

# THE MERGER OF FATA INTO KHYBER PAKHTUNKHWA: CONSTITUTIONAL, SOCIO-ECONOMIC, AND GOVERNANCE CHALLENGES

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## ABSTRACT

*In May 2018, the Federally Administered Tribal Areas (FATA) were merged into Khyber Pakhtunkhwa (KP), leading to the repeal of Article 247 and the abrogation of the colonial era Frontier Crimes Regulation (FCR, 1901). Under the FCR system, basic legal and political rights had long been systematically denied to the people of FATA. The reforms introduced provincial-style elections and the establishment of village councils, thereby institutionalizing structures of local governance. Following these constitutional and administrative changes, substantial investments have been made in infrastructure projects and social programs aimed at addressing decades of severe socio-economic underdevelopment. Nevertheless, challenges remain, including weak institutions, reliance on informal (jirga) justice mechanisms, persistent gender inequalities, and limited resources. This discussion examines these transformations and highlights the need for further reforms to ensure fair, inclusive, and sustainable integration of FATA into the broader provincial framework.*

## INTRODUCTION

Before the 2018 merger, the Federally Administered Tribal Areas (FATA) were not governed by Pakistan's civil or criminal statutes but instead by the colonial-era Frontier Crimes Regulation (FCR) of 1901. The FCR functioned as an executive statute, granting the Political Agent (PA) authority to administer justice outside the framework of courts and due process. It institutionalized the principle of collective punishment, whereby an entire tribe could be fined or imprisoned for the offense of a single member. The regulation further denied the right of appeal, and defendants were barred from access to legal counsel or any higher court of review ("Fata's constitutional status," 2016). Fundamental rights enshrined in Articles 8–28 of the Constitution—such as equal protection, due process, and the right of appeal—had no

practical effect in FATA. Article 247 placed FATA under the exclusive executive authority of the President, while excluding it from the jurisdiction of the Supreme Court and High Courts. As a result, tribesmen were recognized as citizens in form but remained effectively without judicial protection, leaving them practically homeless in terms of legal jurisdiction (ConstitutionNet, 2017).

### The FCR Regime of governance

This legal exclusion was reinforced by the governance structure of FATA. Unlike other provinces, FATA had neither an elected provincial government nor a local government or provincial assembly until 2018. Instead, the region was administered by the President through the Governor of Khyber Pakhtunkhwa,

who exercised special powers in FATA. In practice, however, real authority rested with the Political Agents, appointed by Islamabad to head each agency. These Political Agents functioned simultaneously as police, judiciary, and bureaucracy: they convened jirgas, issued executive orders, and oversaw the day-to-day administration of the region (ConstitutionNet, 2017). Intermediaries within this system were the Maliks and tribal elders, who were co-opted into the administrative framework. The Maliks, as government-aligned figures, served as intermediaries between the Political Agent (PA) and the local population, often presiding over jirgas that adjudicated community disputes. In essence, both the jirga system and *Pashtunwali*—the tribal code of honor—remained the primary mechanisms for conflict resolution, albeit under the supervision and authority of the PA.

### **Socio-Economic Conditions**

Previously, FATA was among the least developed and poorest regions of Pakistan. Its socio-economic deficits were severe, resulting from decades of underinvestment, conflict, and neglect. Literacy rates were particularly alarming: in 2013, overall literacy stood at approximately 24%, meaning only about one-fourth of the population could read and write. Male literacy was around 36%, while female literacy was just 10.5%, reflecting stark gender disparities in access to education ("The dismal state of education in Fata," 2016). The rate of school dropouts was extremely high, and most villages lacked functional schools and qualified teachers. Health and infrastructure indicators were similarly dismal: vaccination coverage, skilled birth attendance, and road accessibility remained far below national averages.

With no income tax base in FATA, the Federal Board of Revenue generated little revenue from the region, resulting in minimal development expenditure. Endemic unemployment and poverty persisted as structural challenges. A 2025 study notes that the five merged districts continue to exhibit some of the weakest economic indicators and highest unemployment rates in the country ("Merged areas: livelihood dilemma," 2024). Conventionally, most households in FATA relied on subsistence farming, animal husbandry, remittances, or cross-border smuggling through the porous Afghan frontier. These livelihoods, however,

were gradually undermined by the war on terror and the construction of border fencing after 2001, leaving many families with few legitimate sources of income ("Merged areas: livelihood dilemma," 2024).

### **Recent Developments**

#### **Reform Initiatives and the Sartaj Aziz Committee.**

Having long grappled with the challenges of FATA, successive Pakistani governments had deliberated on reform, but real momentum emerged in the mid-2010s. In late 2015, Prime Minister Nawaz Sharif established a high-level "FATA Reforms Committee," chaired by Dr. Sartaj Aziz (ConstitutionNet, 2017). In 2017, the committee's report outlined in detail the plan to merge FATA with Khyber Pakhtunkhwa and abolish the Frontier Crimes Regulation (FCR) through new legislation that recognized fundamental rights. It envisioned parliamentary representation, the extension of judicial authority to the region, and the abolition of collective punishment under the FCR. Alongside these recommendations, civil society groups and several political parties had long been advocating for the mainstreaming of FATA into Pakistan's constitutional framework.

Building on these recommendations, the federal government drafted constitutional amendments. In 2017-18, it introduced the Tribal Areas Riway Act (2017), intended to complement existing laws by formally recognizing local customs. However, the bill was widely criticized for entrenching parallel systems of justice, and the government ultimately withdrew it. In its place, political consensus grew around the idea of a complete merger. Consequently, in May 2018, Parliament repealed Article 247 and formally integrated the seven tribal agencies into Khyber Pakhtunkhwa (KP) (ConstitutionNet, 2019). At the same time, the Frontier Crimes Regulation was abolished. These measures followed the Interim Constitution (Extension to Federally Administered Tribal Areas) Act of 2018, which had already initiated the transition process in April 2018. The process was ultimately completed through the 25th Constitutional Amendment.

#### **2.2. Constitutional Amendments**

With several far-reaching changes, the 25th Constitutional Amendment, adopted on May 31, 2018, left a lasting impact.

**Special Status of FATA:** Article 247, which had exempted FATA from the application of provincial laws and the jurisdiction of the courts, was revoked (Wikipedia contributors, 2025). The previously established tribal districts were reconstituted as Khyber Pakhtunkhwa's "Merged Districts," bringing them under the Pakistani Constitution and provincial jurisdiction. Under this legal framework, the inhabitants of these districts were recognized as equal Pakistani citizens, entitled to the same fundamental rights as others. Rights such as due process, equality before the law, and freedoms of speech and religion—enshrined in Articles 8–28 of the Constitution—became applicable and enforceable through the courts.

**Jurisdiction of the Judicial Courts:** The Peshawar High Court and the Supreme Court of Pakistan assumed jurisdiction over the Merged Districts (ConstitutionNet, 2019). As a result, tribal citizens are now able to seek judicial review and appeal in Pakistani courts, meaning FATA is no longer a legal black hole. By contrast, under the FCR era, the jurisdiction of the High Courts and the Supreme Court did not extend to tribal cases, except in limited circumstances under special law.

**Reform of Administration:** The Frontier Crimes Regulation (FCR) was formally abolished, and in its place the Interim Governance Regulation of 2018 was promulgated by the President. This regulation re-designated the posts of Political Agents as Deputy Commissioners and directed district administrations to temporarily assume judicial functions. Divisional Commissioners were appointed in place of the former Chief Commissioners of the tribal areas. In practice, this created a transitional period during which pending cases under the FCR were adjudicated by civil administrators, while the applicable legal framework shifted to ordinary law, including the Pakistan Penal Code and the Civil and Criminal Procedure Codes (Wikipedia contributors, 2018).

The Interim Regulation was never intended as a long-term measure. Sooner than expected, critics argued that it conflicted with constitutional provisions on the separation of powers by

allowing Deputy Commissioners and other bureaucrats to act as judges. In November 2018, the Peshawar High Court—later upheld by the Supreme Court—ruled that no executive authority could serve as a tribunal judge in the merged districts. This decision compelled the administration to devise alternative mechanisms for handling legacy cases until the appropriate judicial institutions were established.

### 2.3. Local Governance and political integration.

Through the constitutional merger, the former residents of FATA became politically empowered. In the 2018 general elections, the tribal districts elected members to the National Assembly as they traditionally had, filling the 12 seats allocated to FATA. More significantly, for the first time, citizens of the tribal districts also voted in the Khyber Pakhtunkhwa Provincial Assembly. The 25th Constitutional Amendment expanded the KP Assembly by 23 seats to ensure representation from the merged districts—approximately 16 general seats along with reserved seats for women and minorities. In July 2019, provincial elections were held in the merged districts, marking their formal inclusion in provincial politics. Furthermore, under the KP Local Government Act, local council elections were organized in 2019–20, establishing more than 700 elected village and tehsil councils across the former FATA (United Nations Development Programme [UNDP], n.d.). These advances incorporated tribal citizens in the electoral politics and governance as first time.

### 2.4. Implementation Structure and Development Plans.

The merger required complex coordination between Islamabad and Khyber Pakhtunkhwa. The federal government established special committees within the Ministry of SAFRON to oversee the transition, while the provincial government initiated reforms. The newly enacted FATA (Rewaj) Act was abandoned in late 2018, and provincial laws were gradually extended in their entirety to the merged districts. The KP Police Act was expanded to cover the region, with deliberations underway to integrate the levies and *khassadar* tribal forces into the regular police. New district and sessions courts

were planned, while a special FATA Tribunal—serving as a legacy appeals body under the FCR—was temporarily established to clear pending cases (ConstitutionNet, 2019).

Top-level planning was also undertaken. In 2018, the federal government launched the *Tribal Decade Strategy*, a 10-year development plan pledging over Rs. 1 trillion in investments for infrastructure, social services, and economic projects in the newly merged districts. This was complemented by a shorter three-year *Azm-e-Nau* plan, designed to address immediate priorities in a de-accelerated framework. The KP Planning Department, with support from the United Nations Development Programme (UNDP), developed mechanisms to implement reforms in development, justice, and governance. According to UNDP, the merger extended constitutional rights to approximately 5 million individuals, established new local government institutions (702 village and tehsil councils), initiated land-titling programs, and introduced formal rule-of-law institutions in the region (UNDP, n.d.).

Simultaneously, international partners also took action. To enhance access to justice for women and marginalized communities in the merged districts, the European Union financed the *Deliver Justice* project (2019–2024). NGOs and think tanks began monitoring implementation, advising on legal reforms—such as the protection of women’s rights—and training local officials. By 2020, legal and socio-economic integration largely remained a paper-based framework, backed by strong political commitment and planning (United Nations Pakistan, 2024). Yet, the central challenge lay in translating these ambitious plans into tangible realities on the ground—a process that continues to evolve.

### **Outcomes: Constitutional, Economic, and Socio-Economic**

#### **Constitutional and Legal Conclusions**

The merger unambiguously transformed the legal status of FATA. Tribal citizens are now guaranteed the full spectrum of constitutional rights. The restrictive principles that once curtailed habeas corpus, equality before law, freedom of movement, and freedom of association have been abolished. As a result, any resident of the merged districts may petition the

Peshawar High Court or the Supreme Court of Pakistan in defense of their rights.

Equally significant, the extraordinary jurisdictional framework of the Frontier Crimes Regulation (FCR) was dismantled. Collective punishments and executive arrests under the FCR were criminalized, while standard criminal law—including statutes addressing honor killings, terrorism, and narcotics—became uniformly enforceable across the merged districts. This marked a decisive shift from exceptional governance to constitutional normalcy, embedding the rule of law within the region (Wikipedia contributors, 2018).

The merger has institutionally created the foundations of a parallel judicial system on paper. Ordinary sessions and civil courts have been established in the merged districts, and training programs for judicial and prosecutorial personnel are underway. Between 2019 and 2021, several new courts were opened, though coverage remains incomplete. The number of legal officers in these districts continues to grow steadily. Most importantly, government agencies such as the Human Rights Commission of Pakistan (HRCP) have extended their mandate to the merged territories. For example, in 2023 the HRCP released a report entitled *The Merger and its Discontents*, assessing human rights conditions in the former FATA under the new regime—an exercise that would have been impossible prior to the merger.

#### **Economic and Infrastructure Performance**

The merger was accompanied by a significant increase in planned development expenditure. Between 2019 and 2025, government reports and press coverage highlighted a series of projects designed to revitalize economic life in the merged districts.

#### **Transport Corridors:**

The 47.5-kilometer *Khyber Pass Economic Corridor* (KPEC), linking Peshawar to Torkham on the Afghan border, was approved through a \$385 million World Bank loan. Construction began in 2023 and is expected to be completed by 2025. The expressway will include bridges and interchanges across the Khyber District, aimed at accelerating trade and generating approximately 100,000 new jobs (Associated Press of Pakistan [APP], 2023).

**Other highway projects:** Additional initiatives include the Sarai Gambila–Karak and Karak–Kohat roads, which connect the southern tribal districts to the national highway network; the Chitral–Dir roads; and expanded carriageways along the Torkham route. By mid-2023, most of these projects had reached over 80 percent completion.

The *Mohmand Dam*—with an estimated cost of approximately Rs. 309.6 billion on the Swabi River—is currently under construction in Mohmand District. Once completed, the dam is expected to irrigate 178,000 acres of land (including 18,000 newly cultivated acres), safeguard the Peshawar basin against floods, and generate 800 MW of hydroelectric power. By mid-2023, roughly 20 percent of the work had been completed, with full completion projected for 2026. According to WAPDA officials, the dam will supply 300 million gallons of drinking water to Peshawar daily and contribute 2.86 billion kilowatt-hours annually to the national grid.

In addition to the Mohmand Dam, smaller dams in Kurram and South Waziristan, along with accelerated agricultural water schemes, have been initiated to strengthen irrigation capacity and improve water management across the merged districts (United Nations Pakistan, 2024).

A number of major educational and health initiatives have been launched to serve the merged tribal districts. For instance, construction is underway on an *Institute of Petroleum Technology* in Karak (adjacent to the merged areas) and a *Children's Hospital* in Peshawar, both intended to benefit students and patients from the tribal districts. Vocational training programs and projects under the so-called *Danish School* model have also been announced.

At the federal level, the Pakistan Skills Development Programme (PSDP) allocated more than Rs. 9.8 billion for tribal education programs in the 2022–23 fiscal year. Overall, nearly two-thirds of the total development expenditure in the merged districts—approximately Rs. 25 billion—was directed toward education. In addition, welfare schemes have been introduced, including the *Interest-Free Prime Minister Loan* program, which provides

financial support to individuals seeking to establish their own businesses (UNDP, n.d.).

The infrastructural and public works projects initiated under the merger are expected to stimulate local employment and business opportunities. For example, the *Khyber Pass Economic Corridor (KPEC)* is anticipated to rejuvenate cross-border trade with Afghanistan, particularly benefiting industries such as marble processing and freight transport. In the short term, jobs have been created through road construction, dam works, and the expansion of government offices.

However, long-term investment has been slower to materialize. Analysts and officials attribute this hesitation partly to persistent security concerns and uncertainty in the region, which continue to challenge the sustainability of economic growth (APP, 2023).

### **Socio Economic and Governance Results**

The merger has begun to reformulate both society and governance. Pakistani law and politics are now engaging directly with tribal communities in ways previously unimaginable. Even the process of integration itself has fostered among citizens a nominal sense of belonging to the broader constitutional order.

In 2019, voters from Khyber, Bajaur, Kurram, Orakzai, North Waziristan, and South Waziristan exercised the provincial franchise for the first time. This not only altered the composition of the Provincial Assembly in Peshawar but also resulted in the election of dozens of local council members, including a small number of women, at the village level.

According to the UNDP, the establishment of 702 elected local governments in the merged districts has fundamentally shifted the relationship between citizens and the state, marking the beginning of a paradigm shift. For the first time, tribal inhabitants were able to submit grievances to elected *nazims* (mayors) or councillors—an avenue of accountability that did not exist under the previous system of appointed political agents (UNDP, n.d.).

### **Land Administration Reforms**

Significant progress has also been made in land administration. For the first time since British rule, governments have undertaken massive cadastral surveys and land settlements in the

tribal districts. According to the United Nations Development Programme (UNDP), this facilitated the first formal land settlement process in the merged areas in 76 years. The initiative has begun codifying land titles and records, a step that promises to resolve ownership disputes that have persisted for decades.

This development can rightly be described as historic, even though the process remains slow. Traditionally, land in the tribal areas was allocated informally by tribal elders without being recorded by the state. The current effort marks a decisive departure from that practice, embedding formal documentation and legal recognition into the system of property rights (UNDP).

Social services in the merged districts are gradually improving, though still at a modest level. Numerous schools and clinics that had been destroyed or abandoned during the years of militancy are being reconstructed, in part with assistance from the Army and international donors. The number of female health workers and teachers has increased, signaling a shift toward greater inclusivity in service provision.

Although disparities in education and health indicators remain significant, these gaps are expected to narrow over time. For reference, the Human Development Index (HDI) of the former FATA has been estimated at approximately 0.44–0.45, considerably lower than the national average. The ongoing expansion of social services represents an important step toward reducing this disparity and integrating the region into the broader developmental framework of Pakistan (Global Data Lab, n.d.). Lady Health Worker mobilization, basic vaccination campaigns, and non-formal education initiatives (such as madrasa literacy programs) have expanded across the merged districts. At the same time, physical and digital connectivity is steadily improving, with increased access to electricity, mobile phone coverage, and rural road networks.

By February 2025, reports indicated that police posts and local government offices had been established in nearly every former agency headquarters, while dozens of new schools were under construction. These developments reflect a gradual but tangible transformation of service

delivery and governance, embedding state institutions more firmly into the daily lives of citizens in the merged areas (APP, 2023)

The position of women in the merged districts is changing gradually. The merger removed several formal barriers: women can now vote and contest seats in the KP Assembly and local councils. In fact, during the 2019 elections, some women from the merged areas contested and were elected on reserved seats. Legally, women are now able to enforce their rights to inheritance and seek protection against violence through the courts, as the *Protection of Women Act* and other gender-related laws have been extended to the region.

Nevertheless, strong cultural traditions continue to restrict the public roles of women. Even so, the slightest increase in women's involvement in politics or education represents a significant shift compared to the past. Encouragingly, there have been instances of village-level women's committees formed with the support of NGOs, signaling the early stages of grassroots participation and empowerment (DAWN.COM, 2021).

#### **Minerals and the Merger: Recent Statutes and issues.**

The territories of ex-FATA are endowed with vast deposits of coal, gold, marble, gemstones, and rare earth minerals. These resources have long been regarded as strategically significant, particularly in a region historically marginalized in terms of development (Malkani et al., 2017). In the post-merger era, however, the legal status and governance of these deposits has become a flashpoint, raising questions of ownership, regulation, and benefit-sharing. Several legislative actions and policy debates illustrate the complexity of this issue:

In September 2019, the Khyber Pakhtunkhwa Assembly passed the *KP Minerals Sector Governance (Amendment) Act, 2019*. Under this statute, all mines, minerals, and other natural deposits within the former FATA were declared property of the government. The law abolished proprietorship by customary clan owners or any other private proprietors, thereby ending the traditional system of collective tribal ownership (Platz, 1994).

The government justified the measure as necessary to end confusion and tribal disputes

over mining rights, and to facilitate systematic exploration and regulation. However, the bill was strongly opposed by the Pakistan People's Party (through Senator Quratulain Marri), which argued that it violated constitutional rights (DAWN.COM, 2019). Critics—including the Qaumi Watan Party and local tribal leaders—condemned the legislation as unjust, framing it as an attempt to seize tribal resources against the will of the communities. They claimed it infringed upon the merger agreement and undermined the historic rights of tribes to their land and mineral wealth.

Proponents countered that state ownership would ensure revenues, such as royalties, were directed toward local development rather than concentrated in clan fortunes. The debate thus highlighted the tension between modern resource governance and traditional tribal entitlements, making mineral rights one of the most contested aspects of the post-merger legal landscape.

More recently, the Khyber Pakhtunkhwa government prepared a new omnibus *Mines and Minerals Bill, 2025*. This legislation quickly became controversial, as it was perceived to blur the constitutional division of powers by allegedly involving the federal Mining Wing—an entity of the Ministry of Energy—in what is constitutionally a provincial subject. Specifically, the bill authorized the federal mineral wing to advise on licensing and recommend policies, powers that provincial law had not previously conferred (DAWN.COM, 2024).

Opposition politicians raised strong objections, arguing that the bill undermined provincial autonomy guaranteed under the 18th Amendment. Critics also condemned a provision requiring large-scale mining investors to establish joint ventures with government-owned companies. While supporters defended this clause as a mechanism to ensure local participation and state oversight, opponents warned that it would discourage private investment and risk monopolizing mining ventures under political elites (DAWN.COM, 2024).

Equally contentious was the creation of a new *Mineral Investment Facilitation Authority*, whose membership was expanded to 14. The sweeping powers granted to this body were criticized as centralizing decision-making in a single

institution, thereby reducing transparency and accountability. The debate surrounding the bill thus underscored the persistent tension between resource governance, provincial autonomy, and the competing imperatives of investment and local control in the post-merger era.

### **Socio-Political Tensions over Mineral Development**

These political wrangles underscore deeper socio-political tensions in the post-merger era. On one side, the federal and Khyber Pakhtunkhwa (KP) governments view mineral development as central to both the economic progress of the tribal districts and the broader national interest, often citing speculative reserves of rare earths in North Waziristan. On the other side, tribal groups express concern over the potential loss of ownership of ancestral resources, framing mineral governance as a question of identity and historic rights.

In July 2025, an editorial alleged that there were intentions to re-establish federal control over the former FATA under a “colonial-style” administration to direct the region’s immense mineral wealth (DAWN.COM, 2025). KP leaders categorically rejected these claims, vetoing any proposals that would cede authority, and reaffirming that mining remains a provincial subject under the constitutional framework.

Meanwhile, the rare earth reserves in the newly unified districts have reportedly attracted international interest, particularly from China and the United States. This external dimension adds further complexity, intertwining local ownership disputes with provincial autonomy debates and global strategic competition over critical minerals.

Practically, the disagreements about the rights over the mineral resources are still open. No significant mining activities have been initiated so far in the former FATA mainly because of legal confusion and security issues. The auctioning and exploration of mineral assets have been stalled because of the confusion that exists between regulatory bodies due to competing claims by their respective federal, provincial and tribal stakeholders ((DAWN.COM, 2024). Other local protesters state that the current debate on the issue of mining is merely an extension of a bigger

problem: will the prosperity of the merged regions be translated into the people or will it be taken by foreign investors without any proper protection.

Despite the legal and administrative reforms, significant problems continue to linger in the merged districts. At the ground level, implementation remains incomplete, and the legacy of the hybrid legal order still exerts strong influence. Key problems include:

### **Weak State Institutions**

The formal justice system in the merged districts remains skeletal. As late as 2025, numerous tribal *tehsils* still lack courtrooms or judges, and legal professionals are often unwilling to relocate due to persistent security concerns and logistical challenges. In some remote valleys, residents must travel more than 100 kilometers to access a Sessions Court—an arduous journey that underscores the enduring shortcomings of the colonial system.

Law enforcement presence is similarly limited. Reports indicate that only a few dozen police officers serve per 100,000 residents, a figure far below the national average. Moreover, the integration of tribal levies into the KP Police has been slow and incomplete. Many former levy personnel remain unpaid or untrained, leaving gaps in security provision and undermining public trust in the state's capacity to enforce law and order (APP, 2023).

### **Deficit of Trust**

Decades of exclusion have fostered deep distrust of formal institutions among tribal communities. Courts are widely perceived as slow, corrupt, or biased, while local *jirgas* remain preferred for their expediency, community-based nature, and lack of cost. According to an NGO report released in 2024, even after the merger, the majority of domestic and land disputes continue to be resolved through traditional *jirga* or mosque arbitration rather than formal courts, which are seen as lengthy and expensive.

This inconsistency in expectations means that state-funded courts often remain underutilized, while local elders continue to adjudicate disputes. Law enforcement faces similar challenges: police officers, often recruited from outside the province, are sometimes mistrusted or viewed as insensitive to Pashtun traditions.

Weak integration and maladministration have, in some regions, revived demands for stronger civilian oversight or community-based policing models.

### **Gender and Minority Rights Gaps**

The issue of women's rights remains one of the most pressing and conflict-generating challenges in the merged districts. Historically, the traditional system was deeply unfriendly to women: *jirgas* were exclusively male, women rarely possessed land, and customary practices such as *swara* (child marriage) and *watta satta* (exchange marriage) were prevalent. Although such forms of discrimination are outlawed under the new constitutional regime, enforcement at the local level remains weak.

Courts and officials have begun to enforce women's inheritance and other rights, but these efforts often encounter strong family and tribal pressure. For example, when a court grants a woman her Qur'anic share of inheritance, male relatives may convene a *jirga* to annul the judgment under the pretext of preserving Pashtun honor.

Access to formal justice is further undermined by cultural barriers. Female litigants often require a male guardian to bring a case to court, and many local women express mistrust toward male judges. These obstacles highlight the gap between constitutional guarantees and lived realities, underscoring the slow and contested process of embedding gender equality in the merged districts.

### **Criminal Justice and Security**

The reform process has unfolded in a context marked by resurgent militancy. Critics warn that ex-insurgents have exploited loopholes in the law, with militant groups in some areas offering their own form of "justice" to villagers as a means of securing support—reminiscent of Taliban-style *jirgas* reported in parts of Kurram. Violent offenses such as honor killings remain prevalent and are often resolved through tribal agreements rather than formal prosecution. Efforts to hold terrorists and violent offenders accountable have been hampered by weak policing and fragile enforcement mechanisms. For example, in a recent honor-killing case in Khyber District, a *jirga* imposed a blood-fine and

reconciliation despite a murder FIR having been registered (DAWN.COM, 2021)

Before the trial, witnesses recanted under pressure, leading to the accused being set free.

This episode illustrates how law enforcement enables parallel punitive processes to bypass the statutory criminal justice system, undermining both the rule of law and public confidence in state institutions.

### **Bottlenecks in Administration and Fiscal Management**

Administrative and fiscal bottlenecks have significantly slowed the reform process in the merged districts. Coordination between Islamabad and Peshawar has often been fraught, with the Ministry of SAFRON at the federal level and the KP Home Department frequently at odds over budgetary allocations. As a result, the region has remained chronically under-funded.

The much-anticipated merger finance package—originally envisioned at Rs. 100 billion per year—has repeatedly been postponed or scaled down, undermining confidence in the government's commitment to sustained investment. By 2022, KP officials estimated that numerous key positions in the merged districts, including judges, police chiefs, and deputy commissioners, remained vacant.

Confusion has also arisen from overlapping administrative frameworks. The coexistence of the Interim Regulation bureaucracy with KP's provincial integration mechanisms has produced contradictory edicts at the ground level, leaving local officials uncertain about which authority to follow. This duality has weakened institutional coherence and slowed the pace of reform, highlighting the need for streamlined governance and consistent fiscal support (APP, 2023).

### **Introduction of Non-State Courts**

Perhaps the most difficult challenge in the merged districts is the coexistence of formal courts and state agencies with informal Islamic and tribal adjudication systems. Family disputes are often the first matters addressed by villagers, who typically turn to local *Sharia councils* (mosque-based arbitration). Tribal clerics (*mullahs*) frequently mediate divorces or inheritance claims, interpreting Islamic

principles to provide resolutions. Although these religious institutions lack official enforcement powers, they wield significant moral authority within communities.

This duality creates tension between statutory law and customary practice. For instance, the Federal Shariat Court has ruled that *swara* (child marriage as dispute settlement) is un-Islamic, yet many elders continue to regard it as a respected tradition. Similarly, despite the Pakistan Penal Code's prohibition of *qisas* (vendetta), many villages still condone acts of revenge in practice (DAWN.COM, 2021).

As long as these informal systems remain strong, the state's monopoly over law and justice is incomplete. The persistence of parallel courts underscores the difficulty of embedding constitutional protections and modern legal norms in a society where customary and religious authority continues to dominate everyday dispute resolution.

### **Recommendations and Reform Strategies**

The successful integration of the former FATA districts requires multi-faceted reform. The overarching aim should be to coordinate legal frameworks, empower state institutions, and maintain cultural legitimacy. Key recommendations include:

Strengthening the formal justice institutions in the merged districts requires substantial investment and sustained commitment to close existing loopholes in courts, prosecution, and corrections. This process must begin with the recruitment and posting of additional judges and magistrates to tribal districts, supported by special allowances to overcome the reluctance of legal professionals to serve in these areas. Each district and major sub-division should be equipped with court complexes and police stations, while mobile courts and tribunals can be deployed in remote regions to ensure that justice is accessible at the local level. Language barriers must also be addressed, with judges and prosecutors conversant in Pashto or assisted by trained interpreters to build trust and improve communication. Judicial independence must be safeguarded by fully implementing the Supreme Court's directive that executive officers cannot serve as judges, thereby removing civil administration from judicial functions. At the same time, government-funded legal aid clinics

and helplines should be established to provide citizens with guidance on their rights and court procedures. International partners such as UNDP and UNODC have supported similar initiatives in Balochistan and KP, and a dedicated Legal Aid Cell in the tribal areas would be an essential step toward empowering communities and embedding constitutional protections in everyday life.

### **Fundamental Rights and Vulnerable Groups Protection**

The protection of fundamental rights and vulnerable groups in the merged districts requires the state to rigorously apply constitutional provisions already in place. Honour killings and forced marriages must be prosecuted under the Pakistan Penal Code (PPC), despite customary pressures that often seek to override statutory law. To prevent derailment of justice, fast-track courts or specially designated magistrates should be assigned to cases involving *swara*, gender-based violence, and abduction. The judiciary must uphold the rulings of the Federal Shariat Court, which has classified practices such as *swara* and *vani* as illegal, and reinforce these determinations through religiously grounded justifications. Mass education campaigns are essential to strengthen awareness, while legal literacy programs targeting women and minorities can help bridge the gap between constitutional rights and local practice. NGOs and local authorities should support workshops conducted in Pashto during community gatherings, ensuring accessibility and cultural resonance. Given the extremely low female literacy rate—around 10 percent—outreach must rely on radio, poetry, and trained female teachers to disseminate information about inheritance rights and marriage protections. Recent initiatives by human-rights organizations, including the HRCP, to engage elders and imams in workshops have been particularly significant, as they emphasize that Islam itself promotes the rights of women, thereby challenging the persistence of unequal customary practices and reinforcing the legitimacy of constitutional protections.

### **Explaining Federal–Provincial Roles and Allocations**

The financial dimension of the merger remains one of the most critical challenges to successful integration. Islamabad must promptly release the promised funds—Rs. 100 billion annually, equivalent to 3 percent of the National Finance Commission award—and clarify any remaining ambiguities in the funding formulas. The long-standing commitment of Rs. 1 trillion over a decade should be realized through timely budget releases, consistent financing of development projects, and regular allocations for essential expenditures such as salaries of teachers and police officers. To ensure transparency and accountability, the federal government and the KP administration should establish a joint oversight council that includes civil society representatives. Such a body would monitor expenditures, streamline coordination, and help eliminate bureaucratic bottlenecks that have historically slowed progress. By clearly defining federal and provincial roles in fiscal management, the merger can move beyond promises toward tangible improvements in governance and service delivery.

### **Economic Empowerment and Social Development**

Beyond infrastructure development, the state must prioritize livelihood empowerment to counter the degradation of conventional and informal economies, including border smuggling and madrasa financing, which have generated significant job losses. Expanding vocational training, microfinance, and entrepreneurship initiatives is essential to create sustainable opportunities. Schemes such as the Prime Minister's interest-free loan programs and skill-centre initiatives should be vigorously marketed in the tribal districts to ensure broad participation and impact.

### **Institutional Capacity and Coordination**

Strengthening institutional capacity requires clear delineation of federal and provincial roles. Duplication of mandates between the KP Home Department, the newly formed Tribal Affairs Ministry, and SAFRON should be avoided, with reforms such as the full disintegration of the FATA Secretariat into KP's departmental structures. Civil servant training is critical: KP

officers must be deployed in mixed areas to gain linguistic and cultural competence, while tribal employees should be integrated into provincial services. Law enforcement should be unified under a single KP Police command incorporating levies and Khassadar, while judicial postings must be supported with military protection until security stabilizes. The Supreme Court's role as an active watchdog must continue, particularly in adjudicating implementation petitions to uphold the 25th Amendment.

### Use of Technology and Mass Media

Legal reforms will remain ineffective unless accompanied by widespread public awareness. Authorities should fund law literacy programs that articulate basic rights—such as the right to file a First Information Report—through accessible mediums like Pashto-language radio broadcasts. Previous initiatives by the FATA Secretariat, including hotlines and mobile legal clinics, should be expanded to dispel misconceptions and strengthen citizen engagement with formal institutions.

### Alternative Dispute Resolution Centres

To bridge the gap between customary and formal justice, the government should establish mediation centres at district headquarters staffed by trained mediators, including women. Building on the Alternative Dispute Resolution Act, these centres could formally connect *jirgas* with the judiciary, allowing mediated settlements to be recognized as court-reconcilable outcomes.

### Monitoring and Evaluation

The merger process requires a strong, independent oversight mechanism. Institutions such as the Human Rights Commission of Pakistan and PILDAT should be empowered to audit progress, publish findings, and recommend corrective measures. Inclusiveness must be the guiding principle: tribal communities should be consulted in designing reforms, with coercion in promoting *Pashtunwali* avoided. Instead, reforms should adapt to local realities, for example by allowing courts to incorporate mediation practices similar to *jirga* discussions or by establishing tribal liaison cells within government departments. By balancing respect for tradition with gradual constitutional

integration, Pakistan can lead the merged districts toward a unified rule of law that honors local identity. This delicate equilibrium will determine whether the merger is perceived by ex-FATA communities as genuine empowerment or as disenfranchisement.

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