⁰

In the above clause the right to self-determination of the people is established as to promote the International peace and security. "The United Nations Charter

¹³⁸ Khan, Zahid Ali, "Military Operations in FATA and PATA: Implications for Pakistan", *Institute of Strategic Studies*, 2012, P. 137. <http://www.issi.org.pk/publication-files/>

¹³⁹ Article 1 of "The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights"

¹⁴⁰ United Nation Organization Charter. <http://www.un.org>

recognizes the principle of equal rights and self-determination but the subsequent growth of International Law has been such that self-determination is now acknowledged as a right under customary International Law".¹⁴¹ "In the present world order, the right of self-determination has assumed a subject of serious concern to all freedom-loving societies".¹⁴²

"This right is said to have evolved and developed during different periods of decolonization, and the scope of the right to self-determination during post-colonialisation has been the subject of considerable discussion and controversy".¹⁴³ Under the United Nation Charter it is the duty of the states to promote the right to self-determination of the people.

In case of FATA the right to self-governance of the people is completely curtailed. In view of the fact that the people in Fata have been deprived of their rights to participate in the policymaking process and governance of the area for too long and outsiders are making decisions for them. The area has been deprived of development despite claims to the contrary.¹⁴⁴ The people of FATA have been completely deprived of the right to self rule since the colonial period of British Government and after the partition the same policies are extended towards FATA. Under Article 247 of the constitution, the President extended the Political Parties Act, 2002, to FATA as for the promotion of political process in the region. The political activities are subjected to the consent of the PA and the people cannot assemble on their own will.

It seems that the people of FATA are not able in the contemporary situation to participate in political activities. By the extension of the Political Parties Act, 2002

¹⁴¹ See for example, the *Namibia Case*, (1971) ICJ, Report, 16.

¹⁴² A.A. Idowu, "Revisiting the Right to Self-Determination in Modern International Law: Implications for African States", *European Journal of Social Sciences – Volume 6, Number 4, Department of Public Law, Faculty of Law Obafemi Awolowo University, Ile-Ife, Nigeria publications*, 2008, p.43.

¹⁴³ *Ibid.* same page, Para, 2.

¹⁴⁴ Wazir, Avaz, "Which system for FATA?", Article in Daily "The News", Newspaper, Islamabad Edition, Published on June 05, 2012.

limited opportunities are created and have no concern with the political freedom of the people of FATA. Neither the constitution of Islamic Republic of Pakistan nor FCR has recognized the right to self governance of the people of FATA. The right to self-determination is the primary principle of International law for the granting of political freedom to the people in the present world.

In current scenario administrative system in FATA has been paralyzed, as an institutional structure. A Political Agent (civil servant) governs an agency of FATA, and is accountable to the governor of Khyber Pakhtunkhwa. Political Agent establishes links with influential tribal elders known as Maliks. The Taliban (insurgents) have now made this administrative system ineffective and weak by killing several Maliks and incessantly intimidating the agency administrators.¹⁴⁵

The armed forces operations in FATA have, however, raised many questions concerning the significance of ensuring the traditional judicial system for the civilian population. The people of FATA have continuously demanded the safety of their lives and properties. The government has, though, failed to protect the lives and properties of the people in FATA, and to provide for appropriate justice. At the same time, many criminal and terrorist groups have emerged in the region who indulges in crimes like theft, looting, robbing, plundering, kidnapping, bombing, suicide attacks, attacks on schools, mosque, markets and killing of innocent people. FCR cannot provide proper justice to the people in such an uncertain situation. The people of FATA are completely isolated and they have no right to directly participate in the legislation for FATA.

FATA is facing an uncertain state of law and order. The FATA is a safe haven for foreign militants and the militancy took place as a result of uncertain political

¹⁴⁵ Khan, Zahid Ali, "Military Operations in FATA and PATA: Implications for Pakistan", *Institute of Strategic Studies*, 2012. P. 139. <http://www.issi.org.pk/publication-files/>

situation. The people are politically subjugated by the current political administration in different ways. Without acknowledging the right to self rule of the people of FATA, peace and prosperity cannot be restored. The basic political rights must be guaranteed in FCR as to bring it in conformity with the International human rights law.

4.3 ECONOMIC IMPLICATIONS

Economic rights in the civilized world are guaranteed to the people by the international and regional human rights instruments. Article 22 of the UDHR, 1948 states as;

*“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”.*¹⁴⁶

Article 22 recognizes the fundamental economic rights of human beings. Every human as a member of society has the right to social security and is entitled to realize his/her economic interest, and such rights can be fulfilled through national efforts of a state and international mutual cooperation. Such rights are indispensable for his dignity and free development of his /her personality. Economic rights are non-derogable. Article 1 of the International covenant on Economic, Social and Cultural Rights, 1966 states;

¹⁴⁶ *Universal Declaration on Human Rights, 1948.*

*"1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."*¹⁴⁷

Clause 1 of the article 1 provides for the right to self-determination. And further states that by the virtue of such rights the people can freely determine their future political status and without any hindrance can decide their economic development and future. It is an exclusive right available to all human beings.

*2. "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."*¹⁴⁸

Clause 2 of the article 1 of the covenant provides for the control of natural resources by the people. In the article it is clearly laid down that the people living in a territory have the right on their natural wealth. In no case this right cannot be denied which caters to their survival.

*3. "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations"*¹⁴⁹

¹⁴⁷ *International covenant on Economic, Social and Cultural rights, 1966.*

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

Clause 3 puts obligations on the state parties for the realization of the right to self-determination. The state parties shall make necessary efforts for the protection, fulfillment, and promotion of the right.

It is obvious that economic rights of the people cannot be deprived in any case. In case of FATA, the situation is somewhat different. FCR lacks provisions regarding the guarantying of economic rights. Currently, the tribal administration is known for rampant corruption as there is no proviso for auditing its accounts and expenditures.¹⁵⁰ Since 1947 there are no provisions for the proper audit of the accounts and expenditures of the FATA. 'FATA Development Authority' is an administrative body for carrying on the developmental projects in the region but the funds used for development projects are at the disposal of the political administration. According to FATA official sources reported by 'Daily Dawn' newspaper that now the Army has become a permanent stakeholder in the FATA' development sector as its recommended development projects are executed every year with FATA's development funds.¹⁵¹ It is further stated as that, 'FATA members of the Parliament both in Senate and National Assembly complain that they use their political influence to obtain fund released from the federal government for development projects in their respective constituencies, but at the end a considerable amount of those funds are spent on the developmental works run by military'.¹⁵²

The people of FATA have been deprived of their basic right to self governance including economic rights either by political administration or army. There is no auditing system for the annual expenditures in FATA in various sectors. A large portion of the FATA economy has been destroyed in the terrorist activities

¹⁵⁰ Khan, Hassan, "Self Rule for FATA", Article in 'Daily Dawn' Newspaper, Islamabad Edition, August 02, 2012.

¹⁵¹ Report by Intikhab Amir, in 'Daily Dawn' newspaper, August 08, 2012.

¹⁵² Report by Intikhab Amir, in 'Daily Dawn' newspaper, August 08, 2012.

launched by Taliban, its allied militant groups and in the military operations. For Instance, educational institutes, markets, roads, hospitals, public places, houses and business places, these all are destroyed in bomb blast or suicide attacks. FCR is lacking all such characteristics by the virtue of which such terrorist activities can be countered.

The FATA mostly consists of barren, rugged and inaccessible land.¹⁵³ There is barely any agricultural activity. It has only 190 thousand hectares of cultivated land which produces only 100 tons of wheat per annum for a population of 3.7 million people.¹⁵⁴ These are the figures of 2004 and now in 2012 these figures are reduced due to the military operations and terrorists activities. The area has almost no industry, apart from a handful of privately run enterprises producing small weapons. Small industries, even cottage industries, would be just right to get better the economy of the region and provide job opportunities to the people of FATA. The current administrative system and security situation have discouraged investment in the FATA, and no one has still bothered to convert FATA into industrial zones.

For cultivation purposes FATA comprises of few canals which are mostly dependent on the rainfall. The lack of electricity in most of the tribal areas also hinders agriculture productivity. And those people who can afford use generator-power tube wells which are very expensive. The people of the land have been deprived of their basic human rights. In comparison to other areas, there is a general sense of deficiency. The absences of economic opportunities, as well as the lacks of infrastructure and social services, have made the FATA a safe place for disruptive

¹⁵³ Mateen A. Mirza, "Taming The 'Wild West' – Integrating The Federally Administered Tribal Areas Of Pakistan", Master Thesis, Dudley Knox Library, Naval Postgraduate School, California, U.S.A., 2005, P.33, www.nps.edu/library/ accessed on 14th July, 2012.

¹⁵⁴ Rahimullah, "Backyard to the Fore". Article in 'Daily Jang' Newspaper, Peshawar Edition, March 14, 2004.

elements and their illegal activities. The tribal areas thus became a haven for militants and the narcotics business.

4.4 IMPACTS OF TERRORISM ON FATA

“After the April 1978 Revolution in Afghanistan, following the Soviet invasion in December 1979 and the resulting Afghan resistance against Red Army, the militants (Mujahideen) were armed to the teeth by so-called free world”.¹⁵⁵ “FATA were used as a medium for illegal supplies of men and war material to wage *jihad* against Soviet invaders, the network of religious seminaries (*madrasa*) was created using matching petro dollars from the Middle East, by the U.S., European democracies and Japan”.¹⁵⁶ “These *madrasa* propagated a more radical version of Islam and provided military and ideological training to militants not only from Afghanistan and FATA but also volunteers and fighters from the Muslim and Western world”.¹⁵⁷

“Millions of peoples became refugees, killed or disabled during the war and the power struggles between Mujahideen groups after the fall of the Najibullah government, and the emergence of new breed of terrorists took place in territories in and around Afghanistan”.¹⁵⁸ “FATA became the center of all these activities, drug and gun running became the order of the day”.¹⁵⁹

“Illegal activities such as possession and use of complicated, heavy weapons, provision of shelter, arms and training of militants, mostly criminals, fugitives of law in their own countries, launching an undeclared war against the Soviet invaders and

¹⁵⁵ Khan, Sarfraz, *Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia, Eurasia Border Review Part II, Hokkaido University, Japan, 2012, P.72.*

¹⁵⁶ *Ibid.*

¹⁵⁷ Hussain, Rizwan, *Pakistan and the Emergence of Islamic Militancy in Afghanistan, Ashgate Publishing Company, Burlington, U.S.A., 2005, p. 117.*

¹⁵⁸ Khan, Sarfraz, *Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia, Eurasia Border Review Part II, Hokkaido University, Japan, 2012, P.72*

¹⁵⁹ Hussain, Rizwan, *Pakistan and the Emergence of Islamic Militancy in Afghanistan, Ashgate Publishing Company, Burlington, U.S.A., 2005, p. 127.*

their allied Afghan government (fellow Pashtoon, Muslims) were promoted that eulogized traditional Pashtoon chivalry, Muslim holy war, hospitality and revenge".¹⁶⁰ This promoted bloodshed within FATA and also in neighboring Afghanistan and settled areas of Pakistan.

Hence, the FATA remained a safe haven for the illegal activities of foreign militants who were deeply involved in illegal activities like murder, kidnapping, illegal smuggling of arms and drugs. The people of FATA, on the other hand remained undeveloped and deprived of their basic human rights.

These practices sustained until the events of September 11, 2001 in United States. After the events of 9/11, Pakistan had to join the "War on Terror." The international coalition launched attacks against Al Qaida and its allied militant's organization in Afghanistan. The fugitive rushed towards the FATA for their safety and to get prepared for the attacks on NATO forces in Afghanistan. These militants include foreign and local peoples. Thus the FATA became a safe hub for the militants groups.

The people in FATA are severely affected by terrorism because hundreds of schools, business places, mosques, houses and markets are destroyed in the terrorist attacks like bombing, suicide bombing, etc.,. Approximately thirteen hundred elders were murdered in different ways by the militant organizations.¹⁶¹ The targeted killing of influential tribal elders and maliks forced many more either to submit or escape the region for safe places. This provided sufficient opportunity to the militants to administer rough justice dictated by their whims. The institution of the Jirga was

¹⁶⁰ Khan, Sarfraz, *Special Status of Tribal Areas (FATA): An Artificial Imperial Construct Bleeding Asia, Eurasia Border Review Part II, HOKKAIDO UNIVERSITY, JAPAN, 2012, P.72.*

¹⁶¹ Dr. Ashraf Ali, "The FATA Situation", Article in Daily 'The News', July 31, 2012, The writer is the head of FATA research centre, Islamabad.

replaced with the shura, a council made up of militants and the clergy who decide cases according to their own interpretation of the Islam.

The terrorism took place in FATA as a result of uncertain legal scenario. The FCR has no proviso for the life and safety of the people while lacking the legal procedure which should be adopted for the security of the citizens. However, the political administration has completely failed in the protection of the people in FATA while the people are facing an uncertain security situation. Now it is the need of the time that the right to self-rule must be ensured to the tribal people that they should be able to decide their better future. The people are no more able to afford a situation like that which brings uncertainty rather than to provide a safe and peaceful environment.

4.5 THE ACTION IN AID CIVIL POWER REGULATION 2011

A new piece of legislation was brought last year that gave sweeping powers to the military in FATA. This regulation comprises of eight chapters, twenty six sections and three schedules. This regulation gave extra powers to the military for the internment of any person guilty of terrorist activities. Under the regulation internment authorities and internment centers have created for the examination and investigation of offenders.¹⁶² It is notable here that this new regulation provides extra-judicial powers to the military.

Here the main problem is that the new regulation is over ruling the existing laws which contains criminal procedure. The action in aid civil power regulation is

¹⁶² "Internment is the imprisonment or confinement of people, commonly in large groups, without trial. The Oxford English Dictionary (1989) gives the meaning as: The action of 'interning': confinement within the limits of a country or place." Most modern usage is about individuals, and there is a distinction between internment, which is being confined usually for preventive or political reasons, and imprisonment, which is being closely confined as a punishment for crime. Internment also refers to the practice of neutral countries in time of war in detaining belligerent armed forces and equipment in their territories under the Second Hague Convention. Early civilizations such as Assyria used forced resettlement of populations as a means of controlling territory, but it was not until much later in the late 19th and 20th centuries that records exist of groups of civilian non-combatants being concentrated into large prison camps. The Universal Declaration of Human Rights restricts the use of internment. Article 9 states that "No one shall be subjected to arbitrary arrest, detention or exile."

the new type of law for violating the basic human rights of the people. The internment authorities have the power to internment of any person on the reason of doubt under the regulation. The extra-judicial detention of the people is against the law and human rights. It negates the basic spirit of the justice and also those reforms which are brought into the FCR after long time.¹⁶³

4.6 CONCLUSION

It is reached upon that FCR provisions, which are incompatible with the international human rights norms, have diverse implications over the social, political and economic life of the people in FATA. FCR is a codified law which puts obligations over the subjects, while lacking itself the basic human rights that must be guaranteed under it. The accommodation of social, political and economic rights guaranteed under the International and regional human rights instruments into the FCR are significant now, as to provide opportunity to the people of FATA for the building up of their better future. Therefore a strong legal regime must be established to improve the life standards of the individuals in FATA.

¹⁶³ www.riport.org/update/RIPORT-FORUM last visited on 5th, June 2012. At 4.00pm.

CHAPTER 5

CONCLUSION AND RECOMMENDATION

5.1 CONCLUSION

Frontier Crimes Regulation 1901 provides for such an administrative and legal framework for Federally Administered Tribal Areas (FATA) that deprives the people social, political and economic rights guaranteed by the International Human Rights law and the protection of courts.

FATA is an area of 27220 square kilometers.¹⁶⁴ FATA is divided into administrative units namely, Bajaur Agency, Mohmand Agency, Khyber Agency, Orakzai Agency, Kurram Agency, North Waziristan Agency, South Waziristan Agency and the adjoining areas of Kohat, Peshawar, Bannu, Lakki Marwat, Tank and Dera Ismail Khan. The FATA is divided into two administrative categories. "First, the 'protected areas' which come directly under control of central government through political appointees/agents, they are vested with judicial powers as well, secondly, the 'non-protected' areas those are governed through the local tribes indirectly".¹⁶⁵ At Federal level, the Ministry of State and Frontier Regions (SAFRON), at Islamabad is allocated the duty to look after the development, management and related matters of the FATA.

"There have been varying estimates about FATA's rapidly growing population, which range from 3.5 million (1998 census) to 7 million".¹⁶⁶ The FATA population are grouped into tight Pashtoon tribal communities the chief being Bajauri, Mohmand, Afridi, Turi, Orakzai, Shinwari, Wazir, Mehsud, Dawar, Bettani, Barki and Sulemankhel each is separate and individually marked off from the others by

¹⁶⁴ Afridi, Latif, *The Federally Administered Tribal Areas and reforms*, Publisher Barkat Ali, Peshawar, 1996, 2.

¹⁶⁵ Global Security.org, Military, "Pakistan's FATA policy".

¹⁶⁶ Riaz, Umar, "The Most Dangerous Place on Earth", *Case study of the FATA area, Pakistan, National Strategy Forum Review, journal, Summer 2011, Volume 20, Issue 3, P.1.* www.nationalstrategy.com.

slight shades of differences ranging from social customs to dialect, but all knit together by common language, culture and traditions.¹⁶⁷

FATA, was historically part of Afghanistan and was captured by the British colonizers in different passages of time in the late nineteenth century after then annexed these areas from the then Afghanistan to the British India. FATA was administered by the FCR 1901 under which FATA has a special status. In the June 3rd Plan and in harmony with Sections 1-7 of Indian Independence Act 1947, Nowadays FATA and other frontier tribes became completely free from the British rule and thereof started independence under the administrative, legislative and judicial system of the tribal *Jirga* (council of elders).¹⁶⁸ The tribal areas remained independent under the national and tribal *Jirga* system during the era which started from August 14, 1947 and lasted till June 27, 1950.

On 27th June, 1950, the Government of Pakistan issued notifications concerning those states or territories which were not the integral part of Pakistan, their status were autonomous or semi-autonomous. The notification states that those territories which are not part of Pakistan can join the federation of Pakistan through their trustworthy representatives. After that it was decided between the tribal elders and the Governor General of Pakistan on the basis that the status which the tribal areas maintain in British regime would be the same in Pakistan. Thus the FATA acquired the semi-autonomous status from the date till now.

Article 246 and 247, of the Constitution of Islamic Republic of Pakistan, 1973, deals with Federally Administered Tribal Areas. Article 246, provides for the territory

¹⁶⁷ Abdul Quddus, Syed, *The North West Frontier Province of Pakistan* (Royal Book company, Karachi Pakistan, 1990), 79

¹⁶⁸ *Historic Documents of the Pakistan Movement*, G. Allana, Islamic books Lahore, 1988.
B) Akbarjee's Articles.

comprising FATA while article 247 provides for the administration of FATA. Article 8 to 25 of the Constitution of Pakistan, 1973, provides for the fundamental rights irrespective of all kinds of discrimination. But these rights have no application in FATA. International human rights instruments as well regional human rights instruments contains the provisions relating to the basic social, political and economic rights. Social, political and economic rights having a fundamental status have no legal protection in FATA.

Human rights are fundamental, universal and inalienable that's why it can't be violated or snatched and are strongly protected under the cover of international peremptory norms *Jus Cogens* and recognized by international, regional and domestic legislative sources.¹⁶⁹ Universal Declaration on Human Rights, 1948, International Covenant on Civil and Political Rights, 1966, and International Covenant on Economic, Social and Cultural Rights, 1966, provides for the social, political and economic rights. Social, political and economic rights guaranteed under the International human rights law have no legal protection to the people of FATA.

Frontier Crimes Regulation 1901, being a century back codified law contains sixty four sections, six chapters and three schedules. In 2011, with the promulgation of the president order of August, 2011, various amendments were brought into the FCR. As we have briefly analyzed the provisions of FCR in chapter III, such amendments are mostly of judicial and administrative nature. Regarding the fundamental human rights there is no provisions in FCR. FCR being a law is lacking the basic characteristics of law.

¹⁶⁹ Brunno Simma & Phillip Alston, *The Source of Human Rights Law: Custom, Jus Cogens & General Principle*, 12 *Aust. Y.B. Int'l L.*, 1992, Pp 82, 94.

FCR being a supreme law for the FATA has no more place without amending it as to change its objectives. Because its objectives are not clear in a sense, that whether it is a law for the protection of fundamental rights or just a law of governing the subjects. The law must have some legal and positive characteristics, which covers both the governmental procedure and too have the provisions of rights and duties. While FCR puts only obligations on the people and lacking all fundamental human rights that must be guaranteed to the citizens in the civilized world.

FCR provisions have various implications on the social, political and economic life of the people of FATA. In the contemporary legal world social, political and economic rights has covered under a strong legal protection and these rights cannot be snatched or violated. While in FATA the lacuna still exists regarding the legal protection of social, political and economic rights. The future of the people of FATA is at the disposal of political administration and there is no direct participation of the people in the social, political and economic development of the region. The people of FATA have been isolated by the cruel provisions of FCR as they are kept out from the policy making for their own future. The FATA has become a safe heaven for the thousands of foreigner's terrorists that have no business to be there and are indulge in terrorist activities.¹⁷⁰

These foreign entrants and their supporters have murdered for no crime more than one thousand known and prominent leaders including *Maliks*(tribal chief) and clerics in the agencies and tribal regions yet no one has been apprehended or identified for these hideous crimes.¹⁷¹ And the region have become the centre for

¹⁷⁰ Mahmood Khan Achakzai, "How to bring peace to the FATA", Article published in daily Jang, Islamabad, 21 Oct, 2011.

¹⁷¹ *Ibid.*

launching attacks on the neighboring country Afghanistan and as a reaction to which the tribal areas have become the testing ground for drone attacks.¹⁷²

Such in uncertain situation now the question arises that while the inhabitants of tribal areas currently cannot take their daily needs such as flour, sugar, audible oil, kerosene etc without a permit of the Political Agent nor can any citizen of Pakistan be he a religious, political or social leader enter the tribal area without permission of the Political Agent, than how did these foreigners land there? All because of the carrying out of the colonial policies towards tribal areas and the ambiguities in the existing laws in FATA. The situation there is so bad to the extent that the whole of the population has been terrorized. Most have left their homes to other places and those left behind have become quite hostages unable to say anything.

Action in Aid Civil Power Regulation, 2011 is a new piece of legislation which gave extra-judicial powers to military in FATA. As it negate the basic spirit of law and justice. That is a new type of tactics in a legal framework as to terrify the people of the region contrary to the demands of the people for the social, political and economic change.

FCR being a codified law put obligations over the subjects, while lacking itself the basic human rights that must be guaranteed under it. The accommodation of social, political and economic rights guaranteed under the International and regional human rights instruments into the FCR are necessary now, as to provide opportunity to the people of FATA for the building up of their better future.

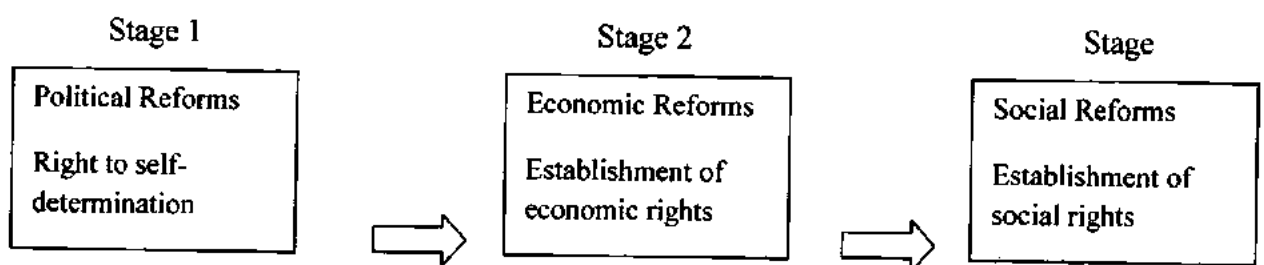
¹⁷² *Ibid.*

5.2 RECOMMENDATIONS

Obviously the time has come to bring immediate and necessary changes into the FCR, as to improve the life standard of the individuals of the region. The problems of FATA are not easily soluble without serious efforts. There is a want of a strong legal regime which must be established there for the protection of the people from the human rights violations. Social, political and economic reforms are needed there in a legal set of principles. As we have discussed earlier that FATA is enjoying a semi-autonomous status since a century. Some people hold their view point on different forums for the merger of FATA into Khyber Pakhtunkhwa. It cannot be compromised on the autonomous status of the FATA which the people are enjoying there for a long time.

For the improvement of the life standard of the individuals of any society, according to my observation a society must pass on to three stages. Firstly the political reforms stage, secondly economic reforms and finally the social reforms stage. These three stages are deeply inter-connected with each other.

Figure 1



In the above figure three stages of reforms are mentioned in a sequence. And the maintenance of sequence in the bringing up of reforms is quite necessary. We can explain the above stages in a manner that political reforms here means the political

rights which must be established, likewise the right to self-determination of the people. Whenever a community is granted the right to self-determination or self rule, it makes the community able to decide its own future. The right to self determination as a political right is a gateway to resolve all the problems of the socio-political and socio-economic nature.

The people of FATA are governed under FCR, while under the FCR Political Agent has given the unlimited powers and that powers are misused under the umbrella of FCR. The people of FATA have no direct participation in the policy making for their future. FCR doesn't provide for the self rule of the people of FATA. The political rights recognized by the United Nation Organization Charter, Universal Declaration on Human Rights, 1948, and International Covenant on Civil and Political rights, 1966 must be accommodated into the Frontier Crimes Regulation, 1901.

It is recommended that more reforms must be brought into the FCR under which an elected council must be established in FATA. Women should also be given representation in the council. The elected council must have the Judicial, Executive and Legislative powers. At first stage, the administration should be strongly accountable to the representative council. All the powers regarding the administrative setup of the FATA must be transferred to the elected council.

In the second stage of reforms the economic rights recognized under the International human rights law have to be incorporated in the FCR as fundamental rights. All the economic opportunities must be created there for the improvement of the life standard of the people of FATA. Economic reforms must be brought in the collaboration with representative tribal elders of the FATA. The FATA is the main

concern of the international community reconstruction opportunity zone in the economic development.¹⁷³ Such opportunity must be availed keeping in view the economic development of the region. Small dams for power generation, canals for agriculture purpose, the utilization of marbles, chromites, forests, wild life and livestock are the desired efforts for the economic development of the region.

Wana, Miranshah, Bara and Torkham are to be declared as a major transit centers. Most of the people in FATA are trading with neighboring countries from these stations. Small industries must be established there as to create opportunity for labors. Dara Adam khel privately owned weapon industries must be transformed to a major industry in FATA under the legal cover. The economic rights recognized by the Universal Declaration on Human Rights, 1948, and International Covenant on Economic, Social and cultural rights, 1966 must be accommodated into the Frontier Crimes Regulation, 1901.

In the third stage all the social rights along with the traditional values of the tribal area should be made part of FCR. "Social rights recognized under International human rights law the right to work, the right to just, safe and healthy working conditions, the right to fair remuneration, the right to organize, the right to bargain collectively, the right of children and young person's to protection, the right of employed women to protection, the right to vocational guidance and training, the right to protection of health, the right to social security, the right to social and medical assistance and to benefit from social welfare services, the right of disabled persons to vocational training and integration, the right of the family to protection, the right to education, the right of mothers and children protection, and rights relating to the

¹⁷³ *Status Report: Afghanistan And Pakistan Civilian Engagement, Office of the Special Representative for Afghanistan and Pakistan November 2011.*

freedom of movement, combined with the right to protection and assistance must be established as basic human rights”¹⁷⁴. The right to education and health should be the primary focus of the reforms.

The current scenario in FATA regarding terrorism is questionable. For peace and stability of the region it is necessary to hold the following steps;

1. For the sake of peace and stability in the region it can only be feasible that the people and leaders of the seven agencies must be recognized as the true owners of the area and to seek their help in bringing about peace and stability. The peace talks should be hold with real owners of the FATA, instead of militants groups as it was done in past.
2. The foreigner militants in the FATA must be removed from the region as they are creating violence and are indulged in the terrorist and criminal activities.
3. The immediate withdrawal of Army from the FATA is the need of the time.
4. It is necessary to compensate for the affected people by the Army action in the tribal agencies and adjacent areas.

It is notable here that these all reforms which are recommended should be done along with the traditional values of the Tribal area. The FCR should not be completely abolished as the people of FATA have accustomed to it. The abolition of FCR and other steps like merger of FATA into Khyber Pakhtunkhwa would lead the region to a new phase of violence and instability. Because the people of the region are adjust in the current administrative setup and they cannot afford any new scheme of administration.

¹⁷⁴ STUART WHITE, "Review Article: Social Rights and the Social Contract – Political Theory and the New Welfare Politics", *British Journal of Political Science*, Cambridge University Pressmark, U.K., 2000, p.512.

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