



LEGAL PLURALISM IN EX-FATA: THE CO-EXISTENCE OF STATUTORY LAW, THE CUSTOMARY LAW, AND THE SHARIA LAW UNDER THE 25TH CONSTITUTIONAL AMENDMENT

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Abstract

The colonial Frontier Crimes Regulations (FCR) have traditionally ruled the frontier tribal areas (FATA) of Pakistan, which is not a part of the mainstream legal system. The 25th Amendment of 2018 replaced FCR and combined FATA into Khyber Pakhtunkhwa, extending the statutory law and constitutional rights. Nevertheless, this shift does not eliminate the presence of deep rooted pluralism, the official state laws are present alongside the established Pashtunwali/jirga traditions and the Islamic values. This paper looks at the interaction of these legal orders in post-merger ex-FATA. The research finds that the legal pluralism in ex-FATA is dynamic and it has to be served with subtle strategies to reconcile the customary traditions and legal law.

Keywords

Legal pluralism, ex-FATA, 25th Amendment, jirga, Pashtunwali.

Introduction

The tribal frontier has been characterized by legal pluralism in Pakistan. Over a hundred years, the area currently known as Ex-FATA had been overseen under the Frontier Crimes Regulations (FCR), a colonial-era system that combined the administrative control with indigenous standards¹. Article 247 of the 1973 Constitution made FATA exempt to the jurisdiction of the ordinary Pakistani courts; its management was under the discretionary powers of the President, who was exercised through the Governor of Khyber Pakhtunkhwa. As a result, although the constitutional rights of tribesmen were theoretically assured, the fact that they were not judicially protected made them inapplicable². Article 247 was abolished, replaced by FATA, which became Khyber Pakhtunkhwa and FCR was repealed by the 25th Constitutional Amendment (2018) formally extending constitutional rights and ordinary laws to the region³.

¹ Muhammad Maqbool Khan Wazir, "FATA Under FCR (Frontier Crimes Regulations): An Imperial Black Law," Central Asia (Islamabad, 2007)

² Muhammad Zubair, "Mainstreaming Pakistan's Federally Administered Tribal Areas (FATA): Constitutional and Legal Reforms", ConstitutionNet (14 June 2017)

³ A Single Polity at Last? Pakistan's Unfinished Efforts to Mainstream Federally Administered Tribal Areas (FATA) | ConstitutionNet <http://constitutionnet.org/news/single-polity-last-pakistans-unfinished-efforts-mainstream-federally-administered-tribal-areas>



The paper explores the reality of legal pluralism in Ex-FATA in the post-merger. It also claims that despite these formal reforms, statutory, customary (Riwaj/Pashtunwali/jirga) and Islamic legal norms continue to exist in a coexistence and interaction state⁴. The state institutions such as the courts, police, and bureaucracy have been protruded on paper but in reality, they are weak and under-funded⁵. At the same time, tribal identity and religious legitimacy strengthen non-state dispute resolution systems like jirgas and Sharia based clerics. The paper examines how these various legal orders intersect, contradict and sometimes work together in the unified districts⁶.

Background and Context

History of FATA Legal Structure. The unique legal status of FATA dates back to the British colonial policy. In an attempt to control the Pashtun tribes, the Frontier Crimes Regulation (FCR) was introduced in 1901 in order to place the tribes under indirect rule⁷. The British allowed locals to settle their own disputes by custom, institute of jirga, but would be governed by the Political Agent (PA) who was the colonial, and later the Pakistani, administrator of each agency⁸. The status of FATA under the FCR was not much altered when the tribes joined Pakistan in 1947 on special agreements. This independence was made codified within the Constitution: Article 247 allowed FATA to come under presidential control, prohibited the enforcement of the laws of Pakistan on this territory, and did not subject to the jurisdiction of the Supreme and High Courts⁹. In this way, FATA was successfully pushed into a legal black hole, beyond popular governance and judicial safeguards¹⁰.

The Frontier Crimes Regulation (FCR). The FCR was a rare combination of administrative executive, traditional and quasi-criminal law. It gave the Political Agent the power to blockade, direct arrest and detain tribalmen indefinitely, fine tribes and even wipe property in order to get compliance¹¹. Murder or theft were common cases that were resolved via jirga and blood-fine (diyat) agreements within the tribal codes. The sign of the FCR was communal responsibility: a whole sub-tribe might suffer because of the wrongdoing of an individual, which is now universally disapproved of¹². Under the FCR, the defendants had no right to lawyer or appeal, no due process or hearings by a superior court; and no higher court review.

⁴ GRR - Global Regional Review <https://www.grrjournal.com/article/the-fata-conundrum-a-study-of-the-postmerger-administrative-chaos>

⁵ Human Rights Commission of Pakistan, *The Merger and its Discontents: Human Rights in the Newly Merged Districts in Khyber Pakhtunkhwa* (Islamabad, 2023).

⁶ GRR - Global Regional Review <https://www.grrjournal.com/article/the-fata-conundrum-a-study-of-the-postmerger-administrative-chaos>

⁷ Index http://www.asc-centralasia.edu.pk/Issue_61/09-FATA_UNDER_FCR.html

⁸ Sadia Malik, "Rights, Custom and the Frontier Crimes Regulation," *South Asia Journal of Human Rights* (2018).

⁹ Single Polity at Last? Pakistan's Unfinished Efforts to Mainstream Federally Administered Tribal Areas (FATA) | ConstitutionNet <http://constitutionnet.org/news/single-polity-last-pakistans-unfinished-efforts-mainstream-federally-administered-tribal-areas>

¹⁰ Amnesty International, "The Black Laws: Human Rights and the Frontier Crimes Regulations," (2014).

¹¹ Bruce Callen, Asim I. Khwaja & Atif Mian, "Choosing Ungoverned Space: Pakistan's Frontier Crimes Regulation," (Harvard Kennedy School AALIMS Working Paper, 2018)

¹² David Gibbs, "Tribal Justice in FATA," *Amnesty International* (2015).



Opponents described the FCR as an act of colonization and a repressive or draconian law (a black law in the words of one activist) that infringed fundamental rights¹³.

Legal and political motives of 25th amendment. A number of forces came to an end of this great regime¹⁴. First, there was the security pressures: the militant groups took advantage of the legal vacuum in FATA and its porous borders, which occasioned insurgency and mass displacement, after the September 11 attacks. The military campaigns, including Zarb-e-azb campaign, finally stretched the territorial influence of Taliban-transnational Pakistan Province (TTP), but the rebuilding of the region needed a strong government¹⁵. Second, there was a lack of development: ex-FATA had one of the worst social and economic indicators in Pakistan, with a high level of poverty and unemployment¹⁶. With the introduction of conventional law therefore it was considered a prerequisite to infrastructure development, investment and service delivery. Third, human rights issues also put extra pressure on it, the Frontier Crimes Regulation (FCR) was repeatedly criticised by Pakistani courts and the international non-governmental organisations because it flouted the due process, the rights of women and the international justice standards¹⁷. Lastly, a political agreement was reached: the 2016 FATA Reforms Committee [33] along with the civil society advocates encouraged mainstreaming FATA by pointing to the reform requiring a constitutional amendment¹⁸. The Pakistani parliament passed the 25th amendment to include FATA in Khyber Pakhtunkhwa (KP) and to do away with the FCR in May 2018¹⁹.

The Transition Framework and 25th Constitutional Amendment.

Abolition of Article 247 Article 25th of the Amendment officially replaced Article 247 of the Constitution and made the President integrate the territory with Khyber Pakhtunkhwa, abolishing his unique powers over FATA²⁰. Therefore, FATA was no longer under the jurisdiction of the Pakistani courts, but the whole territory was united to become tribal districts of KP. According to one of the analysts, the amendment erases the special (discriminatory) status of FATA, therefore, granting its residents the full citizenship of Pakistan under the constitutional order of the country²¹. The FATA Interim Governance Regulation, 2018, that replaced the FCR and allegedly created a temporary justice administration until formal merger was achieved was also promulgated by the President²². Interestingly, but also notably, the

¹³ Amnesty International, *"The Black Laws: Human Rights and the Frontier Crimes Regulations,"* (2014)

¹⁴ Pakistan (Constitution) *Twenty-fifth Amendment Act, 2018* (amending Art. 247).

¹⁵ Shaping A New Peace In Pakistan's Tribal Areas – LobeLog <https://lobelog.com/shaping-a-new-peace-in-pakistans-tribal-areas/>

¹⁶ International Crisis Group, *"After FATA: Steps Towards Political and Economic Reform,"* Asia Report No. 212 (22 May 2012).

¹⁷ David Gibbs, *"Tribal Justice in FATA,"* Amnesty International (2015).

¹⁸ Report of the FATA Reforms Committee, (Islamabad, 2016).

¹⁹ Pakistan (Constitution) *Twenty-fifth Amendment Act, 2018* (amending Art. 247).

²⁰ Pakistan (Constitution) *Twenty-fifth Amendment Act, 2018* (amending Art. 247).

²¹ A Single Polity at Last? Pakistan's Unfinished Efforts to Mainstream Federally Administered Tribal Areas (FATA) | ConstitutionNet <http://constitutionnet.org/news/single-polity-last-pakistans-unfinished-efforts-mainstream-federally-administered-tribal-areas>

²² Govt. of Pakistan, *FATA Interim Governance Regulation, 2018* (Reg. No. XX of 2018).



Interim Regulation retained most of the FCR-type components (e.g. the tribal councils and administrative judges) and did not integrate the provinces completely, thus drawing the criticism of having weakened the rationale of the merger²³.

Enlargement of Constitutional Rights. The amendment has led to the fact that the basic rights provided by the Articles 8 to 28 of the Constitution are now strictly applicable in the unified districts. This encompasses due process (Article 10-A), equality before the law (Article 25), freedom of expression, movement, association, and religion and the right to a fair trial and appeal²⁴. The special exclusion formerly making constitutional courts ineligible to jurisdiction over FATA was repealed and thus people can invoke the High Court and Supreme Court to enforce these rights. This in theory would make ex-FATA citizens a par with the rest of Pakistan²⁵.

Extension of Statutory Laws The amendment also exposes the merged districts to all Pakistani laws. The laws of federal and province, the Pakistan penal code (PPC), criminal procedure code (CrPC), civil procedure code (CPC), police act, anti-honour killing laws, local government laws, etc, now govern former FATA²⁶. The similar agencies like the district courts and the police of Peshawar have also been expanded to these regions officially²⁷. This has in effect, implied that actions that were previously unfamiliar in FATA like the waging of war against the state or honour killings become criminal offences under ordinary law. The land registration, enforcement of contracts, and regulatory laws (tax, environment, etc.) should now theoretically perform the same functions as they do in KP²⁸.

Institutional Replacements The merger involved significant restructuring in terms of institutions. On 31 May 2018, the Frontier Crimes Regulation was scrapped. The controversial provisions of the short-lived Tribal Areas Rewaj Act (prepared in 2017) were officially withdrawn, and the FCR went officially suspended thereafter²⁹. Based on this, the government started launching mainstream institutions. The political agents became redesignated as deputy commissioners; levies and khassadar militias were transferred to the KP Police; and a series of

²³ Shaping A New Peace In Pakistan's Tribal Areas – Lobe Log <https://lobelog.com/shaping-a-new-peace-in-pakistans-tribal-areas/>

²⁴ Key judicial change in Pakistan's tribal areas ruled unconstitutional | ConstitutionNet <http://constitutionnet.org/news/key-judicial-change-pakistans-tribal-areas-ruled-unconstitutional>

²⁵ ibid

²⁶ Irfan Ahmed Khan, "Integration of Tribal Areas and the Enforcement of Rights," *South Asian Survey* (Vol. 27, No. 1, 2020).

²⁷ Fata reforms: Govt to withdraw Rewaj Act, Senate told <http://tribune.com.pk/story/1511104/fata-reforms-govt-withdraw-rewaj-act-senate-told>

²⁸ Survey of Pakistan, "Land Records and Registration in the Former FATA: Needs Assessment," (Peshawar, 2022).

²⁹ Fata reforms: Govt to withdraw Rewaj Act, Senate told <http://tribune.com.pk/story/1511104/fata-reforms-govt-withdraw-rewaj-act-senate-told>



courts, the lowest court being the sessions courts to the highest court, the Peshawar High Court³⁰.

Nature of Legal Orders in Ex-FATA .

Three normative orders exist in Ex-FATA after the merger:

1 Statutory Law: Pakistani legal system (Constitution, PPC, CrPC, etc.).

2 Customary Law (Pashtunwali/Jirga): Tribal codes which were unwritten and elders councils.

3 Sharia Law: The norms of Islam Law as applied by communities and clerics.

Every order has its source of legitimacy and enforcement as well as area of influence.

Statutory Law

Constitutional and Legislative Authority: After the merger the Constitution and all the federal/provincial laws are applicable³¹. Civil courts, police jurisdictions and District and Sessions Courts are formally extended and FATA residents are in principle free to petition the court and accuse a violation of rights³².

Institutional Weakness. Most of the former agencies have a single or two courts that have a large and distant population³³. Police stations are also concentrated in the centres of the districts, which leaves the valleys outside the centres without patrol. To illustrate, the population of some remote tehsils will have to travel more than 100km to get to a court, similar to the colonial days. This type of barriers strengthens local dependence³⁴.

Customary Law (Pashtunwali and the Jirga System)

The most direct system of law in Ex-FATA is still customary law.

Pashtunwali: Pashtunwali is the general cultural code of the Pashtun tribes, which places a special emphasis on such concepts as badal (vengeance or restitution), nanawatai (asylum or forgiveness), ghairat (honour), melmastia (hospitality), and hujra (community gatherings)³⁵. These unwritten rules are older than any state and have a far-reaching influence on tribal ideas

³⁰ Key judicial change in Pakistan's tribal areas ruled unconstitutional | ConstitutionNet <http://constitutionnet.org/news/key-judicial-change-pakistans-tribal-areas-ruled-unconstitutional>

³¹ A Single Polity at Last? Pakistan's Unfinished Efforts to Mainstream Federally Administered Tribal Areas (FATA) | ConstitutionNet <http://constitutionnet.org/news/single-polity-last-pakistans-unfinished-efforts-mainstream-federally-administered-tribal-areas>

³² FATA residents hail extension of Pakistan Supreme Courts' jurisdiction | Arab News <https://www.arabnews.com/node/1284666/world>

³³ Post-Merger Inaction in FATA: Expectations vs. Reality – South Asian Voices <https://southasianvoices.org/post-merger-inaction-in-fata-expectations-vs-reality/>

³⁴ usip.org https://www.usip.org/sites/default/files/2021-04/sr_492-extending_constitutional_rights_to_pakistans_tribal_areas.pdf

³⁵ Pashtunwali – Wikipedia <https://en.wikipedia.org/wiki/Pashtunwali>



of justice. An example is that the decision made by an elder is often packaged as nanawatai or badal instead of type of crime according to law³⁶.

The Jirga: The jirga refers to a group of male elders selected through consensus. It adjudicates through adjudication on the spot which is usually based on Pashtunwali principles and local custom (riwaj)³⁷. Traditionally, the jirga has been an effective dispute-solving platform in which most FATA residents have been proponents of the dispute-solving platform. One of the most significant weaknesses of the jirga (and Pashtunwali) is gender prejudice. Minors and women are hardly involved in proceedings³⁸. With traditional decisions, things like swara (forcing girls to marry due to conflicts) or refusal to give women inheritances may take place³⁹. Enforcement of Jirga decisions is done socially. To take an example, the tribe can impose fines in the form of a jirga to be paid by a family, and in case of default, the whole clan can be sanctioned with punishment (boycott, armed revenge)⁴⁰.

Sharia Law

Local ulema (clerics) and mullahs, committees of mosques, and village religious councils assert the right to give interpretations of the Islamic law. Sharia is very active in the personal law: marriages, divorces, inheritance, and family conflicts frequently go to the bad of the Sharia⁴¹. Indicatively, although customary law barred women against inheritance, under Islam, a daughter is supposed to receive a set amount⁴². Ethical behavior (e.g. alcohol consumption, adultery charges) is primarily addressed in forums conducted by the mosques. Sharia notions of trust and charity dominate in cases of a dispute over a sacred object (shrines, waqf lands)⁴³.

In brief, pluralism exists because it is effective in the social form: it offers immediate coherent justice which is culturally relevant and makes the state system to look distant and impersonal.

The Existence and the Conflict of Statutory, Customary and Sharia Law.

The new condition after the merger is neither a direct movement to the law of the state nor a pure recidivation of the past. Rather, Ex-FATA shows a multiple-level juridical structure where different legal orders proceed to interrelate.

³⁶ Index http://www.asc-centralasia.edu.pk/Issue_61/09-FATA_UNDER_FCR.html

³⁷ "Jirgas: Rogue Agents of Conflict Resolution" by Jo Chitlik - Canopy Forum

³⁸ Regressive jirgas <https://tribune.com.pk/story/2559804/regressive-jirgas>

³⁹ Federal Shariat Court of Pakistan declares the custom of Swara as un-Islamic and unconstitutional | OHRH <https://ohrh.law.ox.ac.uk/federal-shariat-court-of-pakistan-declares-the-custom-of-swara-as-un-islamic-and-unconstitutional/>

⁴⁰ "Jirgas: Rogue Agents of Conflict Resolution" by Jo Chitlik - Canopy Forum <https://canopyforum.org/2025/09/05/jirgas-rogue-agents-of-conflict-resolution/>

⁴¹ Depriving women of their inheritance is 'un-Islamic', Shariat Court rules - Pakistan - DAWN.COM <https://www.dawn.com/news/1899075>

⁴² ibid

⁴³ usip.org https://www.usip.org/sites/default/files/2021-04/sr_492-extending_constitutional_rights_to_pakistans_tribal_areas.pdf



Parallel Authority Structures.

State courts and police are formally based on a parallel system, but their practical sphere does not have an even coverage. In many places there are no local courts and the police are few⁴⁴. In turn, these institutions of a state coexist with the traditional mechanisms, which are occasionally experienced by villagers. Tribal elders and jirgas continue to deliver verdict on most land matters, honor killings and individual crimes in the merged districts⁴⁵. An example is that a 2019 study has reported that residents of the rural Bajaur overwhelmingly support the idea of sending domestic disputes to jirgas instead of formal courts⁴⁶. Family and moral disputes are often settled by religious scholars and fatwa organizations which act by way of mosques and madrassas⁴⁷.

Areas of Conflict

Gender and Human Rights

Gender discrimination is now banned by statutory law in Articles 25 and the criminalization of such practices as swara or honour killing in the PPC⁴⁸. However, traditional practices are preserved: forcible marriage of girls to end feuds, deprivation of women of inheritance, jirgas of males are widespread⁴⁹. In cases where the practices are disrupted in a court of law, the constitutional principle of equality directly comes into conflict with tribal practices. To take an instance; courts which award women their rightful inheritance share are at times compromised by a post-judicial reconciliations through a jirga thus weakening the enforceability of the court order⁵⁰. This means that the constitutional guarantees are usually on paper and not on the books.

Criminal Justice

Badel (revenge) and diyat were substitutes of state prosecution under the FCR. In the present case, the police can make an FIR based on the PPC in case of a homicide today. However, the compensation agreements can still be negotiated by jirgas and family elders. The Supreme Court has decreed that parallel justice like badal as dictated by jirga is illegal, however, in reality things are different⁵¹. The victim may be pressured by the community elders to drop the charges even after a suspect is arrested even though a payment of a blood-fine was made to the

⁴⁴ Post-Merger Inaction in FATA: Expectations vs. Reality – South Asian Voices

<https://southasianvoices.org/post-merger-inaction-in-fata-expectations-vs-reality/>

⁴⁵ Sabir Akhtar & Muhammad Akhtar, "The FATA Conundrum: Post-Merger Administrative Chaos," *Global Regional Review* (Vol. 6, No. 1, 2023)

⁴⁶ Jirgas: Rogue Agents of Conflict Resolution" by Jo Chitlik - Canopy Forum

<https://canopyforum.org/2025/09/05/jirgas-rogue-agents-of-conflict-resolution/>

⁴⁷ ojs.pssr.org.pk <https://ojs.pssr.org.pk/journal/article/download/984/787/1703>

⁴⁸ Rida Tahir, "Federal Shariat Court of Pakistan declares the custom of Swara as un-Islamic and unconstitutional," *OHRH Pakistan Blog* (8 Nov. 2021)

⁴⁹ Depriving women of their inheritance is 'un-Islamic', Shariat Court rules - Pakistan - DAWN.COM <https://www.dawn.com/news/1899075>

⁵⁰ ibid

⁵¹ Federal Shariat Court declares swara or vani un-Islamic - Pakistan - Aaj English TV

<https://english.aaj.tv/news/30269974/2021-10-27>



police. Local monitors often report of instances where jirga settlements successfully nullify criminal prosecution leaving the criminals extrajudicially unchecked⁵².

Land and Property Disputes

Ex-FATA has a large unregistered land that is communally owned by clans. Statutory law involves formal titles and records which are likely to be missing⁵³. Traditionally, the allocation of land is done by tribal elders. In disputes over lands, tribes prefer jirga verdicts which are based on oral lineage (shajras) as opposed to written documents⁵⁴. Jurisdictional overlap is created: a court can be unable to arrive at a decisive judgment, and it sends it back to the community negotiation. The Sharia law of property promotes documentation and also emphasises on honesty and witnessing purposes, which are often opposed to clan norms. The parties can thus play one system off against the other; one of them can commence a court and the other take a jury ruling in hopes of shifting the balance⁵⁵.

Areas of Cooperation

Hybrid ADR Mechanisms

Institutionalisation of some alternative dispute resolution (ADR) processes has been made in the formal justice system. The KP ADR Act 2020 promotes the habit of sending cases to mediation by courts⁵⁶. As a matter of fact, in practice those mediators are usually village elders or civil society arbiters, and they impactually establish court empowered jirgas: elders seek to resolve cases amicably before or after filing, and courts make formal additions⁵⁷.

Court Ruling in favor of Settlements.

In some cases, jirga settlements are out of court that are undertaken during jirgas are sometimes upheld by judges, though not those that clearly violate fundamental rights. During a feud in Bajaur, one of the lands, litigants signed an agreement which was settled under the mediation of a jirga of the land; the district court then registered the agreement hence closing the case. The court considered the jirga agreement as a comparable choice to a mediated consent decree⁵⁸.

State Orders that are Legitimated in a Religious Way.

At some point, the clerics have come out publicly to support new legislation or even court decisions. Certain collaborative efforts have educated imams in constitutional safeguards, which makes them clarify to their congregation how the statutory law complies with the Islamic

⁵² Problems in Fata's merger with Khyber Pakhtunkhwa – Herald <https://herald.dawn.com/news/1398762>

⁵³ Survey of Pakistan, “Land Records and Registration in the Former FATA: Needs Assessment,” (Peshawar, 2022).

⁵⁴ usip.org https://www.usip.org/sites/default/files/2021-04/sr_492-extending_constitutional_rights_to_pakistans_tribal_areas.pdf

⁵⁵ ibid

⁵⁶ Khyber Pakhtunkhwa Law Department, “Implementation of ADR Mechanisms in Merged Districts: Progress Report” (2023).

⁵⁷ ibid

⁵⁸ Irfan Ahmed Khan, “Integration of Tribal Areas and the Enforcement of Rights,” *South Asian Survey* (Vol. 27, No. 1, 2020).



philosophy⁵⁹. These recommendations are useful in creating trust. One locality had a bulletin in the Mosque explaining that right of inheritance, now under the law and under Islam, requires that the daughters be given a portion of the Quranic portion they are entitled to, thus compelling a family to do so⁶⁰.

Case Studies of Coexistence and Conflict.

Case: 1. Land Dispute Mohmand District.

A tribal land disputed case was solved through a jirga that apportioned the disputed land equally among claimants. Tribal elders came in when one of the parties later sought review of the same to the district court. The family abandoned the suit after pressure in the community and the risk of retaliation. This episode emphasized the fact that, without communal action, a statutory remedy could not easily trump a locally condoned, even though extralegal, one⁶¹.

Case 2: Honour Killing in Khyber District.

In 2022, the Khyber tribal leaders arbitrated a diyat settlement between two families after a purported honour killing⁶². The jirga imposed the penalty on the family which violated the rule as fine in goods and cash. The PPC had already entered into a murder case in the police. Upon bringing the dispute to sessions court, the judge rejected the conditions of the jirga saying that no man can legally concede the life of another. However, by the time the trial occurred, all the key witnesses had reneged under the fear of tribal revenge. The offender ended up going unprosecuted. The case shows that badal imposed by jirga can be an effective way of thwarting statutory prosecution where the mechanisms of enforcement are weak⁶³.

Case 3: Case of marriage dispute in Bajaur.

A woman was also forced to marry through a traditional marriage swara to resolve an inter-family dispute⁶⁴. She then fled and petitioned the cleric who ruled the marriage as invalid in line with the Islamic law. This religious announcement was accepted by the family, and the woman was liberated without applying any legal procedures. As it is described in this case,

⁵⁹ Council of Islamic Ideology (Pakistan), *"Harmonising Sharia and Pakistani Laws"* (Islamabad, 2020).

⁶⁰ Human Rights Commission of Pakistan, *The Merger and its Discontents: Human Rights in the Newly Merged Districts in Khyber Pakhtunkhwa* (Islamabad, 2023).

⁶¹ USDOS – US Department of State (Author): "2023 Country Report on Human Rights Practices: Pakistan", Document #2107764 - ecoinet <https://www.ecoi.net/en/document/2107764.html>

⁶² Jirgas: Rogue Agents of Conflict Resolution" by Jo Chitlik - Canopy Forum <https://canopyforum.org/2025/09/05/jirgas-rogue-agents-of-conflict-resolution/>

⁶³ Pakistan: Authorities must end impunity of tribal councils as so-called "honour killings" continue unabated - Amnesty International <https://www.amnesty.org/en/latest/news/2023/11/pakistan-authorities-must-intensify-pressure-to-end-impunity-of-tribal-councils-as-honour-killings-continue-unabated/>

⁶⁴ Federal Shariat Court of Pakistan declares the custom of Swara as un-Islamic and unconstitutional | OHRH <https://ohrh.law.ox.ac.uk/federal-shariat-court-of-pakistan-declares-the-custom-of-swara-as-un-islamic-and-unconstitutional/>



parties can prefer to use religious authority, with all its local binding force, over formal courts, which they consider unreliable or otherwise unavailable in sensitive circumstance⁶⁵.

Ex-FATA implications of Legal Pluralism.

The co-existence of the multiplural legal orders is both good and bad:

Access to Justice:

Optimistic: Jirgas and mosques provide convenient and culturally understandable justice. To many residents of the villages, jirga is cheaper and more convenient than going to court, thus making more disputes get some sort of resolution, even informal. With no state courts over decades, jirgas were arguably a much-needed void, offering justice of a very large scale⁶⁶.

Negative: The use of informal mechanisms, however, brings imbalance in the delivery of justice. Jiras can be controlled by influential or powerful people, and women and minorities are excluded⁶⁷. State courts offering legal protection are still mostly not accessible to the poor. The critics declare that a two-tier system will arise where those who have access to resources ultimately gain formal justice whereas the rural poor are left in a cycle of feudal-tribal adjudicatory. Legal pluralism is therefore an alternative but it also brings about disparity in enforcement and rights protection as well⁶⁸.

Security and Rule of Law:

The hybrid order is very strong in terms of its influence on security. On the one hand, jirgas serve to resolve tensions which otherwise would escalate to violence; they tend to mediate disputes between clans and impose fines thus avoiding the development of a feud⁶⁹. Conversely, the inefficiency of the state apparatus presents a situation whereby the criminals feel that they can circumvent the formal legal system by resolving conflicts within the tribal system. Militants have at times taken advantage of such loopholes by providing justice services, including Taliban courts, when the state institutions do not exist⁷⁰. The existence of parallel systems implies that the hegemony of the state to legitimate use of force is not full. The reinforcement of legitimate and unbiased law-enforcement is a key to the permanent safety, yet the primary goal is to build the trust towards state institutions⁷¹.

⁶⁵ USDOS – US Department of State (Author): “2023 Country Report on Human Rights Practices: Pakistan”, Document #2107764 - ecoinet <https://www.ecoi.net/en/document/2107764.html>

⁶⁶ usip.org https://www.usip.org/sites/default/files/2021-04/sr_492-extending_constitutional_rights_to_pakistans_tribal_areas.pdf

⁶⁷ Pakistan’s jirgas: buying peace at the expense of women’s rights? | openDemocracy <https://www.opendemocracy.net/en/5050/pakistan-jirgas-womens-rights/>

⁶⁸ undp.org <https://www.undp.org/sites/g/files/zskgke326/files/2024-07/brief.pdf>

⁶⁹ Post-Merger Inaction in FATA: Expectations vs. Reality – South Asian Voices <https://southasianvoices.org/post-merger-inaction-in-fata-expectations-vs-reality/>

⁷⁰ Pakistan's parallel justice system proves Taliban are 'out-governing' the state | Pakistan | The Guardian <https://www.theguardian.com/world/2014/jun/16/pakistan-parallel-justice-system-waziristan-taliban-outgoverning-state>

⁷¹ ibid



Socio Economic Development:

Uncertainty in the law has a harmful effect on development. Land disputes that are not resolved and therefore have not been registered under titled land can halt agricultural and infrastructural investments. Entrepreneurs are hesitant when the property rights are not clear, or they seem to be at the mercies of the elders. Investors and donors are wary of regions where the rule of law cannot be entirely enforced⁷². Even the persistence of informal law brings up human-right issues, like gender discrimination, which can work against the social development agenda. Making the legal orders to be harmonised like by introducing plausible aspects of customary dispute resolution in the formal system may also increase legal predictability and economic action⁷³.

Merger Institutional Reforms and Governance.

The 25th Amendment was a landmark in law; however, most governance reforms have moved at a very slow rate.

State-Level Reforms

Judicial Infrastructure: One of the main gaps has been that of court capacity with only few trial courts having been set up to cover the merged areas and most of the judges being posted in Peshawar⁷⁴. Access to justice District bar associations register dismal magistrate, judge and auxiliary staff shortages and many Sessions Court judge positions are being skipped on security grounds thus continuing to add to case volumes and postponing access to justice. Though the Supreme Court has stipulated that no executive official is supposed to exercise a judicial role, the civil administrators still carry out a quasi-judicial role before formal courts emerge into operation⁷⁵.

Police Reforms: The metamorphosis of law enforcement has not been even. In 2017, the KP Police Act of 2017 was applied to the merged districts, aiming at transforming tribal levies into a traditional police force; but, former levies and khassadar staff have not been fully trained⁷⁶. According to one governmental report, such districts have very few police officers per 100,000 residents, significantly worse than national averages and community mistrust of the police is still high since the officers are often viewed by locals to be strangers who do not know anything about local conditions. As a result tribal councils still form lashkars, or tribal militias, to take security issues and may act in cooperation or a replacement to official forces⁷⁷.

Administrative Coordination: There are also blurred lines between federal and provincial roles that complicate the process of governance. An example is that budgets allotted to merged

⁷² Is Pakistan's Second Chance in the Tribal Areas Slipping Away? – The Diplomat

<https://thediplomat.com/2025/08/is-pakistans-second-chance-in-the-tribal-areas-slipping-away/>

⁷³ *ibid*

⁷⁴ usip.org https://www.usip.org/sites/default/files/2021-04/sr_492-extending_constitutional_rights_to_pakistans_tribal_areas.pdf

⁷⁵ *ibid*

⁷⁶ Policing the Tribal Areas of Pakistan: The Influence of Tribal Traditions and the Need for Police Reforms - Global ECCO - Naval Postgraduate School

⁷⁷ Khasadar, Levies personnel to get policing powers in tribal districts - Pakistan - DAWN.COM <https://www.dawn.com/news/1468845>



districts are slow to be disbursed and the much-anticipated merger finance to be used locally is still pending due to the vagaries of the bureaucracy⁷⁸. At the federal level the newly developed Interim Governance Regulation first tried to maintain a bureaucratic parallel administration thus going against the constitution. The 2021 report by KP Home Department openly indicates that by 2022, the vacancies on judges, police chiefs, and civil administrators are still unfulfilled. Lack of coordination between federal SAFRON ministry and the provincial departments is said to extend delays in the delivery of basic services⁷⁹.

Community-Level Reforms

Reforming the Jirga System: These are those who would reform the Jirga System, instead of trying to completely eliminate jirgas, it would better be to revise the operations of the jirgas⁸⁰. There is training of the local leaders on constitutional rights and gender equity by the human rights non-governmental organisations and legal aid groups. The KP Alternative Dispute Resolution (ADR) Act of 2020 aims at converting jirgas into village-based mediation institutions with an exception on serious criminal cases⁸¹. Pilot projects have put all-women jirgas or women representatives into settlement discussions- a divisive innovation that promises to preempt women viewpoints. Although the jirgas are not recognised institutions of law, there is a tendency to make their operations more consistent with the human rights standards, including having the accused present and heard-practices common under the previous Frontier Crimes Regulations. Other elders have also decided on their own not to insist on swara or support polygamous marriage by giving their verdicts, as a result of new knowledge that such practices can attract criminal charges⁸².

Involving Religious Leaders: Clerics have huge power in the tribal societies. Innovative campaigns include putting ulema councils in the discussion of reform. Programmes funded by the ministry of religious Affairs involve the use of respected madrassa leaders to preach the need to respect constitutional rights with the underlining that Islam requires women to be educated and to consent to any marriage⁸³. In some of the districts, imams have been invited to the district courts so that they may witness proceedings thereafter explaining the ruling to the villagers in religious language. On the other hand, other clerical organizations have passed fatwas denouncing the violent practices, e.g. affirming that Islam does not allow killing in the name of honour, thus making religious law consistent with the new law⁸⁴.

Legal Awareness and Education: There is a chronic problem of low legal literacy. Most of the residents, especially women, are not aware of their rights under the new system. The

⁷⁸ Post-merger challenges | Political Economy | thenews.com.pk

<https://www.thenews.com.pk/tns/detail/566345-post-merger-challenges>

⁷⁹ ibid

⁸⁰ Jirga system in merged districts has no legal status, NA panel told - Pakistan - DAWN.COM

<https://www.dawn.com/news/1927458>

⁸¹ Government of Khyber Pakhtunkhwa, *KP Alternative Dispute Resolution Act, 2020*.

⁸² David Gibbs, "Tribal Justice in FATA," *Amnesty International* (2015)

⁸³ Pakistani clerics declare 'honour killing' against Islam | Reuters

<https://www.reuters.com/article/world/pakistani-clerics-declare-honour-killing-against-islam-idUSKCN0Y2100/>

⁸⁴ ibid



campaigns organized by the state and non-governmental institutions have already stipulated mobile courts and legal aid clinics in the integrated districts, where free counsel is provided⁸⁵. Pashto radio programmes contain simple rights messages, e.g. Did you know that harassment in the marketplace is unlawful? Local schools and community centres are also used to provide workshops on how to file first information report (FIR) or access court services. Early results are positive: in a 2022 survey, there was a slight rise in the number of calls to legal aid helplines in merged regions, indicating the increase in awareness⁸⁶.

Conclusion

The phenomenon of legal pluralism in post-merger Ex-FATA does not belong to history but is a dynamic phenomenon. Constitutional basis has now been established in the statutory law but a major part of the population still follows customary and religious norms in their day-to-day lives. Coexistence of such legal orders provides both practical advantages, like the availability of justice and social peace, and real issues, such as the violation of rights and the law being vague. Development should be aware of the ingrained nature of the traditional norms and religious values despite the assertions of the state as supreme.

⁸⁵ undp.org <https://www.undp.org/sites/g/files/zskgke326/files/2024-07/brief.pdf>

⁸⁶ *ibid*