

Federally Administered Tribal Areas (FATA)

Between Constitutional Ambiguity and Violations of Human Rights: A Study for Reform

ASAD JAMAL



CGPA
CENTRE FOR GOVERNANCE
AND PUBLIC ACCOUNTABILITY

**Centre for Governance and Public Accountability (CGPA)
September 2014**

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About the Author

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Purpose of the Study

This study is commissioned by the Centre for Governance and Public Accountability (CGPA) for the purpose of enriching debate on FATA governance reforms. There is no denying the fact that without amending Article 247 of the Constitution of Pakistan, any initiative for the governance reforms in FATA will not go far enough in ensuring the rights of the people of FATA. Until FATA has no constitutional guarantees to be properly represented and their rights adequately protected, any initiative in the name of governance reforms in FATA will remain a futile exercise. Constitution of Pakistan in its current state does not effectively provide such guarantees. It is the foremost responsibility of the members of National Assembly and the Senate of Pakistan to ensure representation and rights protection to FATA as provided to citizens in the provinces of Pakistan.

The Frontier Crimes Regulation (FCR) is a dispensation of the FATA perennial neglect expressed through Article 247 of the constitution of Pakistan. FATA must have full representation at the national, provincial and local levels. The question of provincial representation is critical as there are strong support and equally strong opposition from different political parties for FATA amalgamation in Khyber Pakhtunkhwa province of Pakistan. CGPA recommends that the people of FATA should be allowed to decide about their future through a referendum. The democratic processes, in which citizens exercise their right to universal suffrage and have their voice heard in deciding about their own lives, have great potential of state building than any other method.

Disclaimer

As described, the purpose of the study is to provide research support to the debates in the legislatures and other policy makers on FATA governance reforms. However, this analysis and commentary on Article 247 and text of FCR are in no way a substitute to the official version notified by concerned government departments. Every effort has been made to avoid mistakes while referring to or reproducing legal texts.

However, CGPA will appreciate comments and feedback for improvement of this publication. The contents of the study can be reproduced and without formal approval from CGPA, provided the source is duly acknowledged.

Acronyms

ACS	Additional Chief Secretary
APA	Assistant Political Agent
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Right of the Child
CGPA	Centre for Governance and Public Accountability
DCO	District Coordination Officer
FATA	Federally Administered Tribal Areas
FCR	The Frontier Crimes Regulation, 1901
ICCPR	International Covenant on Civil and Political Rights
ICSECR	International Covenant on Social, Economic and Cultural Rights
KP	Khyber Pakhtunkhwa
PA	Political Agent
PATA	Provincially Administered Tribal Areas
PEMRA	Pakistan Electronic Media Regulatory Authority
PLD	The All Pakistan Legal Decisions
NFC	National Finance Commission
SCMR	Supreme Court Monthly Review
UDHR	Universal Declaration of Human Rights

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1. Introduction

The purpose of this study is to analyse how Article 247 of the Constitution of Pakistan and the Frontier Crimes Regulation, 1901 (FCR) deny to the people of the Federally Administered Tribal Areas (FATA) the fundamental human rights enshrined in the Constitution of Pakistan, 1973 and international human rights law incorporated in different United Nations treaties as well as customary international law.

The Federally Administered Tribal Areas (FATA) is part of the tribal territories of Pakistan lying between north-west of Pakistan and Afghanistan. FATA is administered and governed by the Federal Government of Pakistan. Article 247 of the Constitution of Pakistan sanctions a special status for tribal territories.¹ Territories included in FATA are mentioned in Article 246 of the Constitution.² FATA has virtually been “stateless”³ in the sense that the ordinary state institutions including the police, judiciary, democratically elected representative governments including local government structures or municipal institutions as are present in other parts of Pakistan do not exist here. It may also be said, in the same vein, that the rights guaranteed to the people of Pakistan in the chapter on Fundamental Rights in the Constitution of Pakistan⁴ are not available to the people of FATA mainly because the Constitution ousts the jurisdiction of the superior courts of Pakistan.⁵

Due to their special status and with the executive authority in the hands of the Federation, FATA is governed through a special governance structure, which is unrepresentative administration heavy and judiciary proof.

The Frontier Crimes Regulation 1901, as amended to date,⁶ is the main legal instrument for the resolution of civil and criminal disputes in FATA. As a result the people of the region do not have the same rights in promise or practice as those the people in the rest of the country. The main reason behind this is the non-existence of various legal structures essential for the people of FATA to enjoy fundamental rights as enshrined in the Constitution as well as the ones the state of Pakistan is obliged to ensure and make available to them under the various international human rights treaties including International Covenant on Civil and Political Rights (ICCPR), International Covenant on Social Economic and Cultural Rights (ICESCR), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and international customary law, generally, and Universal Declaration of Human Rights (UDHR) specifically.⁷

¹ Article 247(1) prescribes “...the executive authority of the Federation shall extend to the Federally Administered Tribal Areas...”

² See Article 246(c) of the Constitution of Pakistan as referred to below note 4

³ Dr. Raza Rehman Khan uses the word “stateless” in the context of local government in his paper titled “Local Government System in FATA” available at <http://frc.com.pk/wp-content/uploads/2014/01/Research-Paper-7.pdf>

⁴ See Part II, Chapter I (Fundamental Rights). The rights include due process, equality before law, right to a fair trial, personal liberty, freedom from arbitrary detention and arrest, freedom from torture etc.

⁵ Article 247(7) of the Constitution of Pakistan

⁶ Several significant amendments were incorporated in the FCR by a Presidential Order in 2011 called Frontier Crimes Regulation (Amendment) Order, 2011. The amendments have lessened the harshness of the Regulation to some extent.

⁷ Pakistan ratified ICCPR in 2010 along with United Nations Convention against Torture (UNCAT). Earlier, in 2008, Pakistan ratified International Covenant on Economic, Social and Cultural Rights (ICESCR). See <http://www.dawn.com/news/875750/iccpr-ratified>; All these international treaties and the Declaration are binding on the

The main instrument which is used to deny the people of FATA their fundamental rights is the Frontier Crimes Regulation (FCR) which in its original form was imposed on the region in late 19th century by the colonial masters of the sub-continent on the pretext of respecting the traditions of the region but in fact to subjugate them to the wishes of the ruling classes. If there ever was a reason for such a draconian legal system, it does not exist anymore. The world has changed, so has the region and the political dynamics of the region. The status quo must change if peace and prosperity is to be brought to this region.

A detailed analysis of constitutional provisions and the FCR is presented here.

2. The 1973 Constitution of Pakistan and FATA

There are two kinds of tribal areas as referred to in the Constitution of Pakistan, 1973 i.e. Provincially Administered Tribal Areas (PATA) and Federally Administered Tribal Areas (FATA).⁸

PATA is under the administrative and legislative control of the provinces of Khyber Pakhtunkhwa and Balochistan.⁹ However, no law passed by the Provincial Assembly shall apply to PATA, or to any part of it, “unless the Governor of the Province in which the Tribal Area is situated, with the approval of the President, so directs”.¹⁰ Further, the President of Pakistan may issue directions to the Governor of the Province ‘such direction as he may deem necessary’, which the Governor is bound to comply with.¹¹ The President has also the power to exclude any tribal area from within the definition of Tribal Area.¹² Further, the governor of the province may “with the prior approval of the President, with respect to any matter within the legislative competence of the Provincial Assembly make regulations for the peace and good government of a PATA or any part thereof”.¹³

Federally Administered Tribal Areas (FATA) includes Tribal areas adjoining districts of Peshawar, Bannu, Kohat, Lakki Marwat, Dera Ismail Khan, Tank, and Agencies of Bajaur, Orakzai, Mohmand, Khyber, Kurram, North Waziristan and South Waziristan.¹⁴ It is, as the name suggests, in the administrative and legislative control of the Federation/Federal government.¹⁵ No law enacted by the parliament is applicable to FATA “unless the President so directs”.¹⁶

Pakistani state. All regions included in Pakistan or otherwise in Pakistan’s control or administrative influence must be guaranteed the rights

⁸Tribal Areas are referred to in Article 246(a) as “the areas in Pakistan which, immediately before the commencing day, were Tribal Areas, and includes (i) the Tribal Areas of Balochistan and the Khyber Pakhtunkhwa Province; (ii) the former States of Amb, Chitral, Dir and Swat.

⁹Article 246(b) describes the Provincially Administered Tribal Areas which include (i) The districts of Chitral, Dir and Swat (which includes Kalam), the Tribal Area in Kohistan district, Malakand Protected Area, the Tribal Area adjoining Mansehra district and the former State of Amb; and (ii) Zhob district, Loralai district (excluding Duki Tehsil), Dalbandis Tehsil of Chagai District and Marri and Bugti tribal territories of Sibi district;.

¹⁰Article 247(3) the Constitution of Pakistan, 1973

¹¹ Article 247(2) *ibid*

¹²Article 247(6) *ibid*

¹³ Article 247(4)) *ibid*

¹⁴Article 246(c) *ibid*

¹⁵ Article 247(1) *ibid*

¹⁶Article 247(3) *ibid*

Article 247(7) excludes the jurisdiction of superior courts in relation to tribal areas ‘unless the Parliament by law otherwise provides’.¹⁷

The right to political participation is intrinsic to the Constitution of Pakistan. The Preamble to the Constitution says, “the State shall exercise its powers and authority through the chosen representatives of the people”. Further article 32 under the Principles of Policy prescribes “the State shall encourage local government institutions composed of elected representatives”.

Articles 1 in International Covenant on Civil and Political Rights (ICCPR) as well as International Convention on Economic, Cultural and Social Rights (ICESR) guarantee right to self determination of the people and binds states to ensure that all the people under its administrative and legislative control or influence shall enjoy this right.¹⁸ Article 25 of the International Covenant on Civil and Political Rights (ICCPR) prescribes that the state shall ensure that every citizen enjoys the right and the opportunity, without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; and (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

Article 247 of the Constitution of Pakistan violates the principles enshrined in the ICCPR and the guarantees they provide, as the people of FATA are not allowed to enjoy the rights to take part in the conduct of their public affairs through their elected representatives. Instead article 247(1) envisages executive authority of the central government i.e. the federation over FATA, which means that the people of FATA cannot have their own elected executive authority. Consequently, while other regions like the Khyber Pakhtunkhwa and other provinces may be governed by their elected executive bodies but the FATA people must be governed from a far.

It is an anomaly that under the 1973 Constitution, the people of FATA are supposed to elect their representatives to sit in the Parliament and make laws but the laws enacted by the Parliament are not applicable to FATA unless they’re approved and made applicable to FATA by the President of Pakistan.

The people of FATA are supposed to pay taxes but the taxation is effectively without representation. It is now universally recognized principle and our superior courts have repeatedly upheld the universally recognized principle of “No taxation without representation”. Representation of the people of FATA is subject to the approval of the President of Pakistan who may also issue orders to be applicable to the region or part thereof.

Article 247(5) is about local administration for law and order; and general governance of the region. While other regions of Pakistan can enjoy authority over matters of peace in their territorial jurisdiction i.e. for example, maintenance of law and order is subject to a power of local authorities¹⁹, exercised by

¹⁷ The proviso to article 247(7), however, provides that the superior courts shall continue to exercise jurisdiction over tribal areas as they did immediately before commencement of the Constitution day i.e. 14th August 1973

¹⁸ Pakistan has ratified both the International Convention on Economic, Cultural and Social Rights (ICESR) and International Covenant on Civil and Political Rights (ICCPR) in 2008 and 2010 respectively.

¹⁹ Law and order is a provincial/regional subject under the Constitution of Pakistan. Therefore, provinces have their own policing institutions and responsible for maintaining peace.

the local authorities, appointed by the representative institutions of the people. This is a violation of similar articles 1 of ICCPR and ICESCR which prescribe “All peoples have the right of self-determination”. By virtue of this right the people of FATA can freely determine their political status and freely pursue their economic, social and cultural development.

Again there is an anomaly in the constitution of Pakistan with respect to article 247(6) and article 48(6). The Constitution of Pakistan provides provisions for holding of referendum with the approval of the Parliament in Article 48(6), to ascertain public opinion on any question of national importance. However, the same right is not granted to the people at large in FATA. Instead, article 247(6) leaves it to the discretion of the federal government and a *jirga* which may be appointed by it and would obviously be a body of unelected people.

The Constitution of Pakistan lays down a mechanism in which the superior courts i.e. the provincial high courts and the Supreme Court of Pakistan are envisaged as the guardians of fundamental rights of the people. The authority of the superior courts does not extend to FATA coupled with the fact that FCR does not establish independent judicial for a resolution of disputes. As a result there is no judicial mechanism to ensure fundamental rights in FATA. As a result, constitutionally guaranteed rights in the chapter on Fundamental Rights, and internationally guaranteed rights under various treaties including ICCPR and ICESCR cannot be ensured.

Judicial review of the executive action is universally seen as a right to ensure other more fundamental rights as enshrined in national constitutions/bills of rights as well as international human rights law. Absence of judicial review means that fundamental rights may not be enforced as envisaged in Articles 199 and 184(3) of the Constitution of Pakistan. This is an obvious denial of all rights which may be violated in the region by the external “alien” executive authorities governing the region from afar.

Box: Article 247 of the Constitution of Pakistan

Article 247 of the Constitution of Pakistan

- 1) Subject to the Constitution, the executive authority of the Federation shall extend to the **Federally Administered Tribal Areas**, and the executive authority of a Province shall extend to the Provincially Administered Tribal Areas therein.
- 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 may deem necessary, and the Governor shall, in the exercise of his functions under this Article, comply with such directions.
- 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 exceptions and modifications as may be specified in the direction.
- 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 regulations 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 regulations for the peace and good Government of a **Federally Administered Tribal Area** or any part thereof.

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*.

7) Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area, unless [Majlis-e-Shoora (Parliament)] by law otherwise provides:

Provided that nothing in this 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.

3. Frontier Crimes Regulation (FCR)

3.1 A Historical Background

We cannot rein wild horses with silken braids. — John William Kay

John William Kay, an artillery officer turned civil servant, was a successor of John Stuart Mill as secretary political and secret department of the India Office. He is quoted to have said this almost 150 years ago about the 'troublesome tribesmen' of the North Western Frontier of India while explaining the reason for the 'very special codes' such as Frontier Crimes Regulation (FCR). Almost 70 years after the British left the subcontinent, the state of Pakistan continues to treat the people in tribal areas like 'wild horses'.²⁰

The Frontier Crimes Regulation 1901 (FCR) has been in operation for more than a century. It is a special law prescribing trial procedure for offences and civil disputes in the tribal areas. It is also a substantive law in as much as it defines certain offences and prescribes punishments for the same. Apart from the special procedures prescribed in the FCR, specific provisions of the Code of Criminal Procedure, 1898 are made applicable to proceedings under FCR as they are in rest of Pakistan have been

²⁰ Asad Jamal, "A Law that must go", The News on Sunday, 6 April 2008, <http://jang.com.pk/thenews/apr2008-weekly/nos-06-04-2008/dia.htm#4>

made applicable.²¹ Similarly, several important provisions of the Pakistan Penal Code 1860 have been made applicable.²²

The history of FCR dates back to the occupation and annexation of the so-called Frontier regions housing the Pakhtoons by the British Government in 1848. Initially, the ordinary civil and criminal laws in force in British India were extended to these territories. However, the rate of conviction under the ordinary criminal law was very low, and this was ascribed to the peculiar customs prevalent in the Pakhtoon areas and their code of honour. For instance, committing murder under certain conditions was regarded as an obligation rather than a crime. Consequently, during trial, the standard evidence would not come forth, and hence, convictions were rare.²³ This is said to have led the British administration to devise a special law for these Pakhtoon regions and the Frontier Crimes Regulation of 1871 was enacted.²⁴

This Regulation was re-enacted in 1873 and again in 1876, with minor modifications. The Regulation had scanty provisions, authorizing the Deputy Commissioner to detain and impose fine on any member of a Frontier tribe, who acted in a hostile or unfriendly manner towards the British Government. It further restricted the erection of any hamlet or village or tower or walled enclosure close to the frontier without authorization, and permitted their demolition by the authorities on military grounds. With the passage of time, the Regulation was found to be inadequate; hence its scope was extended by adding new provisions to it. This was done through the Frontier Crimes Regulation of 1901.²⁵

The FCR contained some indigenous features. The trial procedure was generally in accord with the Pakhtoon traditions, where decision by Jirga was the dominant norm. The sentencing policy of the FCR is somewhat liberal vis-a-vis the criminal law prevalent in settled districts. Sentences prescribed are generally lower than those provided by the Pakistan Penal Code 1860 and there is no provision for the sentence of death²⁶.

Trial by Jirga, a unique feature of the law, can ensure the independence and impartiality of the system of administration of justice, in as much as the Jirga members, like jurors, pronounce the final verdict as to the guilt or innocence of the accused. Thus, the basis of conviction or acquittal by the state authority is decided by fellow peers rather than any state authority itself as in other parts of Pakistan.²⁷

The FCR is operative in specified tribal areas including the Federally Administered Tribal Areas

²¹ For example, section 42 provides that "Where the Political Agent or District Coordination Officer, as the case may be, holds an inquiry under this Regulation, he shall follow the procedure as prescribed in section 117(2) of the Code of Criminal Procedure, 1898 (Act V of 1898), as nearly as may be practicable." Section 117 (Inquiry as to truth of information) of Code of Criminal Procedure, 1898 lays down strict criteria. Similarly, section 386 (Direction for warrant of levy of fine),

²² See below The Second Schedule to the Frontier Crimes Regulation as amended

²³ Official Letter dated Lahore 15 February 1886, Correspondence between the Punjab Government and the Peshawar Division Commissioner discussing the "whole question of criminal administration of the Peshawar District" and "the lamentable prevalence of homicide and murder". The document summarises official views towards the adoption of a "new Frontier Regulation". in Robert Nichols (ed.) titled "The Frontier Crimes Regulation: A History in Documents" (OUP:2012) pp. 2-17

²⁴ *ibid*

²⁵ See *The State v. Dosso*: PLD 1958 SC (Pak) 533 *Abdul Rauf v. NWFP Government*: PLD 1958 Pesh 73; For a detailed account see Human Rights Commission of Pakistan's report titled "FCR: A bad law nobody can defend";

²⁶ Section 13 FCR

²⁷ Sections 8-13 FCR; For a detailed discussion see Human Rights Commission of Pakistan's report titled "FCR: A bad law nobody can defend"

(FATA). Article 1 of the Constitution includes FATA in the territory of Pakistan. At present, Article 246 stipulates 13 regions and agencies that comprise the FATA. Article 247 prescribes the manner and method of administering FATA. It states that the executive authority of the Federation extends to FATA and that it shall be administered by the Governor on the direction of the President. Existing laws and regulations can be extended and new ones can be made for FATA. Most of the laws -- civil, criminal, electoral and fiscal -- have been extended to FATA. The President may, subject to ascertaining the views of the tribal Jirga, abolish the special status of a given FATA region/agency and convert it into settled area.

Article 247(7) however, debars the jurisdiction of the Supreme Court and High Courts to tribal areas, except when the Parliament by law otherwise provides. However, this prohibition does not affect the jurisdiction of the Supreme Court or a High Court exercised in relation to tribal areas immediately before the commencing day of the Constitution.²⁸ Under Article 142(d), the Parliament has the exclusive power to make laws for such areas in the Federation as are not included in any province.²⁹ Further, Article 258 states that until Parliament by law or otherwise provides, the President may make necessary provisions for peace and good governance of any part of Pakistan not forming part of a province. The Constitution further provides provisions for representation of the FATA population in the Parliament. Article 51 reserves 12 seats in the National Assembly, elected through adult franchise and Article 59 reserves 8 seats in the Senate filled through indirect system of election through members of the National Assembly from the FATA.

Clearly FATA is part and parcel of the territory of Pakistan and as such is governed under the Constitution. However, The Constitution, also prescribes a special system of extension/application of laws to FATA and a distinct system of administration. The Constitution defines fundamental rights, which extend to the whole of Pakistan. Their enforcement under Articles 199 and 184 (3) of the Constitution is however through the High Courts and the Supreme Court. It seems that whereas fundamental rights remain available to the residents of FATA, their enforcement is precluded by the bar in Article 247(7) to the exercise of jurisdiction of the courts in such territory. It has been urged time and again that the Parliament could remove the bar by enacting a law.³⁰

3.2 Challenges to FCR

The FCR has not had a smooth sail especially post-independence era. It has frequently been challenged and reviewed by the courts for repugnancy to fundamental rights. Cases started coming to courts soon after the promulgation of the 1956 Constitution, which contained fundamental rights for citizens. In a series of judgments the superior courts declared various provisions of the law void, as being inconsistent with the fundamental rights. Such judgments were *Dosso v. State* (PLD 1957 Quetta 9), *Toti Khan v. DM, Sibi* (PLD 1957 Quetta 1), *Abdul Akbar Khan v. DM, Peshawar* (PLD 1957 Pesh 100), *Abdul Baqi v. Superintendent, Central Prisons, Mach* (PLD 1957 Karachi 694), *Khair Muhammad Khan v. Government of WP* (PLD 1956 Lahore 668) and *Malik Muhammad Usman v. State* (PLD 1965 Lahore 229). Justice A. R. Cornelius in the case of *Samunder v. the Crown* (PLD 1954 FC 228) referred to FCR proceedings as "obnoxious to all recognised modern principles

²⁸ Proviso to Article 247(7)

²⁹ Article 142(d) reads: "Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province."

³⁰ This is one of the important recommendations by the civil society and representatives of FATA. For a detailed account see Human Rights Commission of Pakistan's report titled "FCR: A bad law nobody can defend";

governing the dispensation of justice". He therefore concluded that in the circumstances, it was impossible to preserve public confidence in the justness of the decision made under the FCR.

It may be noted that the High Court of West Pakistan in the case of *Dosso v State* (PLD 1957 Quetta 9) exercised jurisdiction despite the ouster clause, under Article 178 of the 1956 Constitution. The Court did so, on the ground that tribal areas are included within the areas of Pakistan and the citizens residing therein are entitled to the benefit of fundamental rights, guaranteed by the Constitution. This is how the Court struck down certain provisions of the FCR, which were found to be repugnant to Article 5 (equality before the law and equal protection of law) of the Constitution. The Peshawar High Court in the case of *Mohammad Irshad v Assistant Commissioner, Swat* (PLD 1990 Peshawar 51) struck down the PATA Criminal Laws (Special Provisions) Regulation I of 1975 and PATA Civil Procedure (Special Provisions) Regulation II of 1975, as these were found to be a violation of Article 25 of the Constitution. A serious blow was delivered by the Supreme Court to the notion of special areas, deprived of the benefits of the Constitution, in the case of *Al-Jehad Trust v Federation of Pakistan* (1999 SCMR1379)³¹, wherein the court assumed jurisdiction under Article 184 (3) on a petition filed before it, seeking the enforcement of fundamental rights of the people of the then Northern Areas, now Gilgit-Baltistan³². It may be clarified that the Constitution made no mention of Northern Areas³³. The Supreme Court nevertheless assumed jurisdiction in view of the matter being of public importance relating to enforcement of fundamental rights. The court ruled that the people of Northern Areas are citizens of Pakistan for all intents and purposes and like other citizens have the right to invoke any of the fundamental rights and liable to pay taxes and other levies, competently imposed. The court observed that the people are entitled to participate in the governance of that area and should have an independent judiciary to enforce, inter alia, the fundamental rights. It accordingly directed the Federal Government to initiate appropriate legislative/administrative measures to enable the people of Northern Areas to be governed through their chosen representatives and to have access to justice through an independent judiciary, inter alia, for enforcement of their fundamental rights. Earlier also the Supreme Court had in the case of *Superintendent of Land Customs, Torkham-v-Zewar Khan* (PLD 1969 SC 485) ruled that tribal areas were legally part of the territories of Pakistan as several laws including Customs Act were applicable to it. The Court observed that both under the international law as well as the municipal law, the tribal territories are part and parcel of Pakistan, and are duly recognised as such by foreign states.

Reference to international law is important in the sense that international human rights instruments, to which Pakistan is a signatory, are binding on the state in respect of all regions and all people. Therefore, it is incumbent upon the state to take necessary constitutional, legislative or administrative measures to extend international human rights norms/principles to all the people in the state, including FATA.

³¹ Available at http://cmsdata.iucn.org/downloads/al_jehad_trust_v_federation_of_pakistan__1999_scmr_1379.pdf

³² The Northern Areas were renamed as Gilgit-Baltistan in the Gilgit- Baltistan (Empowerment and Self Governance) Order, 2009 at <http://www.gilgitbaltistan.gov.pk/images/stories/downloads/Governance-Order.pdf>

³³ Article 257 refers to Jammu & Kashmir only by stating that when the people of State of Jammu & Kashmir decide to accede to Pakistan, the relationship between Pakistan and that State shall be determined in accordance with the wishes of people of that State. As per judgment of the Supreme Court of A J & K in the case of *Federation of Pakistan v Malik Mohammad Miskeen* (PLD1995 SC (AJ&K) 1), the Northern Areas are not part of Azad Jammu & Kashmir territory.

Judging by the standards of international human rights principles, the norms practiced in civilized states and the fundamental rights guaranteed in the Constitution of Pakistan, the FCR failed and continues to fail to meet the test of compatibility. This is so because FCR has a peculiar origin. The British devised it as an instrument of subjugating the tribes and disciplining the Pakhtoon population. It was necessary to establish the writ of the colonial authority. In drafting it, the British Government relied upon some of the customs and traditions prevalent in the tribal areas. However, such customs and traditions were twisted to suit the Government plan of securing convictions. The selection of Jirga members was therefore left to the executive authority, and the findings of Jirga were not binding. This way the Executive was made the ultimate authority and final arbiter to initiate trial, prosecute offenders and award punishments. The trial fora including appellate and revision authorities are from amongst the executive. Consequently, the law contains no concept of an independent/impartial judicial authority or a court of law to dispense free and fair justice. This is contrary to the mandate of the Constitution.

The very preamble of the Constitution as well as Article 2-A and 175 of the Constitution provide for an independent judiciary. This vital safeguard was altogether missing from the FCR before the 2011 amendments. All its provisions - substantive as well as procedural e.g. selection of Jirga members (section 2), trial procedure in civil/criminal matters (sections 8 & 11), the power to blockade hostile or unfriendly tribe (section 21), demolition of and restriction of construction of hamlet, village or tower on frontier (section 31), removal of persons from their places of residence (section 36), manner and method of arrest/ detention (sections 38 & 39), security for good behaviour (sections 40, 42), imposition/collection of fine (sections 22-27 27) etc, were in violation of the Constitution. This is contrary to Article 8 of the constitution, which provides that any law or customs or usages having the force of law, in so far as it is inconsistent with the fundamental rights shall be void. Quite clearly, the provisions of FCR were violative of several articles of the Constitution e.g. Article 4 (right of individual to be dealt with in accordance with the law), Article 9 (security of person), Article 10 (safeguards as to arrest and detention), Article 13 (protection against double jeopardy, self-incrimination), Article 14 (inviolability of dignity of man, prohibition of torture for the purpose extracting evidence), Article 24 (protection of property rights), and Article 25 (equality of citizens). All these guarantees are also part of the international treaties including ICCPR, UNCAT and ICESCR, which Pakistan is bound to implement in all the territories included in it or under its control or direct influence.

3.3 Status of FCR—Post 2011 Amendments

Although modest modifications were made by the various governments at the federal level in previous decades, the substance and structure of the regulation have remained essentially the same. Prior to 2011, the FCR was amended in 1928, 1937, 1938, 1947, 1962, 1963, 1995, 1997, 1998 and 2000. However, all amendments were minor in nature and in substance.

For example, in 1997 the word “commissioner” was substituted for “court of the commissioner” and the definition of the word “Governor” was added. Likewise, in 1962, punishment by forfeiture of property in the case of conviction under Section 302 or 306 of the Pakistan Penal Code (XLV of 1860) was added to the FCR. Alternatively, the power to revise decisions made by the commissioner was removed from the Regulation in 1997. The Regulation’s Second Schedule was amended in 1995 and 1998, adding offences related to the Customs Act of 1969, the Prohibition (Enforcement of Hadd) Order of 1979, the Employment of Children Act of 1991 and the Control of Narcotic Substances Act, also of 1997.

In August 2011, however, the President of Pakistan Asif Ali Zardari signed and enacted the first-ever substantive amendments in the history of the FCR.³⁴ The 2011 presidential order has significantly altered the FCR. The 2011 political reforms included numerous and extensive amendments to the Frontier Crimes Regulation. The legal concepts and overarching structure of the regulation, however, remained essentially untouched. Though the 2011 amendments to the FCR did introduce a few new concepts, improved some pre-existing substantive and procedural provisions, and has made some gains in political terms for the people of FATA, the argument that additional political and human rights reforms are needed remains. Some of the more important reforms included in the amendments have been pointed out as follows³⁵:

- Protection of women, children below 16 and citizens above 65 from collective responsibility arrest or detention³⁶
- Changes to arresting of an entire tribe under the collective responsibility³⁷
- Fixed time limits for the disposal of cases³⁸
- Provisions for independent appeal, review and revision processes³⁹
- Changes to the FATA Tribunal⁴⁰

Under the previous section 48 (as amended in 1997) membership of the FATA Tribunal was limited to the Federal Home and Law Secretaries. The 2011 amendments have introduced two retired bureaucrats and one lawyer on the FATA Tribunal. The reform specify that the membership of the FATA Tribunal must consist of a chairman and two other members. The chairman must have been a civil servant of not less than BPS-21 rank and must have experience in tribal administration. One of the other two members must also have been a civil servant of not less than BPS-20 rank and also have tribal administration experience. The third member must qualify to be appointed as judge of a High Court and must be familiar with *Rewaj* (tribal customs).

- Production of the accused before political authority within 24 hours⁴¹
- Power to transfer cases to the assistant political agent⁴²
- Introduction of the provision for bail⁴³
- Introduction of the provision for of inspection of prisons⁴⁴
- Reference to council of elders and *Qaumi Jirga*⁴⁵

³⁴See the Gazette of Pakistan, Extraordinary, Part I, Islamabad, August 27, 2011

³⁵The Frontier Crimes Regulation 1901 available at <http://www.slideshare.net/fatanews/frontier-crimes-regulation-1901-amended-2011-english-16663284> pages 9-10

³⁶Section 21(c)(3) and 22(d), the Frontier Crimes Regulation as amended by the Frontier Crimes (Amendment) Regulation 2011

³⁷Section 21 *ibid*

³⁸For example, sections 8 and 11 fix disposal of cases by the Councils of Elders in ninety days *ibid*

³⁹See Sections 48, 50, 52, 55A, 55AA *ibid*

⁴⁰Sections 55A, 55AA *ibid*

⁴¹Section 11 *ibid*

⁴²Section 5 *ibid*

⁴³Section 11A *ibid*

⁴⁴Section 58A *ibid*.

⁴⁵Section 12a *ibid*

- Acceptance of local customs and traditions (*Rewaj*)⁴⁶
- Fines on communities in the case of murder
- Forfeiture of public salary for being involved in a crime⁴⁷
- Arrest by authorities other than the political agent⁴⁸
- Checks on arbitrary power to arrest⁴⁹
- Punishment and compensation for false prosecutions⁵⁰
- No deprivation of property rights without adequate compensation⁵¹
- Audit by the Auditor General of Pakistan of funds with the political agent⁵²

However, the mechanism continues to violate several rights. Consider, for example, the right to a fair trial. The right to a fair trial is universally considered to be a fundamental right. It is guaranteed in the Constitution of Pakistan in Article 10A. ICCPR's Article 14 clearly stipulates the necessary elements of right to a fair trial. The necessary elements of a fair trial, in a civil dispute and criminal matters both but especially the latter, include:

- Equality before law;⁵³ (The very concept of Council of Elders is based on the social inequality)
- Proceedings before an independent judicial tribunal⁵⁴;
- Presumption of innocence unless proven guilty⁵⁵;
- To be informed of the nature of charge⁵⁶;
- Adequate time and facilities to prepare defence⁵⁷;
- A legal counsel of the choosing of the accused, or free and competent legal assistance provided by the state;⁵⁸
- Right to get examination of defence witnesses and cross examination of witnesses against the defendant;⁵⁹
- Prohibition of self incrimination;⁶⁰
- Children under 18 to be tried separately;⁶¹
- Right to compensation in case of miscarriage of justice;⁶²

⁴⁶Section 8 *ibid*

⁴⁷Section 26 *ibid*

⁴⁸Sections 38 & 39 *ibid*.

⁴⁹Section 40A *ibid*

⁵⁰55AA *ibid*

⁵¹56 *ibid*

⁵²58(2) *ibid*

⁵³Article 14(1) ICCPR. See Human Rights Committee General Comment 32, Doc. CCPR/C/GC/32 at http://ccprcentre.org/doc/ICCPR/General%20Comments/CCPR.C.GC.32_En.pdf

⁵⁴Article 14 (1) *ibid*

⁵⁵Article 14(2) ICCPR; No guilt can be presumed until the charge has been proved beyond reasonable doubt. Human Rights Committee General Comment 32 at paragraph 30

⁵⁶Article 3(a) *ibid*

⁵⁷Article 3(b) *ibid*

⁵⁸Article 3(d) *ibid*

⁵⁹Article 14(3) (e) ICCPR

⁶⁰Article 14(g) ICCPR

⁶¹Article 10(2) (b) & 10(3), Article 14(4); Also see Human Rights Committee General Comment 32, Doc. CCPR/C/GC/32 at paragraph Part VI at paragraphs 42 onwards

⁶²Article 14(6) Part VIII, Paragraph 52-3 *ibid*

Most of these elements of the right to a fair trial are missing from FATA's legal regime under the FCR even in its amended form post-2011. One of the fundamental features of this right is fair and open hearing and adjudication before independent judicial forum. The institutional mechanism neither in the FCR as it stood before 2011 amendments nor in its current amended form provides for an independent forum for the resolution of disputes. Members of the Council of Elders who are supposed to hear the dispute and make recommendations to the Assistant Political Agent (APA) are appointed by the Political Agent. Further, the Council of Elders is headed by the Assistant Political Agent. The institution of the Political Agent is subject to the higher state authorities of the Federal Government, not independent. The Political Agent's other primary responsibilities are executive and administrative in nature and he is not a judicial officer. Political Agent also enjoys the power to set aside recommendations received from the Council. This also does not help matters. Similarly, the fora for appeal and revision purposes are also not independent. Government officers like Commissioners appointed by the Government are competent to hear appeals against the decision of the APA. Retired government officers with experience in administration of FATA are supposed to fill these fora along with a lawyer. These are not independent fora for adjudication of disputes.

The notorious principle of "collective responsibility" also continues to be an integral part of the Regulation.⁶³ The principle of presumption of innocence continues to be violated one way or the other. For instance, section 23 provides, "Where, within the area occupied by a village community or part of a village-community, a person is found dangerously or fatally wounded, or the body is found of a person believed to have been killed, *the members of the village community or part thereof shall be deemed to have committed an offence* under section 22, unless...".

Child rights are also not fully protected as they are at least legally guaranteed for other parts of the country, and as envisaged under the international treaties like the Convention on the Rights of the Child (CRC). For example, children 16 may be arrested and detained and proceeded against along with other adult accused contrary to the requirements of the international treaties including ICCPR and CRC, and domestic law namely the Juvenile Justice System Ordinance, 2002. The latter is the procedure to proceed with the criminal cases involving children.⁶⁴

But above all, it's Article 247(7) which ousts the jurisdiction of high courts and the supreme court of Pakistan from enforcing fundamental rights.

4. Recent Litigation and Challenges to Article 247 and FCR

In a recent constitutional case (Abdul Bari versus Director Livestock Dairy Development)⁶⁵ before the Peshawar High Court the question raised for determination by the Court was with regard to the jurisdiction of High Court to Federally Administered Tribal Areas (FATA). Some of the petitioners

⁶³See sections 21, 22, 23, 24 *ibid*

⁶⁴ Even though the Juvenile Justice System Ordinance 2002 has been extended to FATA by SRO 928 (1)/2004 w.e.f. 6th Nov 2004. UN Human Rights Committee has recommended "States should take measures to establish an appropriate juvenile criminal justice system, in order to ensure that juveniles are treated in a manner commensurate with their age." See Comment 32, Doc. CCPR/C/GC/32 at paragraph 43

⁶⁵W.P No. 1741-P of 2012 Abdul Bari versus Director Livestock Dairy Development FATA Secretariat decided by Justice Fasihul Mulk of the Peshawar High Court on 7 April 2014. For a more detailed discussion refer to Arif and Khan, "Peshawar High Court Judgment: Implications for the Reform Process in Pakistan's Federally Administered Tribal Areas" (August 2014) at <http://www.fatareforms.org/peshawar-high-court-fata-judgment-analysis/>

sought indulgence of the Court to be treated as civil servants working in FATA either on deputation or appointed there by the Federal or Provincial Governments; some of the persons had been detained by the authorities under the FCR and sought relief from the high court against their illegal detention; and some of the persons who had entered into contracts with Government agencies for carrying out developmental works in FATA, were aggrieved of the disputes arising out of said contracts.

The questions framed broadly pertained to the following:

1. Federal and Provincial employees working in FATA on Deputation.
2. Federal Government Employees posted in FATA.
3. Employees recruited for FATA.
4. Illegal detentions by officers in FATA.
5. Decisions of Tribunals in Civil & Criminal cases.
6. If the cause of action arisen/accrued in the settled area but the proceedings have been carried out by the political authorities.
7. If the cause of action has arisen in FATA between a person belonging to the settled area; and,
8. Contractual obligations arising in FATA between Government functionaries and private persons.

It was held that all these aspects had been addressed and answered in the two recent judgments of the Supreme Court of Pakistan in the cases of (i) Additional Chief Secretary (FATA) and others versus *Piayo Noor*⁶⁶, and (ii) Mst. Rohaifa through her sons and another vs Federation of Pakistan through Secretary, Ministry of Defence and 2 others⁶⁷.

In *Piyao Noor*⁶⁸, the respondent was proceeded against by the political authorities under the provisions of FCR being “a hardened and desperate criminal”. The respondent had filed Writ Petition No.2100 of 2008 before the Court challenging his detention and trial under the FCR but the writ petition was dismissed for being not maintainable. The respondent filed another Writ Petition (No.569 of 2009) without making any reference to the dismissal of his earlier writ petition, which was partially allowed and respondent was admitted to bail on the ground that there was no material on record to show that the respondent was involved in kidnapping or other cognizable offence. The order was impugned by the Additional Chief Secretary, FATA before the apex Court and leave to appeal was granted on 25.03.2010. The matter was decided vide judgment dated 23.05.2013 wherein it was laid down that respondent was resident of the Tribal Area and was being tried by the Council of Elders for various crimes mentioned in the Reference sent by the Assistant Political Agent under section 11 of the FCR. The learned Supreme Court of Pakistan while considering the judgments reported in PLD 1974 SC 109, PLD 1975 SC 66, 1991 SCMR 2400, Civil Appeal No.144 of 1981, PLD 2002 SC 526, 2012 MLD 503(Peshawar), PLD 2011 Peshawar 164, 2009 YLR 2497, PLD 2006 Peshawar, 1999 MLD 2661 (Peshawar), 1999 MLD 840 (Peshawar), PLD 1997 Peshawar 132, 1997 MLD 152 (Peshawar), 1996 CLC 1702 (Peshawar), 1992 MLD 2043 (Peshawar), PLD 2012 Balochistan 197 held that:-

“The foundation for the jurisdiction of the Courts has been laid down in Clause (1) of Article 175 of the Constitution. Couched in the negative term it declares “No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.” The constitutional jurisdiction of the High

⁶⁶Additional Chief Secretary (FATA) and others versus Piayo Noor cited as 2014 SCMR 17

⁶⁷PLD 2014 Supreme Court 174

⁶⁸Supra note 64

Court is embodied in Articles 199 and 203 of the Constitution. Where the latter provision confer upon it supervisory jurisdiction over the Courts subordinate to it, Article 199 empowers the High Courts to issue writs of various forms under its original constitutional jurisdiction. The said Article open with the words "Subject to the Constitution", a High Court may, if it is satisfied that no other adequate remedy is provided by law,-". The expression "Subject to the constitution" for the present purpose would mean subject to the ouster Clause (7) of Article 247. Like Clause (1) of Article 175, Clause (7) of Article 247 also opens with the negative expression that "neither the Supreme Court nor a High Court shall exercise any jurisdiction...."

Thus where a matter relates to a Tribal Area, the jurisdiction of the High Court under Article 199 is ousted whether the grievance brought before the Court is based upon violation of fundamental rights or of any other law.....In view of the above provision the High Court however is not barred from examining whether the provision of section 86-A, Cr.P.C has been complied with where it is alleged that a person has been arrested in the Settled Area and transferred to the Tribal Area to face a criminal charge without producing him to the Magistrate. It, however, will be for the aggrieved person to show that he was arrested from the Settled Area. The jurisdiction of the Magistrate under section 86-A, Cr.P.C or for that matter of the High Court is limited to the question of arrest of a detenu. Where, however, the violation of section 86-A, Cr.P.C is neither alleged nor established and the crime statedly is committed in the Tribal Area or where the subject matter of the civil dispute is located in the said Area the jurisdiction of the High Court to entertain petition under Article 199 is excluded."

In *Mst. Rouhaifa*, the court was of the view that jurisdictional question in terms of Article 247(7) of the Constitution has successively come up before the Supreme Court on which judgments have been given. Accordingly, the judgments rendered in the cases of *Qaum Bangash and others v. Qaum Turi and others* (1991 SCMR 2400), *Shaukat Khan v. Assistant Political Agent, Landi Kotal, Khyber Agency and others* (PLD 2002 Supreme Court 526), *Abdul Rahim and others v. Home Secretary, Government of West Pakistan and another* (PLD 1974 Supreme Court 109), *Malik Taj Muhammad and another v. Bibi Jano and 25 others* (1992 SCMR 1431), *Muhammad Siddiq and others v. Government of Pakistan and others* (1981 SCMR 1022), and *Ch. Manzoor Elahi v. Federation of Pakistan and others* (PLD 1975 Supreme Court 66) were again examined and it was finally concluded that so far as the application of the jurisdiction of the superior courts in terms of Article 247(7) of the Constitution is concerned, as per consensus of the Judgments of the Court, the bar of jurisdiction on High Court in terms of Article 247(7) of the Constitution will be applicable where cause of action and subject matter of dispute is in the Tribal Area and the parties to the dispute are also residents of Tribal Area and in terms of the Judgment in the case of *Ch. Manzoor Elahi*, supra, that if a person voluntarily goes to a Tribal Area and commits offence there he on general principle of law is liable to be tried and punished according to law, custom and usage which prevails there but jurisdiction of the Supreme Court and that of the High Court will not be barred under Article 247(7) of the Constitution rather the same will be available to be exercised under Article 184 and Article 199 of the Constitution:

- (i) Where location of the corpus in dispute is situated in the territory outside the Tribal Area;*
- (ii) Where parties to the dispute have their residence outside the Tribal Area;*

- (iii) Where cause of action has arisen outside the Tribal Area;
- (iv) Where the offence has taken place outside the Tribal Area;
- (v) Where the arrest is made or sought to be made which is outside the Tribal Area;
- (vi) Where effective action or step is taken or performed outside the Tribal Area.

The court while referring to what the former Supreme Court Chief Justice Alvin Robert Cornelius once famously said that the 1901 Frontier Crimes Regulation was “*obnoxious to all recognized modern principles governing the dispensation of justice*”⁶⁹, the court recommended to the Parliament to make “suitable amendments in Article-247(7) of the Constitution so that the people of FATA could invoke the jurisdiction of this Court [High Court] or the Supreme Court in case of infringement of their fundamental rights, which are though available to them under the Constitution being Citizens of Pakistan but cannot be availed because of the bar contained in Article-247(7) of the Constitution”.

5. Efforts for Amending Article 247

Taking the cue from the afore-mentioned judgment by the Peshawar High Court, Senator Farhatullah Babar of Pakistan Peoples’ Party has introduced a Private Member’s bill⁷⁰ which recommends omission of Article 247(7)⁷¹.

Similar demands have been voiced by civil society organizations. For example, Political Parties Joined Committee on FATA Reforms has started working on finalization of proposals for future governance status of FATA. The political parties’ joint committee has already agreed on following recommendations:

- Peace in FATA should be guaranteed
- Article 247 in the constitution of Pakistan should be amended
- Local bodies elections should be held in FATA
- A comprehensive development package should be developed for FATA
- The future status of FATA should be decided by its people
- Pakistan Electronic Media Regulatory Authority (PEMRA) jurisdiction should be extended to FATA
- The Jirga system should be made more democratic and independent
- Actions in Aid in Civil Powers Regulations should be abolished
- Executive and judicial powers should be separated
- Citizens should not be deprived of property, inheritance laws should be extended to FATA
- Civil arm forces should be strengthened and professionalized

Besides political parties, FATA Coordination Committee, a committee of 26 civil society organizations, is also supporting these recommendations for FATA reforms.

6. Conclusion and Recommendations

International human rights principles, judicial norms practiced elsewhere in the world and guaranteed in the Constitution of Pakistan envisage certain basic principles to be present in the criminal justice

⁶⁹ Sumunder son of Jullunder versus the Crown State, PLD 1954 FC 228

⁷⁰The bill is available at the official website of the Senate of Pakistan at http://www.senate.gov.pk/uploads/documents/1407838467_584.pdf .

⁷¹Section 2 of the Constitution (Amendment) Act 2014

system. These principles include the presumption of innocence until proven guilty and trial under due process/procedure.

The safeguards available to citizens are: no arrest or detention without breach of law; arrested accused to be informed about the reasons of arrest; the right to and be provided a counsel of choice and if the accused is indigent, such counsel to be provided by the State; extension in period of detention subject to remand given by a court;; release/ acquittal of the accused in the event of the prosecution failing to establish the guilt, right to be treated in accordance with the law and enjoy the protection of law, right against self-incrimination or double jeopardy or retrospective punishment or punishment greater than prescribed by law; right of the accused to produce witnesses in favour and cross-examine witnesses against himself, humane and dignified treatment while in custody, prohibition on use of torture for extracting evidence and prohibition of inhuman, degrading or humiliating treatment or punishment. An essential safeguard is trial by an independent and impartial court of law through free and fair dispensation of justice.

These are the established safeguards practiced in many other societies. Many of them regrettably are missing from the system of criminal justice in vogue in Pakistan, in general, but especially in FATA under the FCR regime. The criminal justice system is confronted with multiple problems and challenges, besides the absence of adequate safeguards for the accused. It is neither expeditious nor economical, and contains major drawbacks for the victim to secure his right or redress of grievance, and the accused to get a fair trial. If this system is still considered better than FCR, then perhaps FCR remains the worst form of legislation. FCR is patently contrary to the constitutional norms. The law therefore needs to be scrapped and process of reform of the law may be undertaken. To begin with, some of the draconian provisions in the FCR e.g. seizure/confiscation of property and arrest/detention of an individual without due process, removing a person from his residence/locality, fines on community for crime committed by individuals (Sections 22, 23), prohibition on erecting village, walled enclosure and their demolition (Sections 31 - 32) etc, should be abolished. Ordinary criminal justice may be extended to the tribal area to prevent gap/void in legislation.

The accumulation of executive and judicial functions in a single authority should be done away with. The judicial functions at the trial, appeal and revision stages should be exercised by judicial authorities working under the High Court. The High Court can be made the court of ultimate appeal in cases under FCR, if it must stay in some acceptable form. The Jirga members should not be selected by the Executive and their findings, on facts of the case, be made binding, except when it is against law, equity or public policy.

Article 247(7) of the Constitution which ousts the jurisdiction of superior courts over FATA should be omitted from the Constitution as has been proposed in a private member's bill referred to above. And article 247(3) should be amended to make the Presidential approval for the laws passed redundant. This is to say that the legislative power of the Parliament should be direct without the need for the necessary approval and direction of the President to that effect, and the judicial review powers of the high court and the Supreme Court be extended to FATA.

6.1 Recommendations

1) Constitutionally FATA is an integral part of Pakistan and any law repugnant to the

Constitution should be repealed. The people of FATA are as much citizens of Pakistan as people of any other part of the country. The Constitution must treat all the people on equal footing.

2) The legislative and administrative powers of the President of Pakistan under Article 247(3) of the Constitution regarding FATA should be transferred to the Parliament. The people of FATA deserve to be duly represented in the Parliament i.e. the decisions made, laws enacted in the Parliament should also extend to FATA which is represented through its elected members in the Parliament.

3) Article 247(7) of the Constitution should be omitted from the Constitution to extend jurisdiction of the superior judiciary to FATA. Denial of superior courts' jurisdiction to FATA is in reality denial of fundamental rights available to the people of other parts of the country. This is blatant discrimination which is enshrined in a document as important as the Constitution.

4) Recommendations of the political parties joint action committee on FATA reforms and civil society organizations should be considered on priority basis and be given practical shape.

5) The nomenclature relating to tribal areas generally and especially the regions and territories under discussion, such as Frontier Crimes Regulation, betrays the colonial legacy. It may be renamed appropriately. In fact, the very idea absorbed in the name given to the region i.e. Federally Administered Tribal Areas (FATA) is anathematic. The region should have local regional government, a right enjoyed by people of other regions/territories/provinces.

6) FCR even in the amended shape clashes with fundamental human rights. Amendments should be made in the FCR to ensure complete protection of the rights of the tribal people.

7) The judicial powers in the hands of the Political Agent should be taken away and a separate judicial institution under the supervision of the Peshawar High Court, due to geographic proximity, may be established till such time that the people of FATA exercise their right to self-determination. Such judicial institution may consider the findings of the Council, on facts of the case, may be binding unless they're in violation of fundamental rights or constitution or other laws, or public policy.

8) If the institution of the Council of Elders must remain an integral part of the system under FCR for resolution of disputes and adjudication of criminal cases then selection of members of the Council should not be in the control of the institution of the Political Agent. Such an institution must be independent of the executive's influence.

9) Provisions in violation of the fundamental rights guaranteed in the Constitution and under the international human rights law should be repealed. Such provisions include the ones which violate the principle of presumption of innocence, apply notorious doctrine of collective responsibility, deny right to due process and allow for destruction of property or detention without charge etc.

10) A constitutional/legal mechanism needs to be devised such as the one incorporated in Article 48(6), to determine the wishes of the people of FATA whether they would like to stay autonomous and become a separate province or would like FATA to become part of Khyber Pakhtunkhwa. People of FATA shall decide about FATA future status as independent province or part of Khyber Pakhtunkhwa. A mechanism should be devised where voices of all people of FATA can be articulated. Such mechanism could be a referendum (most preferably) or an indirect manner through elected local

government with mandate for such decision. While amending Article 247, such a provision needs to be incorporated so that the status of FATA is decided once and for all. Obviously, in both cases the Federation of Pakistan needs to revise the NFC award and other guarantees necessary for a healthy federation.

Annex 1: Matrix of Human/Fundamental Rights Violation by Article 247

Provisions of Article 247	Violation of Rights	How?
<p>Sub-article 1:</p> <p>Special Status of FATA: Executive authority of the Federation to extend to the Federally Administered Tribal Areas</p> <ul style="list-style-type: none"> ñ President has power to issues regulation for FATA ñ No legislation by elected representatives ñ Centralised form of governance 	<p>Violation of article 25 of ICCPR</p> <p>- Denial of the right to political participation</p>	<p>The right to political participation is intrinsic to the Constitution of Pakistan. The Preamble to the Constitution says that “the State shall exercise its powers and authority through the chosen representatives of the people”. Further article 32 under the Principles of Policy prescribes “the State shall encourage local government institutions composed of elected representatives”.</p> <p>Further, article 25 of the ICCPR prescribes that the state shall ensure that every citizen enjoys the right and the opportunity, without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; and (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.</p> <p>Article 247 of the Constitution of Pakistan violates the principles enshrined in the ICCPR and its guarantees in that the people of FATA are not allowed to enjoy the right to take part in the conduct of their public affairs through their elected representatives. Instead article 247(1) envisages executive authority of the central government i.e. the federation over FATA i.e. people of FATA cannot have their own elected executive authority. Consequently, while other regions like the Khyber Pakhtunkhwa and other provinces may be governed by their elected executive bodies but FATA people must be governed from afar. This is virtual statelessness.</p>
<p>Sub-article 3:</p> <p>No Act of Parliament to be applicable in FATA unless the President so directs</p>	<p>Violation of right to political participation: Legislation through executive orders rather than through chosen representatives</p>	<p>It is a constitutional anomaly that under the Constitution, the people of FATA are supposed to elect their representatives to sit in the Parliament but the laws of the Parliament are not automatically applicable to FATA unless they’re approved by the Federal Government and the President extends them to FATA.</p> <p>The people of FATA are supposed to pay taxes but the taxation is <i>effectively</i> without representation. Our superior courts have repeatedly upheld the universally recognized principle of “No taxation</p>

Provisions of Article 247	Violation of Rights	How?
<p>Sub-Article 5:</p> <p>The President may make regulations for the peace and good Government of a Federally Administered Tribal Area</p>		<p>without representation”.</p> <p>This article is about local administration for law and order; and general governance of the region.</p> <p>While other regions of Pakistan can enjoy authority over matters of peace in their jurisdiction i.e. for example, maintenance of law and order is a local power exercised by the local authorities appointed by the representative institutions of the people. Similarly, good government includes local government institutions that are missing in FATA due to this provision in the Constitution of Pakistan.</p>
<p>Article 247(6) essentially provides that it will be upon the discretion of the Federal executive authority whether to exclude a region in the FATA regime or retain it in the scheme. And in order to ascertain the wishes of the people of a particular region the President may call a <i>jirga</i>, whose composition and selection is not spelt out.</p>	<p>Violation of right to self-determination</p>	<p>This is a violation of article 1 of ICCPR which prescribes: “All peoples have the right of self-determination”. By virtue of this right the people of FATA can freely determine their <i>political status</i> and freely pursue their economic, social and cultural development.</p> <p>Again there’s a anomaly so far as the Constitution of Pakistan provides for holding of referendum with the approval of the Parliament in Article 48(6) to ascertain public opinion on any question of national importance. However, the same right is not granted to the people at large in FATA. Instead, article 247(6) leaves it to the discretion of the federal government and a <i>jirga</i> which may be appointed by it and would obviously be a body of unelected people.</p>
<p>Article 247(7)</p> <p>Jurisdiction of the Supreme Court of Pakistan and high courts ousted</p>	<p>Non-availability of judicial review and protection of fundamental rights: Violation of guaranteed fundamental rights</p>	<p>The Constitution of Pakistan lays down a mechanism in which the superior courts i.e. the provincial high courts and the Supreme Court of Pakistan are envisaged as the guardians of fundamental rights of the people. The authority of the superior courts is extended to FATA as a result there’s no judicial mechanism to ensure fundamental rights in FATA.</p> <p>As a result, constitutionally guaranteed rights in the chapter on Fundamental Rights, and internationally guaranteed rights under various treaties including ICCPR and ICESR cannot be ensured.</p> <p>Judicial review is universally seen as a right to</p>

Provisions of Article 247	Violation of Rights	How?
		<p>ensure other rights categorized as fundamental rights as enshrined in national constitutions/bills of rights as well as international human rights law. Absence of judicial review means that fundamental rights may not be enforced as envisaged in Articles 199 and 184(3) of the Constitution of Pakistan. This is an obvious denial of all rights which may be violated in the region by the external “alien” executive authorities governing the region from afar.</p>

Annex 2: Matrix of Human/Fundamental Rights Violation by FCR

Provision of FCR	Violation of Rights	How
Preamble	Right to political participation through legislation	The preamble of the Regulation clearly lays down that 'the President is pleased to make the Regulation in pursuance of clause (5) of Article 247 of the Constitution of the Islamic Republic of Pakistan' which means it is not a law made by the chosen representatives of the people of FATA.
Sections 4-5;	Violation of the principle of independence of judiciary; Violation of the Article 14 of the ICCPR	<p>These provisions describe the powers enjoyed by the Federation's administrative officials i.e. Assistant Political Agent (APA) and Political Agent who apart from enjoying executive powers also enjoy judicial powers to decide civil disputes and criminal offences. Thus they hold executive, judicial as well as law-enforcement powers. Their executive and judicial powers combined make them all-powerful without being accountable to the people of FATA directly or through their chosen representatives or government.</p> <p>The constitution of Pakistan envisages a scheme for the executive and the judicial branches of the government so as to make them independent. Article 175(3) of the Constitution of Pakistan clearly lays down that the Judiciary and the Executive must be separated in exercise of their powers.</p> <p>The executive cannot exercise the judicial power as it leads to anomalous condition in which the executive may be adjudicating matters in which it may have a vested interest which clearly impinges on the principle of independence of judiciary.</p>
Section 7	No political representation	<p>Several provisions of the Regulations show that the Assistant Political Agent/Political Agent act literally like rulers of FATA but unelected.</p> <p>Section 7 gives them the power to pardon anyone involved in any capacity in any offence, thus acting like elected representatives of a province.</p>
Sections 8-11 Council of Elders (<i>jirga</i>)	Violation of the principle of independence of institutions; and the principles of fair trial as enshrined in Article 10A of the Constitution of	FCR envisages resolution of civil disputes and part adjudication of criminal offences through Councils of Elders (<i>jirga</i>) who act somewhat like the juries in western tradition. They are, however, appointed by the Political Agent, and, more importantly, presided over by the Assistant Political Agent. This means that the institution of Political Agents is all powerful and the Councils are appointed and led by the Political Agents; the councils

Provision of FCR	Violation of Rights	How
	Pakistan and article 14 of the International Covenant on Civil and Political Rights (ICCPR)	enjoy no independence. The rules of their engagement are made according to the wishes of the Political Agent. Unlike the independent jury in the West, these councils are puppets in the hands of the Political Agents. Consequently, fair trial is simply impossible due to the direct involvement of the administrative officials who may have a vested interest in the subversion of the process.
Sections 21, 22 etc.	Application of principle of collective responsibility	Several provisions of FCR incorporate the abhorrent principle of collective responsibility. The application of collective punishment disregards individual culpability and identifies the innocent with the guilty.
Section 36	Vague and discretionary powers of administrative cum judicial officers	Several provisions of FCR such as section 36 use vague words. Uncertainty in statutes leads to subjective approach to be adopted by concerned authorities. It is a fundamental principle of statutory drafting that legislation should be clear of ambiguity but such is not the case with FCR. For example, section 36 uses word “dangerously fanatic” which is not defined anywhere in the Regulation. It is thus left to subjective discretion of the Political Agent to decide he feels like rather than base his decision on some sound principles of law.
Sections 48, 55	Violation of the principle of independence of appellate and revisional forums	These provisions like others violate the principle of independence of appellate fora as both have administrative staff of the federation as chairpersons for the appeals, reviews and revisions of the decisions made by the Political Agents.

Annex 3: Frontier Crimes Regulations, 1901 (As Amended To Date)

THE FRONTIER CRIMES REGULATION, 1901

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REGULATION NO. III OF 1901

THE FRONTIER CRIMES REGULATION, 1901

A Regulation [further to provide for maintenance of peace, law and order and good governance in the Federally Administered Tribal Areas]⁷²

⁷³[WHEREAS it is expedient further to provide for maintenance of peace, law and order and good governance in the Federally Administered Tribal Areas;

NOW, THEREFORE, in pursuance of clause (5) of Article 247 of the Constitution of the Islamic Republic of Pakistan⁷⁴, the President is pleased to make the following Regulation:-

CHAPTER I PRELIMINARY

1. Short title, commencement and extent.

(1) This Regulation may be called the Frontier Crimes Regulation, 1901; and

(2) It shall come into force at once.

⁷⁵[(3) It shall extend to such Federally Administered Tribal Areas as may be notified by the Governor from time to time in pursuance of Article 145 of the Constitution of Islamic Republic of Pakistan⁷⁶. The Federally Administered Tribal Areas include the tribal areas as specified in the Third Schedule to this Regulation.]

⁷⁷[(4) Omitted.

⁷⁸[(5) Omitted.

⁷⁹[2. **Definitions.**— In this Regulation, unless there is anything repugnant in the subject or context,-

⁷² The long title was substituted by the Frontier Crimes (Amendment) Regulation, 2011 hereinafter referred to as 2011 Amendments. The original long title read as: "*A Regulation further to provide for the suppression of crime in certain frontier districts.*" (Note: all the substitutions, omissions, and additions indicated hereafter have been effected by the Frontier Crimes (Amendment) Regulation, 2011

⁷³ The preamble was substituted by the Frontier Crimes (Amendment) Regulation, 2011 for the following "Whereas it is expedient further to provide for the suppression of crime in certain frontier districts; It is hereby enacted as follows:-"

⁷⁴ Article 247(5) reads as follows: "(5) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter, make regulations for the peace and good Government of a Federally Administered Tribal Area or any part thereof."

⁷⁵ Present section 1(3) was substituted by the Frontier Crimes (Amendment) Regulation, 2011 for the following: "It shall extend to the areas specified in the Third Schedule, but the Governor may by notification in the official Gazette exempt any such area from the operation of all or any of its provisions."

⁷⁶ Article 145 reads: (1) The President may direct the Governor of any Province to discharge as his Agent, either generally or in any particular matter, such functions relating to such areas in the Federation which are not included in any Province as may be specified in the direction. (2) The provisions of Article 105 shall not apply to the discharge by the Governor of his functions under clause (1).

⁷⁷ Omitted by the Frontier Crimes (Amendment) Regulation, 2011.

⁷⁸ Omitted by the Frontier Crimes (Amendment) Regulation, 2011.

⁷⁹ Substituted for the following: "2. Definitions. In this Regulation unless there is anything repugnant in the subject or context

[(a) "Council of Elders" means -

- (a) “Appellate Authority” means an Authority established under section 48 of this Regulation;
- (b) “Council of Elders” means in the Federally Administered Tribal Areas, a council of three or more respectable elders appointed by the Political Agent or District Coordination Officer, as the case may be, and presided over by Assistant Political Agent vested with powers under section 30 of the Code of Criminal Procedure 1898 (Act V of 1898);
- (c) “FATA Tribunal” means a Tribunal established under section 55A;
- (d) “Governor” means the Governor of Khyber Pakhtunkhwa as Agent to the President of Pakistan for Federally Administered Tribal Areas in terms of Article 145 of the Constitution of the Islamic Republic of Pakistan;
- (e) “*Qaumi Jirga*” means *Jirga* consisting of respectable elders and representatives of the tribes; and
- (f). “*Rewaj*” means usages, traditions and customs of the tribes in vogue in Federally Administered Tribal Areas.]

⁸⁰[**3. Relation of Regulation to other laws.**– (1) The provisions of this Regulation shall take effect in case to which they apply, notwithstanding anything contained in any other law for the time being in force.

-
- i. in relation to Quetta and Kalat Divisions and District Lasbella a Council of three or more persons convened according to the Pathan, Baluch or other usage, as the Deputy Commissioner may in each case direct; and
 - ii. in relation to other areas, a Council of three or more persons whether officials or otherwise convened by the Deputy Commissioner and presided over by a Magistrate invested with powers under Section 30 of the Code of Criminal Procedure, 1898 (V of 1898);] and
 - (b) "Deputy Commissioner" includes any Magistrate of the first class appointed by the Deputy Commissioner by order in writing to exercise all or any of the functions or powers specified in the first part of the first Schedule, and also any Magistrate appointed by the [Provincial Government] to exercise all or any of such functions or powers;
 - [(c) "Commissioner" or "Court of the Commissioner" means the Provincial Government or such officer or officers as the Provincial Government may appoint in this behalf.]

⁸⁰ Substituted by the Frontier Crimes (Amendment) Regulation, 2011 for the following: “3. Relation of Regulation to other enactments.

1) The provisions of this Regulation shall take effect in case to which they apply, notwithstanding anything in any other enactment.

2) The powers conferred by this Regulation may be exercised in addition to any powers conferred .by or under any other enactment, and, where the contrary is not expressed or implied, other enactments in force in any place in which all or any of the provisions of this Regulation are for the time being in force shall, so far as may be, apply to cases dealt within that place under this Regulation.”

(2) The powers conferred by this Regulation may be exercised in addition to any powers conferred by or under any other law for the time being in force, and, where the contrary is not expressed or implied, other laws in force in Tribal Areas in which all or any of the provisions of this Regulation are for the time being in force shall, so far as may be, apply to cases dealt within that place under this Regulation.

(3) The laws specified in the Second Schedule shall apply to the Federally Administered Tribal Areas.]

CHAPTER II POWERS OF COURTS AND OFFICERS

⁸¹**4. Assistant Political Agent.**— (1) In any Agency or Frontier Region in the whole or any part thereof where all or any of the provisions of this Regulation are for the time being in force, the Governor may confer powers under section 30 of the Code of Criminal Procedure, 1898 (Act V of 1898) on any Assistant Political Agent.

(2) Every Assistant Political Agent shall have all the ordinary powers of a Magistrate of the First Class as specified in Schedule III and additional powers as specified in Part I of Schedule IV to the Code of Criminal Procedure, 1898 (Act V of 1898), and may pass any sentence of imprisonment or fine or both as provided in this Regulation.

(3) When exercising any of the powers of a Political Agent or District Coordination Officer under this Regulation, an Assistant Political Agent shall be deemed, for the purposes of this Regulation, to be the Political Agent or District Coordination Officer, as the case may be, and shall exercise all or any of the powers specified in the First schedule.

(4) Every Assistant Political Agent shall exercise his powers in subordination to the Political Agent or District Coordination Officer, as the case may be, and in such cases or class of cases, and within such local limits as the Political Agent or District Coordination Officer may, by order in writing, direct.

⁸¹ Present section 4 was substituted by the Frontier Crimes (Amendment) Regulation, 2011 for the following: “4. Additional District Magistrate.

a) In any district in the whole or any part of which all or any of the provision of this Regulation are for the time being in force, the [Provincial Government] may appoint any Magistrate or Magistrates of the first class to be an Additional District Magistrate or Additional District Magistrates, without any limit of time.

b) Every Additional District Magistrate so appointed shall have all the ordinary powers of a District Magistrate specified in the fifth part of the third schedule to the Code of Criminal Procedure, 1898. c) When exercising any of the powers of a Deputy Commissioner under this Regulation, an Additional District Magistrate shall be deemed, for the purposes of this Regulation to be the Deputy Commissioner. d) Every Additional District Magistrate shall exercise his powers in subordination to the District Magistrate, and in such cases or classes of cases, and within such local limits as the District Magistrate may, by order in writing, direct.

⁸²[5. **Power of Political Agent or District Coordination Officer to transfer the case.**– The Political Agent or the District Coordination Officer may, on the application of any of the parties, after notice to the other party and hearing them, transfer any civil or criminal matter to any Assistant Political Agent, within thirty days from the appointment of the Council of Elders and shall record reasons thereof for such transfer of the case.]

⁸³[6. **Power to pass sentences of whipping in certain cases.** (Omitted)]

⁸⁴[7. **Tender of pardon to accomplices.**– Section 337 of the Code of Criminal Procedure, 1898 (Act V of 1898), for the purpose of this Regulation, shall be construed to read as under,-

(1) In the case of any offence, at any stage of the investigation or inquiry into, or trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, the Political Agent or the District Coordination Officer, as the case may be, may tender pardon to such person on condition of his making full and true disclosure of the whole of the circumstances within his knowledge related to the offence and to every other person concerned, whether, as principal or abettor, in the commission thereof:

Provided that no person shall be tendered pardon who is involved in an offence relating to hurt or *qatl* without permission of the victim or, as the case may be, of the heirs of the victim.

(2) The Political Agent or District Coordination Officer, as the case may be, who tenders a pardon under sub-section (1) shall record his reasons for doing so.

(3) Every person accepting a tender of pardon under this section shall be examined as a witness in the subsequent trial, if any.

⁸² Present section 5 was substituted for the following: 5. Power of District Magistrate to withdraw or recall cases. 1)

The District Magistrate may withdraw any case from, or recall any case which he has made over to, an Additional District Magistrate whether the Additional District Magistrate is exercising jurisdiction with respect to the case as a Magistrate or as a Deputy Commissioner. 2) If the case may, under the Code of Criminal Procedure, 1898, be referred to another Magistrate competent to inquire into or try it, the District Magistrate may, instead of disposing of the case himself, refer it to such other Magistrate for inquiry or trial, as the case may be.

⁸³ Original section 6 was omitted by the Frontier Crimes (Amendment) Regulation, 2011. It previously read as: Where any person against whom, under Section 1, Sub-section (4), this section may for the time being be enforced is convicted by a Criminal Court of an offence punishable under any of the following sections of the Indian Penal Code, namely, Sections 304, 307, 324, 325, 326, 376, 377, 382, 392 to 399, 427, 428, 429, 435, 436 and 448 to 460, the Court may subject to the provisions of Section 393 of the Code of Criminal Procedure, 1898 pass upon him a sentence of whipping in addition to any other punishment to which he may be sentenced.

⁸⁴ 7. Tender of pardon to accomplices.– Section 337 of the Code of Criminal Procedure, 1898, shall for the purposes of this Regulation, be construed as if- (a) the words in Sub-section (1) "triable exclusively by the High Court or Court of Session or any offence punishable with imprisonment which may extend to ten years or any offence punishable under Section 211 of the Indian Penal Code (Now the Pakistan Penal Code) with imprisonment which may extend to seven years or any offence under any of the following sections of the Indian Penal Code (Now the Pakistan Penal Code), namely, Sections 216-A, 369, 401, 435 and 477-A"; and (b) the whole of Sub-section (2-A) were omitted.

- (4) Such person, unless he is already on bail, shall be detained in custody until the termination of the trial.

CHAPTER III COUNCILS OF ELDERS

⁸⁵[8. **Civil reference to the Council of Elders.**— (1) Where the Political Agent or the District Coordination Officer, as the case may be, is satisfied from any information that a civil dispute exists between the parties which is likely to cause breach of peace, he may, for the settlement thereof make an order in writing stating the grounds for his being so satisfied, refer the dispute within fifteen days to the Council of Elders, for findings in accordance with *Rewaj* who shall give its findings within ninety days on the issues in dispute after making necessary inquiry and hearing the parties and their witnesses.

(2) Where a reference to the Council of Elders is made under sub-section (1), the Political Agent or the District Coordination Officer, as the case may be, shall nominate the Council of Elders. The names of the members so nominated be communicated to the parties, and any objection taken thereto by any of the parties, shall be recorded. The Political Agent or the District Coordination Officer, as the case may be, shall dispose of the objections after hearing the parties and recording the reasons thereof, appoint the members of the Council accordingly.

(3) The order of reference made under sub-section (1) shall state the issues in dispute on which the findings of Council of Elders is required.

(4) On receipt of the findings of Council of Elders, the Political Agent or the District Coordination Officer, as the case may be, by recording his reasons may,-

- (a) pass a decree in accordance with the findings of the majority of the Council of Elders; or
- (b) remand the case to the Council of Elders for further inquiry and findings.

⁸⁵ Present section 8 substituted the previous which read as: 8. Civil reference to Council of Elders. (1) Where the Deputy Commissioner is satisfied, from a police report or other information, that a dispute exists which is likely to cause a blood-feud or murder, or culpable homicide not amounting to murder, or mischief or a breach of the peace, or in which either or any of the parties belongs to a frontier tribe he may, if he considers that the settlement thereof in the manner provided by this section will tend to prevent or terminate the consequence anticipated, and if a suit is not pending in respect of the dispute, make an order in writing, stating the grounds of his being satisfied, referring the dispute to a Council of Elders, and requiring the Council to come to a finding on the matters in dispute after making such inquiry as may be necessary and after hearing the parties. The members of the Council of Elders shall in each case, be nominated and appointed by the Deputy Commissioner. (2) The order of reference made under Sub-section (1) shall state the matter or matters on which the finding of the Council of Elders is required, (3) On receipt of the finding of the Council of Elders under this section, the Deputy Commissioner may (a) remand the case to the Council for a further finding; or (b) refer the case to a second Council; or (c) refer the parties to the Civil Court; or d) pass a decree in accordance with the finding of the Council, or of not less than three-fourth of the members thereof, on any matter stated in the reference; or e) declare that further proceedings under this section are not required.

⁸⁶**9. Effect of decree on finding of Council.**— A decree passed under clause (a) of sub-section (4) of section 8 shall,-

- (a) be a final settlement of the case so far as the decree relates to the matter stated in the reference; and
- (b) have, to that extent and subject to the provisions of this Regulation with respect to the finding of appeal or revision as the case may be, the same effect as a decree of a Civil Court of ultimate jurisdiction, and be enforced by the Political Agent or the District Coordination Officer, as the case may be, as a decree of such Court.

⁸⁷**10. Restriction on jurisdiction of Civil Courts.**— No Civil Court shall have Jurisdiction to call in question the legality of anything done or purported to be done in respect of any matter, the cause of action whereof has arisen in the Tribal Area.

⁸⁸**11. Criminal references to Council of Elders.**— (1) Whenever an offence, of which the Political Agent or District Coordination Officer is competent to take cognizance under this Regulation, is committed, the case shall be registered and the accused shall be produced before the Assistant Political Agent concerned within twenty four hours of the arrest of the accused excluding the time necessary for the journey from the place of arrest to the Assistant Political Agent having jurisdiction. The Political

⁸⁶ The present section 9 replaced the previous section 9 which read as follows: "9. Effect of decree on finding of Council. A decree passed under Section 8, Sub-section (3), clause (d), shall not give effect to any finding or part of a finding which, in the opinion of the Deputy Commissioner, is contrary to good conscience or public policy, but shall be a final settlement of the case so far as the decree relates to any matter stated in the reference, although other matters therein stated may remain undisposed of; and have, to that extent and subject to the provisions of this Regulation with respect to revision, the same effect as a decree of a Civil Court of ultimate resort, and be enforced by the Deputy Commissioner in the same manner as a decree of such a court may be enforced."

⁸⁷ Substituted the previous section 10. Restriction on jurisdiction of Civil Courts. No Civil Court shall take cognizance of any claim with respect to which the Deputy Commissioner has proceeded under Section 8, Sub-section 3, clause (a), clause (b), or clause (c).

⁸⁸ Substituted the previous section 11 worded as follows: Criminal references to Council of Elders. 1) Where, in the opinion of the Commissioner or Deputy Commissioner, it is inexpedient that the question of the guilt or innocence of any person or persons accused of any offence, or of any several persons so accused, should be tried by a Court of any of the classes mentioned in Section 6 of the Code of Criminal Procedure, 1898, the Deputy Commissioner may or if the Commissioner so directs, shall, by order in writing, refer the question to the decision of a Council of Elders, and require the Council to come to a finding on the question after such inquiry as may be necessary and after hearing the accused person. The members of the Council of Elders shall, in each case, be nominated and appointed by the Deputy Commissioner. 2) Where a reference to a Council of Elders is made under Sub-section (1) and the members of the Council have been nominated, the names of the members so nominated shall, as soon as may be, be communicated to the accused person, and any objection which he may then make to the nomination of any such member shall be recorded. The Deputy Commissioner shall consider every objection made by an accused person under this sub-section, and may, in his discretion, either accept or reject the objection, provided that, in the latter case, he shall record his reasons for so doing. The Deputy Commissioner shall, after disposing of any objection made by the accused person, appoint the members of the Council. 3) On receipt of the finding of the Council of Elders under this section, the Deputy Commissioner may (a) remand the question to the Council for a further finding; or (b) refer the question to a second Council; or (c) acquit or discharge the accused person or persons, or any of them; or in accordance with the finding on any matter of fact of the Council, or of not less than three-fourths of the members thereof convict the accused person or persons, or any of them, of any offence of which the facts so found show him or them to be guilty: Provided that a person discharged under clause (c) shall not be liable to be retried for any offence arising out of the same facts after the expiry of two years from the date of such discharge.

Agent or District Coordination Officer as the case may be, shall make an order in writing referring the question for finding of guilt or innocence of any person or persons accused of any offence or offences, to the Council of Elders for its findings who after holding necessary inquiry and hearing the parties and witnesses, submit its findings to the Political Agent or District Coordination Officer as the case may be. The Political Agent or District Coordination Officer, as the case may be, shall appoint the members of the Council of Elders within ten days from the date of arrest of the accused and shall require the Council of Elders to submit its findings on the question referred to within ninety days.

(2) Where a reference to the Council of Elders is made under sub section (1) and the members of the Council have been nominated by the Political Agent or District Coordination Officer, as the case may be, the names of the members so nominated be communicated to the accused and the complainant, and any objection taken thereto by any of the parties, shall be recorded. The Political Agent or the District Coordination Officer, as the case may be, shall dispose of the objections after hearing the parties and the reasons thereof be recorded and appoint the members of the Council accordingly.

(3) On receipt of the findings of the Council of Elders, the Political Agent or the District Coordination Officer, as the case may be, by recording his reasons may,-

- (a) pass an order in accordance with the findings of the majority of the Council of Elders; or
- (b) remand the case to the Council of Elders for further inquiry and findings.

(4) No person shall be prosecuted or punished for the same offence more than once

⁸⁹[11A. **Bail.**— (1) Where any person accused of non-bailable offence is arrested or detained or appears or is brought before the Political Agent or District Coordination Officer, as the case may be, he may be released on bail,. However, he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with imprisonment for ten years:

Provided that the Political Agent or District Coordination Officer may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail:

Provided further that a person accused of an offence as aforesaid shall not be released on bail unless the complainant has been given notice to show cause why he should not be so released.

(2) If it appears to the Political Agent or District Coordination Officer, as the case may be, at any stage of the investigation, inquiry or trial that there are no reasonable grounds for

⁸⁹ New section 11A was introduced in the Frontier Crimes (Amendment) Regulation, 2011.

believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused may, pending such inquiry be released on bail with or without sureties for his appearance.

(3) The Political Agent or District Coordination Officer, as the case may be, releasing any person on bail under sub-section (1) or (2), as the case may be, shall record his reasons in writing for so doing.

(4) Nothing herein shall be deemed to authorize the Political Agent or District Coordination Officer, as the case may be, to release on bail any person accused of non-bailable offence not in custody or not produced before him.

(5) The FATA Tribunal, Appellate Authority, or in case of a person released on bail by the Political Agent or District Coordination Officer, as the case may be, may cause any person who has been released under this section, to be re-arrested and may be committed to custody by an order recording reasons for so doing.

⁹⁰**[11B. Reference by *Qaumi Jirga* in exceptional cases.**— The Political Agent or District Coordination Officer, as the case may be, may take cognizance of any offence or civil dispute in exceptional circumstances, if so recommended by a *Qaumi Jirga* of the Tribe in the interest of justice and public peace.”.

⁹¹**[12. Punishment on conviction on findings of Council.**— Where the Political Agent or District Coordination Officer, as the case may be, convicts a person under clause (9) of sub-section (3) he may pass sentence of imprisonment or fine or both for the offence, provided that the sentence shall not exceed fourteen years.

⁹⁰ New section 11A was introduced in the Frontier Crimes (Amendment) Regulation, 2011.

⁹¹ Previously, section 12 read as follows: “1) Where the Deputy Commissioner convicts a person under Section 11, Subsection (3), clause (d) he may pass upon him any sentence of fine. 2) Where the Deputy Commissioner so convicts a person of an offence mentioned in the second schedule, he may, whatever may be the punishment prescribed for the offence, sentence the person, in lieu of or in addition to fine, to be imprisoned for a term which may extend to seven years, or, subject to the provisions of Section 393 of the Code of Criminal Procedure, 1898, to be whipped or to be whipped and imprisoned for a term which may extend to five years, or to be transported for a term which may extend to seven years, and, where he so convicts a person of an offence punishable with transportation or with imprisonment for a term exceeding seven years, he may, subject to confirmation by the Commissioner, sentence the person to a term either of transportation or of imprisonment exceeding seven years but not exceeding fourteen years; Provided first, that a sentence of whipping shall not be passed on any person so convicted of an offence under Sections 121, 121-A, 122, 123, 124-A, 125, 126, 127, 144, 150, 216, 216-A, 400, 401, 402/494, or 495 of the Indian Penal Code: *Provided*, secondly, that a sentence of transportation or imprisonment for an offence shall not be for a longer term than that (if any) prescribed for the offence: *and Provided*, thirdly, that a sentence of transportation shall not be passed for an offence which is not punishable with transportation or with imprisonment for a term which may extend to seven years or more. [3] In cases of convictions under Section 302 or 396 of the Pakistan Penal Code, the immovable property of the accused shall be liable to forfeiture to the Government][sub-section 3 was added by W.P. Ordinance XII 1962 section 3.]

⁹²**[13. Manner of enforcing sentences.**— Any sentence passed under section 12 shall be executed in the manner provided for the execution of sentences in Chapter XXVIII of the Code of Criminal Procedure, 1898 (Act V of 1898); and-

- (a) an offence punishable with imprisonment for life shall be punishable with rigorous imprisonment for a term which may extend to fourteen years;
- (b) the imprisonment in default of payment of fine shall be simple and the provisions of sections 63 to 70 of the Pakistan Penal Code, 1860 (Act XLV of 1860) shall, subject to aforesaid provisions, apply to sentences passed under this Regulation; and
- (c) the sentence of imprisonment and fine provided by the Pakistan Penal Code, 1860 (Act XLV of 1860) or any other law specified in the Second Schedule to this Regulation for the offence shall be applicable to such offence committed in Federally Administered Tribal Areas.

14. Time for exercising power of reference to Council of Elders. [Omitted]⁹³

15. Motion by Public Prosecutor in view of reference to Council of Elders. [Omitted]⁹⁴

16. Case of persons jointly accused of an offence. [Omitted]⁹⁵

17. Powers to set aside orders making or refusing to make references to Council of Elders. [Omitted]⁹⁶

18. Recommendation of Council of Elders. [Omitted]⁹⁷

⁹² Substituted for the previous section 13 which read: Manner of enforcing sentences. 1) Any sentence passed under Section 12 shall be executed in the manner provided for the execution of sentences passed by a Court of any of the classes mentioned in Section 6 of the Code of Criminal Procedure, 1898. 2) For the purposes of Sections 64 to 67 of the Indian Penal Code in reference to a sentence under Section 12 of this Regulation, a) an offence punishable with death or transportation for life shall be deemed to be punishable with rigorous imprisonment for a term which may extend to ten years; b) the imprisonment in default of payment of fine may be rigorous or simple at the discretion of the Deputy Commissioner.

⁹³ Previous section 18 read: Time for exercising power of reference to Council of Elders. The powers conferred by Section 11 on the Commissioner and Deputy Commissioner, respectively, may be exercised by them, in cases committed to the Court of Session, at any time before the trial before that Court has commenced, and, in cases pending before any Court inferior to the Court of Session, at any time before an order of conviction or acquittal has been made.

⁹⁴ Previous section 18 read: Motion by Public Prosecutor in view of reference to Council of Elders. 1) In any trial before a Court of Session, the Public Prosecutor may, when instructed in writing in that behalf by the Commissioner or Deputy Commissioner, at any time before an order of conviction or acquittal has been made with respect to any accused person, withdraw from the prosecution of such person in order that the case may be referred to a Council of Elders. 2) The Sessions Judge shall thereupon stay proceedings with respect to such person, and the Deputy Commissioner shall refer the case to a Council of Elders.

⁹⁵ Previous section 18 read: Case of persons jointly accused of an offence. The powers conferred by Section 11, as limited by Section 14, may be exercised against and the withdrawal of a prosecution under Section 15 may have reference to one or some only of two or more persons jointly accused of an offence.

⁹⁶ Previous section 17 read: Powers to set aside orders making or refusing to make references to Council of Elders. The Deputy Commissioner may, if he thinks fit, at any time reconsider and set aside any order of the Deputy Commissioner under this Regulation (a) directing reference to a Council of Elders, or (b) refusing to make such a reference.

⁹⁷ Previous section 18 read: Recommendation of Council of Elders. (1) Where a Council of Elders to which a reference has been made under this Regulation makes any recommendation to which effect might be given if it were a finding on a matter or question referred to the Council under this Regulation, the Deputy Commissioner may, if the recommendation affects a person mentioned in the order of reference and is relevant to the matter or question actually referred, deal with the recommendation or any part of it as if it were a finding under Section 8 or Section 11: *Provided* that no decree or sentence may be passed on any such recommendation as aforesaid against any person who has not had the claim or charge fully explained to him and been given an opportunity of entering upon his defence in regard thereto. (2) Where the Deputy

⁹⁸**[19. Record of Political Agent or District Coordination Officer.**– (1) Where the Political Agent or District Coordination Officer, as the case may be, passes any sentence of imprisonment or fine or both, he shall maintain a complete record of the case and record his reasons for passing the sentence.

(2) The record shall be made by the Political Agent or District Coordination Officer, as the case may be, and the Council of Elders in Urdu, English or Pushto.

⁹⁹**[20. Attendance of parties and witnesses before Political Agent or District Coordination Officer or Council of Elders.**– Where a reference is made to a Council of Elders, the Political Agent or the District Coordination Officer, as the case may be, may exercise all or any of the powers conferred by the Code of Civil Procedure, 1908, (Act V of 1908) and the Code of Criminal Procedure, 1898, (Act V of 1898) respectively, as the case may be, for the purpose of compelling the attendance, before himself or the Council of Elders or Joint Council of Elders, of the parties, and witnesses, or any of them, in any case and at any stage of the proceedings.

Chapter IV PENALTIES

¹⁰⁰**[21. Blockade of hostile or unfriendly tribe.**– In the event of any tribe of Federally Administered Tribal Areas or any section of the tribe or any member of the tribe, acting in hostile, subversive or offensive manner towards the State or to any person residing within the settled area of Pakistan, the Political Agent or District Coordination Officer, as the case may be, by an order in writing may direct,–

Commissioner deals with a recommendation under Subsection (1), he may pass any such decree as is authorised by Section 8, or any such sentence as is authorised by Section 12, Sub-section (1), and the decree or sentence shall have the same effect and be enforced in the same manner as if it were a decree or sentence passed under Section 8 or Section 12, Subsection (1), as the case may be.

⁹⁸ 19. Record of Deputy Commissioner. (1) Where the Deputy Commissioner passes, under this Chapter a sentence of fine exceeding two hundred rupees, or of imprisonment for a term exceeding three months, or of transportation, he shall make a record of the facts of the case of the offence committed and of his reasons for passing the sentence. (2) The record shall be made by the Deputy Commissioner in English and in his own hand, unless for any sufficient reasons he is prevented from so making it, in which case he shall record the reason of his inability and shall cause the record to be made from his dictation in open Court.

⁹⁹ 20. Attendance of parties and witnesses before Deputy Commissioner and Council of Elders. Where a reference is made to a Council of Elders under this Chapter, the Deputy Commissioner may exercise all or any of the powers conferred by the Code of Civil Procedure and the Code of Criminal Procedure, 1898, respectively, as the case may be, for the purpose of compelling the attendance, before himself or the Council of Elders, of the parties, and witnesses, or any of them.

¹⁰⁰ 21. Blockade of hostile or unfriendly tribe. In the event of any frontier tribe, or of any section or members of such tribe, acting in a hostile or unfriendly manner towards the British Government or towards persons residing within British India, the Deputy Commissioner may with the previous sanction of the Commissioner, by order in writing, direct: a) the seizure, wherever they may be found, of all or any of the members of such tribe and of all or any property belonging to them or any of them"; b) the detention in safe custody of any person or property so seized and; the confiscation of any such property; c) and may, with the like sanction by public proclamation; d) debar all or any member of the tribe from all access into British India; and e) prohibit all or any persons within the limits of British India from all intercourse or communication of any kind whatsoever, or of any specified kind or kinds with such tribe or any section or members thereof.

- (a) the arrest of hostile members of such tribe wherever they may be, and the attachment of the property both movable and immovable wherever it may be found, belonging to them or any of them;
- (b) the detention in safe custody of any person so arrested or property so attached; and
- (c) debar all or any such member of the tribe from access into the settled area of Pakistan by public proclamation:

Provided that the above-mentioned actions shall be taken against plareena of the accused in the first instance, and if the circumstances so warrant, then any or all of the following actions may be taken by a well-reasoned order in writing against,-

- (i) the sub-section of the tribe of the accused;
- (ii) the section of the tribe of the accused;
- (iii) any other section of the tribe of the accused,

Provided further that the confiscation of the property so attached shall be made after public proclamation and holding necessary inquiry,; Provided also that women, children less than sixteen years of age persons over sixty-five years of age shall not be arrested and detained under this section.

Explanation:– *Plareena* as mentioned in first proviso includes the male descendants of the paternal grandfather of the accused.

¹⁰¹[22. **Fines on communities accessory to crime.**—(1) Where, from the circumstances of any case, there appears to be good reason to believe that the inhabitants of any village, or part of a village, or any of them, have -

- (a) connived at, or in any way abetted, the commission of any offence; or
 - (b) failed to render any assistance in their power to discover the offenders or to effect their arrest;
 - (c) connived at the escape of, or harbored, any offender or person suspected of having taken part in the commission of any offence; or
 - (d) combined to suppress material evidence of the commission of an offence;
- the Political Agent or District Coordination Officer, as the case may be, may with the previous sanction of the Commissioner, impose a fine on the inhabitants of such village or part of a village, or any of them as a whole:

¹⁰¹ 22. Fines on communities accessory to crime. Where, from the circumstances of any case, there appears to be good reason to believe that the inhabitants of any village, or part of a village, or any of them, have a) connived at, or in any way abetted, the commission of an offence; or b) failed to render all assistance in their power to discover the offenders or to effect their arrest; c) connived at the escape of, or harboured, any offender or person suspected of having taken part in the commission of an offence; or d) combined to suppress material evidence of the commission of an offence; the Deputy Commissioner may, with the previous sanction of the Commissioner, impose a fine on the inhabitants of such village or part of a village, or any of them as a whole.

Provided that women, children less than sixteen years of age and persons over sixty-five years of age shall not be arrested and detained under this section.

Explanation.- (2) Nothing contained hearing shall be construed to debar the Political Agent or District Coordination Officer, as the case may be, to take any appropriate action against the personnel entrusted with watch and ward duties in the particular locality in accordance with *Rewaj*.

¹⁰²[**23. Fines on communities where murder or culpable homicide is committed or attempted.**— Where, within the area occupied by a village community or part of a village-community, a person is found dangerously or fatally wounded, or the body is found of a person believed to have been killed, the members of the village community or part thereof shall be deemed to have committed an offence under section 22, unless the elders of the village-community or part thereof show that the members thereof -

(a) had not found an opportunity of preventing the offence or arresting the offender; or

(b) have used all reasonable means to bring the offender to justice.

¹⁰³[**24. Recovery of fines.**— Fines imposed under section 22 shall, in default of payment, be recoverable as if they were arrears of land revenue due by the members of the community or part thereof upon whom the fine is imposed.

¹⁰⁴[**25. Forfeiture of remissions of revenue etc. in the case of communities and persons accessory to crime.**— Where a village-community or part of a village-community has become liable to fine under section 22, it shall further be liable to forfeit, in whole or in part and for a term or in perpetuity, any remission of land revenue of which it may be in joint enjoyment, and the members of the village-community or part thereof, as the case may be, shall in like manner be liable severally to forfeit any assignment or remission of land-revenue or allowance paid out of public funds which they, or any of them, may enjoy.

¹⁰⁵[**26. Forfeiture of public emoluments etc., of persons guilty of serious offences or of conniving at crime.**— Where it is shown to the satisfaction of the Political Agent or District Coordination Officer,

¹⁰² Where, within the area occupied by a village community or part of a village-community, a person is dangerously or fatally wounded by an unlawful act, or the body is found of a person believed to have been unlawfully killed, the members of the village community or part thereof shall be deemed to have committed an offence under Section 22, unless the headmen of the village-community or part thereof can show that the members thereof a) had not an opportunity of preventing the offence or arresting the offender; or b) have used all reasonable means to bring the offender to justice.

¹⁰³ . Fines imposed under Section 22 shall, in default of payment, be recoverable as if they were arrears of land revenue due by the members of the community or part thereof upon whom the fine is imposed.

¹⁰⁴ 25. Forfeiture of remissions of revenue etc. in the case of communities and persons accessory to crime. Where a village-community or part of a village-community has become liable to fine under Section 22, it shall further be liable to forfeit, in whole or in part, and for a term or in perpetuity, any remission of land revenue of which it may be in joint enjoyment, and the members of the village community or part thereof, as the case may be, shall in like manner be liable severally to forfeit any assignment or remission of land-revenue or allowance paid out of public funds which they, or any of them, may enjoy.

¹⁰⁵ 26. Forfeiture of public emoluments etc. of persons guilty of serious offences or of conniving at crime. Where it is shown to the satisfaction of the Deputy Commissioner that any person who is in the enjoyment of an assignment or remission of land-revenue or allowance payable out of public funds, has been guilty of a serious offence, or has colluded with or harboured any criminal, or has suppressed material evidence of the commission of any offence, or has failed, on the

as the case may be, that any person who is in the enjoyment of an assignment or remission of land-revenue or allowance payable out of public funds, has been guilty of a serious offence, or has colluded with or harboured any criminal, or has suppressed material evidence of the commission of any offence, or has failed, on the investigation of any criminal case, to render loyal and proper assistance to the authorities, to the best of his ability, the Political Agent or District Coordination Officer, as the case may be, may in addition to any other penalty to which such person may be liable under any law for the time being in force, direct the forfeiture, in whole or in part and for a term or in perpetuity, of such assignment or remission of land-revenue or allowance, as the case may be:

Explanation.— For the purposes of this section the expression “serious offence” means any offence punishable with imprisonment for a term which may extend to three years or more.

¹⁰⁶**[27. Powers to direct forfeiture.**— Forfeiture under section 25 or section 26 may be adjudged by order of the Political Agent or District Coordination Officer, as the case may be, for a term which may extend to three years, and by order of the Governor or any officer authorized by him for any longer term or in perpetuity.

¹⁰⁷**[28. Powers of Governor saved.**— Nothing contained in sections 25, 26 and 27 shall affect the powers of the Governor with respect to the grant, continuance or forfeiture, in whole or in part, of any assignment or remission of land-revenue or of any allowance paid out of public funds.

¹⁰⁸**[29. Preparation to commit certain offences.**— Where a person is found carrying arms in such manner or in such circumstances as to afford just grounds of suspicion that the arms are being carried by him with intent to use them for an unlawful purpose, and that person has taken precautions to elude observation or evade arrest, he shall be taken in custody and be tried as provided in section 11 and if found guilty, may be punished with fine which may extend to five thousand rupees and the arms carried by him be confiscated and in case of habitual offender or previous convict, he may be punished

investigation of any criminal case, to render loyal and proper assistance to the authorities to the best of his ability, the Deputy Commissioner may, in addition to any other penalty to which such person may be liable under any law for the time being in force, direct the forfeiture, in whole or in part and for a term or in perpetuity, of such assignment or remission of land-revenue or allowance, as the case may be. Explanation. For the purposes of this section the expression “serious offence” means any offence punishable with transportation or with imprisonment for a term which may extend to three years or more.

¹⁰⁶ 27. Powers to direct forfeiture. Forfeiture under Section 25 or Section 26 may be adjudged by order of the Deputy Commissioner for a term, which may extend to three years, and by order of the Commissioner for any longer term or in perpetuity.

¹⁰⁷ 28. Powers of Provincial Government saved. Nothing in Sections 25, 26 and 27 shall affect the powers of the 21[Provincial Government] with respect to the grant, continuance or forfeiture, in whole or in part, of any assignment or remission of land-revenue or of any allowance paid out of public funds.

¹⁰⁸ 29. Preparation to commit certain offences.

Where a person is found carrying arms in such manner or in such circumstances as to afford just

grounds of suspicion that the arms are being carried by him with intent to use them for an unlawful purpose, and that person has taken precautions to elude observation or evade arrest, or is found after sunset and before sunrise within the limits of any military camp, cantonment or of any municipality, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both, and the arms carried by him may be confiscated.

with imprisonment with extend to two years or with fine which may extend to rupees ten thousand and the arms carried may be confiscated.

¹⁰⁹**[30. Adultery.-**(1) A married woman who, knowingly and by her own consent, has sexual intercourse with any man who is not her husband, is guilty of the offence of adultery, and shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(2) Cognizance shall not be taken of an offence under this section unless a complaint has been made by the husband of the woman, or, in his absence, by a person who had care of the woman on his behalf at the time when the offence was committed.

¹¹⁰**[31. Power to prohibit erection of new villages or towers on frontier.-** (1) No new hamlet, village-habitation, tower or walled enclosure shall, without the previous sanction in writing of the Political Agent or District Coordination Officer, as the case may be, who may either grant or refuse such sanction as he thinks fit, be erected at any place within one hundred and twenty yards from the center of the road.

(2) Where the Political Agent or District Coordination Officer, as the case may be, refuses to sanction the erection of any such hamlet, village-habitation, tower or walled enclosure, as the case may be, he shall record his reasons in writing for so doing.

¹¹¹**[32. Power to direct removal of villages.-** Where it is expedient on military grounds, the Federal Government may, by order in writing, direct the removal of any village situated in close proximity to the frontiers of Islamic Republic of Pakistan to any other suitable site, and award to the inhabitants such compensation for any loss which may have been occasioned to them by the removal of their village as, in the opinion of the Federal Government, is just and adequate.

¹⁰⁹ Previously this provision read as follows: 30. Adultery.

(1) A married woman .who, knowingly and by her own consent, has sexual intercourse with any man who is not her husband is guilty of the offence of adultery, and shall be punishable with imprisonment for .a term which may extend to five years, or with fine, or with both.

22[(2) Cognizance shall not be taken of an offence under this section unless a complaint has been made by the husband of the women or, in his absence, by a person who had care of the women on his behalf at the time when the offence was committed.]

¹¹⁰ 31) Power to prohibit erection of new villages or towers on frontier.

1) No new hamlet, village-habitation, tower or walled enclosure shall, without the previous sanction in writing of the Commissioner, who may, either grant or refuse such sanction as he thinks fit, be erected at any place within five miles of the frontier of²³ British India.

2) Where the Commissioner refuses to sanction the erection of any such hamlet, village habitation, tower or walled enclosure, as the case may be, he shall record, his reasons for so doing.

¹¹¹ Amended by the Frontier Crimes Regulations (Amednment) Order 2011. Previous it read as: 32. Power to direct removal of villages. — Where it is expedient on military grounds, the Central Government] may, by order in writing, I direct the removal of any village situated in close proximity to the frontier of ²⁴British India to any other site within five miles of the regional may and award to the inhabitants such compensation for any loss which may have been occasioned to them by the removal of their village as in the opinion of the [Central Government], is just.

¹¹²[33. **Regulation of Hujras and Chauks.** Omitted.

¹¹³[34. **Attachment or disposal of buildings used by robber, etc.**– (1) Where the Political Agent or District Coordination Officer, as the case may be, is satisfied that any building is habitually used as a meeting place by robbers, house-breakers, thieves, receivers of stolen properties, protectors or harbourers of thieves or their abettors, habitual offenders who commit or attempt to commit, or abet the commission of the offences of kidnapping, abduction, extortion, cheating, mischief, car-lifting, offences involving breach of peace, or by desperate and dangerous criminals or for the purpose of gambling, he may, by order in writing, direct the arrest of such persons and prohibit the owner or occupier thereof from so using such building, and, if the order is not obeyed, he may, by a like order, direct that the building be attached in favour of Government of Pakistan, and where such attachment is not feasible, then the Political Agent or District Coordination Officer, as the case may be, may pass an order of the disposal of the building if the Jirga of the Tribe expresses its inability to effect surrender of the accused to the Administration. Such further order shall be without prejudice to any punishment to which the offenders or owner or occupier of such building may, under any law for the time being in force, be liable for disobedience of the prohibitory order.

(2) No person shall be entitled to any compensation in respect of the disposal of any building under sub-section (1).

¹¹⁴[35. **Naubati chaukidari system.** *Omitted*

¹¹⁵[36. **Power to require persons to remove in certain cases.**– Where, in the opinion of the Political

¹¹² Section 33 was omitted by the Frontier Crimes Regulations (Amednment) Order 2011. It read as: 33. Regulation of Hujras and Chauks. — No building of the kind commonly known as "hujra" or "chauk", and no building intended to be Used as a "hujra" or "chauk", shall be, erected or built, and no existing building not now used/as a "hujra" or "chauk", shall at any time be used as such, without .the previous, sanction in writing of, the Deputy Commissioner. Whoever contravenes the provisions of Sub-section (1) shall be punishable with imprisonment; for "a term, which may extend to six months or with fine, or with both.

¹¹³ 34. Demolition of buildings used by robber etc. 1) Where the Deputy Commissioner is satisfied that any building is habitually used as a meeting place by robbers, house-breakers, thieves or bad characters or for the purpose of gambling, he may, by order in writing, prohibit the owner or occupier thereof from so using such building, and, if the order is not obeyed, may, by a like order, direct that the building be demolished. Such further order shall be without prejudice to any punishment to which the owner or occupier of such building may, under any law for the time being in force, be liable for disobedience of the prohibitory order. 2) No person shall be entitled to any compensation in respect of the demolition of any building under Sub-section (1).

¹¹⁴ The omitted section 35 read: 35. Naubati chaukidari system. 1) Where, in the opinion of the Deputy Commissioner, the custom of providing for watch and ward by what are commonly known as "Naubati chaukidars" exists in the case of .any village-community, "and the village-community, or any part thereof fails to provide .for the due performance of such service, or any member of the village-community fails to perform his duty of watch and ward according to the customary rotation in respect of such duties, the Deputy Commissioner may impose a fine, which may extend to one hundred rupees in any one case, upon the village-community or part or member thereof so failing as aforesaid. 2) The provision of Section 24 shall be applicable to the recovery of fines imposed on any village-community or part thereof under this section. 3) Where such custom as aforesaid has not existed or has fallen into misuse in any village-community, the Deputy Commissioner may, with the previous sanction of the Commissioner, by order in writing, direct introduction or revival, as the case may be, and thereupon the provisions of Sub-section (1) shall apply in respect of the village-community.

¹¹⁵ 36. Power to require persons to remove in certain cases. Where in the opinion of the Deputy Commissioner, any person a) is a dangerous fanatic; or b) belongs to a frontier tribe and has no ostensible means of subsistence or cannot give a satisfactory account of himself; or c) has a blood-feud; or d) has occasioned cause of quarrel likely to lead to blood-shed; The Deputy Commissioner may, by order in writing, require him to reside beyond the limits of

Agent or District Coordination Officer, as the case may be, any person,—

- (a) is dangerously fanatic; or
- (b) belongs to a frontier tribe and has no ostensible means of subsistence or can not give a satisfactory account of himself; or
- (c) has a blood-feud; or
- (d) has occasioned cause of quarrel likely to lead to blood-shed;

the Political Agent or District Coordination Officer, as the case may be, may by order in writing, require him to reside beyond the limits of the territories to which this Regulation extends, or at such place within the said territories as may be specified in the order:

Provided that, if the person has a fixed habitation in the place which the Political Agent or District Coordination Officer, as the case may be, requires him to leave, an order under this section may not be made without the recommendations of Council of Elders.

¹¹⁶**[37. Penalty for breach of certain orders.**— Whoever contravenes the provisions of section 31, or disobeys an order under section 21 or section 32, or a prohibition under section 34, or a requisition under section 36, shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine which may extend to ten thousand rupees.

¹¹⁷**[38. Powers of arrest.**— In any place in which all or any of the provisions of this Regulation are for the time being in force—

- (i) any private person may, without an order from a local administration and without a warrant, arrest or cause to be arrested, and make over or cause to be made over to Political Agent or District Coordination Officer, as the case may be, or take or cause to be taken to the nearest notified post of the local administration, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has

the territories to which this Regulation extends or at such place within the said territories as may be specified in the order:

Provided that, if the person has a fixed habitation in the place which the Deputy Commissioner requires him to leave, an order under this section shall not be made without the previous sanction of the Commissioner.

¹¹⁶ 37. Penalty for breach of certain orders. Whoever contravenes the provisions of Section 31, or disobeys an order under Section 21 or Section 32, or a prohibition under Section 34, or a requisition under Section 36, shall be punishable with imprisonment for a term which may extend to six months, and shall also be liable to fine which may extend to one thousand rupees.

¹¹⁷ 38. Powers of arrest. In any place in which all or any of the provisions of this Regulation are for the time being in force.

(i) any private person may, without an order from a Magistrate and without a warrant, arrest or cause to be arrested, and make over or cause to be made over to a police officer or take or cause to be taken to the nearest police station, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned; and (ii) Section 48 of the Code of Criminal Procedure, 1898, shall be read as if the following sub-section were added thereto namely: "(4) But this section gives a right to cause the death of a person against whom those portions of the Frontier Crimes Regulation 1901 which are not of general application, may be enforced. a) if he is committing or attempting to commit an offence, or resisting or evading arrest, in such circumstance as to afford reasonable ground for believing that he intends to use arms to effect his purpose; and b) if a hue and cry has been raised against him of his having been concerned in any such offence as is specified in clause (a) or of his committing or attempting to commit an offence, or resisting or evading arrest, in such circumstances as are referred to in the said clause".

been received, or a reasonable suspicion exists of his having been so concerned; and

(ii) section 46 of the Code of Criminal Procedure, 1898 (Act V of 1898), shall, mutatis mutandis apply to Federally Administered Tribal Areas.

¹¹⁸**[39. Arrest without warrant in cases under section 496A, Pakistan Penal Code 1860 (XLV of 1860).-**

(1). Where there is reason to believe that a person has committed or attempted to commit an offence punishable under section 496A of the Pakistan Penal Code (XLV of 1860), an officer of the Law Enforcement Agencies, under the command of Political Agent or District Coordination Officer, as the case may be, without an order from a Magistrate and without a warrant, arrest that person on the requisition of the husband of the woman, or, in his absence of a person having the care of her on his behalf, or, in the absence of both the husband and any such person as last aforesaid from the village in which the woman resides, on the requisition of a head man of the village.

(2). An officer of law Enforcement Agencies, under the command of Political Agent or District Coordination Officer, as the case may be, making an arrest under sub-section (1) shall, without unnecessary delay, take or send the person arrested to the nearest Magistrate having jurisdiction.

(3). The Magistrate may in default of bail being furnished to his satisfaction, detain the person arrested for such period, not exceeding fourteen days, as may be necessary to enable the husband, or, in his absence, a person who had care of the woman on his behalf, to make a complaint.

¹¹⁹**[40. Security for keeping the peace.-** (1) Where any person, who is likely to do any wrongful act or commit any offence, which may cause breach of peace or disturb the public tranquility, is produced

¹¹⁸ 39. Arrest without warrant in cases under Section 498, Indian Penal Code. 1) Where there is reason to believe that a person has committed or attempted to commit an offence punishable under Section 498 of the "Indian Penal Code, an officer in charge of a police station may, without an order from a Magistrate and without a warrant, arrest that person on the requisition of the husband of the woman, or, in his absence of a person having the care of her on his behalf, or, in the absence of both the husband and any such person as last aforesaid from the village in which the woman resides, on the requisition of a headman of the village. 2) A police officer making an arrest under Sub-section (1) shall, without unnecessary delay, take or send the person arrested to the nearest Magistrate having jurisdiction. 3) The Magistrate may, in default of bail being furnished to his satisfaction, detain the person arrested for such period, not exceeding fifteen days, as may be necessary to enable the husband, or, in his absence, a person who had care of the woman on his behalf, to make a complaint.

¹¹⁹ 40. Security and surveillance for the prevention of murder or culpable homicide or the dissemination of seditious matter. 1) Where the Commissioner or the Deputy Commissioner is of opinion that it is necessary for the purpose of preventing murder, or culpable homicide not amounting to murder, or the dissemination of seditious matter, to require a person to execute a bond, for good behaviour or for keeping the peace, as the case may be, he may order the person to execute a bond with or without sureties for his good behaviour or for keeping the peace, as the case may be, during such period not exceeding three years, as the Commissioner or the Deputy Commissioner, as the case may be, may fix. 2) The Deputy Commissioner may make an order under Sub-section (1) (a) on the recommendation of a Council of Elders, or (b) after inquiry as hereinafter provided. [(2-A) Pending the completion of an enquiry for the purposes of Sub-section (2), the Deputy Commissioner may, if he considers that immediate measures are necessary for preventing any offence referred to in Sub-section (1), direct the

before the Political Agent or the District Coordination Officer, as the case may be, he may require such person to show cause why he should not be ordered to execute a bond with or without sureties for good behaviour and keeping the peace for a period not exceeding two years.

(2) The Political Agent or District Coordination Officer, as the case may be, shall hold necessary inquiry as nearly as may be practicable, into the truth of the information upon which such action has been taken, in accordance with sub-section (2) of 117 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(3) Pending completion of such inquiry, the Political Agent or District Coordination Officer, as the case may be, if he considers that immediate measures are necessary for preventing the breach of peace or commission of any offence, direct the person to execute a bond with or without sureties for keeping the peace and maintaining good behaviour failing which he may be detained until such bond is executed or, in default of execution of bond, until the inquiry is concluded within a period of thirty days.

(4) After holding such inquiry, as provided above, if it is proved that there is an apprehension of breach of peace or disturbance of public tranquility, the Political Agent or District Coordination Officer, as the case may be, may pass an order directing such person to execute the bond with or without sureties for his good behaviour and for keeping peace and tranquility for a period not exceeding two years failing which he may be detained. In case it is not proved that there is any apprehension of breach of peace or disturbance of public tranquility, the Political Agent or the District Coordination Officer, as the case may be, shall release such person if in custody, and if not in custody shall discharge him.

(5) Where a person has been convicted of the offences as mentioned in section 106 of the Code of Criminal Procedure 1898 (Act V of 1898), for the offences under the laws mentioned in the Second Schedule he may be ordered to execute a bond with or without sureties for his good behaviour and for keeping the peace. If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(6) Where the Political Agent or District Coordination Officer, as the case may be, is of the opinion that sufficient grounds exist for making an order under sub-section, (4) he may, by order in writing, direct that the person concerned after his release shall notify his residence and any change of his residence in the manner prescribed in section 565 of the Code of Criminal Procedure, 1898, for a term not exceeding two years.

person in respect of whom the enquiry is to be held, to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour for a period not exceeding one month, and detain him in custody till such bond is executed]. { Sub-section (2-A) of Section 40 ins. by W.P. Ord: XXXVII of 1963, S.2, shall apply to Queta and Kalal Divisions only.} (3) Where a person has been convicted in accordance with the finding of a Council of Elders of an offence mentioned in Section 106 of the Code of Criminal Procedure, 1898, or punishable under Section 302, Section 304, Section 307 or Section 308 of the Indian Penal Code, the Deputy Commissioner at the time of passing sentence, or the Commissioner at the time of revising the sentence, may make an order under Subsection (1) with respect to that person. (4) Where the Deputy Commissioner makes an order under Sub-section (1) on the recommendation of a Council of Elders, he shall record his reasons for acting on the recommendation. (5) Where the Commissioner or the Deputy Commissioner is of opinion that sufficient grounds exist for making an order under Sub-section (1) he may, either in lieu of or in addition to such order, by order in writing direct that the person concerned shall notify his residence and any change of residence in the manner prescribed by Section 565 of the Code of Criminal Procedure, 1898, during such term, not exceeding three years, as may be specified in the order.

¹²⁰**40A. Arrest by authorities other than Political Agents etc.**— Whenever a person is arrested by the authorities other than the Political Agents, District Coordination Officers or their subordinate staff and is produced before the Political Agent or District Coordination Officer, as the case may be, he shall immediately inform the Governor or an Officer authorized by him and the Chairman FATA Tribunal about the production of such person before him and thereafter shall proceed against him in accordance with the provisions of this Regulation and the circumstances of the case.”

¹²¹**41. Security from families or factions in case of blood-feud.**— Where a blood-feud or other cause of quarrel likely to lead to bloodshed exists, or, in the opinion of the Political Agent or District Coordination Officer, as the case may be, is likely to arise between two families or factions or tribes, the Political Agent or District Coordination Officer, as the case may be, after holding an inquiry as hereinafter provided, order all or any of the members of both families or factions or tribes or of either family or faction or tribe to execute a bond, with or without sureties, for their good behavior and keeping the peace, during such period, not exceeding two years as he may fix.

¹²²**42. Procedure in inquiry.**— Where the Political Agent or District Coordination Officer, as the case may be, holds an inquiry under this Regulation, he shall follow the procedure as prescribed in section 117 (2) of the Code of Criminal Procedure, 1898 (Act V of 1898), as nearly as may be practicable. The record of the inquiry proceedings shall be maintained and such inquiry shall be concluded within thirty days.

¹²³**43. Breach of bond.**— (1) A bond executed under section 40 shall be liable to be forfeited if the person bound thereby to be of good behaviour or to keep the peace, as the case may be, commits or

¹²⁰ Added by the Frontier Crimes Regulations (Amednment) Order 2011

¹²¹ 41. Security from families or factions in case of blood feud. Where a blood-feud or other cause of quarrel likely to lead to blood-shed exists or, in the opinion of the Deputy Commissioner, is likely to arise between two families or factions, the Deputy Commissioner may, on the recommendation of a Council of Elders, or, after inquiry as hereinafter provided, order all or any of the members of both families or factions or of either family or faction to execute a bond, with or without sureties, for their good behaviour or for keeping the peace, as the case may be, during such period, not exceeding three years as he may fix.

¹²² 42. Procedure in inquiry. An inquiry for the purposes of Section 40 Sub-section (2), or Section 41, may be conducted so far as may be necessary out of Court. Provided that a person from whom it is proposed to require a bond under Section 40, or the principal members of a family or faction from which it is proposed to require a bond under Section 41, shall be given an opportunity of showing cause in Court why a bond should not be required and of having his or their witnesses examined there, and of cross-examining any witness not called by himself or themselves who may testify there to the necessity or otherwise for the execution of a bond. (2) Sections 112, 113, 115 and 117 of the Code of Criminal Procedure, 1898, shall not apply to an inquiry under this section, but the Deputy Commissioner shall record his order with the reasons for making it.

¹²³ 43. Breach of bond. A bond executed under Section 40 shall be liable to be forfeited if the person bound thereby to be of good behaviour or to keep the peace, as the case may be, commits or attempts to commit, or abets the commission of, any offence punishable with imprisonment. 2) A bond executed under Section 41 shall be liable to be forfeited if the person bound thereby to be of good behaviour or to keep the peace, as the case may be, commits or attempts to commit, or abets the commission of, any offence punishable with imprisonment in respect of any member of the opposite family or faction to which the bond related. 3) If, while a bond executed under Section 41 is in force, the life of any member of either family or faction is unlawfully taken or attempted, the Deputy Commissioner may declare the bond of all or any of the members of the other family or faction and their sureties (if any) to be forfeited, unless it is shown to his satisfaction that the homicide or attempt was not committed by, or in consequence of the abetment of, any member of that family or faction.

attempts to commit, or abets the commission of, any offence punishable with imprisonment or fine or both.

(2) A bond executed under section 41 shall be liable to be forfeited, if the person or persons bound thereby to be of good behaviour or to keep the peace, as the case may be, commit or attempt to commit, or abet the commission of, any offence punishable with imprisonment in respect of any member of the opposite family or faction or tribe to which the bond related.

(3) If, while a bond executed under section 41 is in force, the life of any member of either family or faction or tribe is taken or attempted to be taken, the Political Agent or District Coordination Officer, as the case may be, may declare the bond of all or any of the members of the other family or faction or tribe and their sureties if any, to be forfeited, unless it is shown to his satisfaction that the homicide or attempt was not committed by, or in consequence of the abetment of, any member of that family or faction or tribe.

(4) The procedure as provided in Chapter XLII of the Code of Criminal Procedure 1898 (Act V of 1898), shall be followed for the forfeiture of the bond under this Regulation.

¹²⁴**44. Imprisonment in default of security.**— (1) Where a person ordered to give security under section 40 or section 41, does not give security on or before the date on which the period for which the security is to be given commences or in cases of forfeiture of bond, he shall be committed to prison or, if he is already in prison, be detained in prison until the period for which the security was required, expires, or until within such period he or they furnish the required security bond to the satisfaction of the Court.

(2) Imprisonment for failure to give security under this Chapter may be simple or as the offence requiring the security directs in each case.

¹²⁵**45. Length of imprisonment.**— Where a person has suffered imprisonment for two years for failure to give security under section 40 or section 41, he shall be released forthwith, provided where the person in the opinion of the Political Agent or District Coordination Officer, as the case may be, is habitual or desperate or hardened criminal or the grounds on which he was detained have not ceased, the Political Agent or District Coordination Officer, as the case may be, may proceed afresh under the provisions of this Chapter for passing a fresh order and reasons thereof be recorded.

46. Further Security. Omitted¹²⁶

¹²⁴ 44. Imprisonment in default of security. 1) Where a person ordered to give security under Section 40 or Section 41 does not give security on or before the date on which the period for which the security is to be given commences he shall be committed to prison, or, if he is already in prison, be detained in prison until that period expires, or until within that period he furnishes the required security. 2) Imprisonment for failure to give security under this Chapter may be rigorous or simple as the officer requiring the security directs in each case.

¹²⁵ 45. Length of imprisonment. Where a person has suffered imprisonment for three years for failure to give security under Section 40 or Section 41, he shall be released and shall not again be required to give security unless a fresh order is passed in accordance with the provisions of this Chapter or of the Code of Criminal Procedure, 1898.

¹²⁶ 46. Further Security. (1) Where a person has, under the provisions of this Chapter, given security or been imprisoned for failure to give security, he may be brought before the Deputy Commissioner, if on the expiry of the period for which security was required to be given the Deputy Commissioner so directs. (2) Where the Deputy Commissioner thinks it necessary, for the purpose of preventing blood-shed, to require security for further period from any person so brought before him, he shall record proceeding to that effect. (3) The proceeding may be founded on the facts on which the original order to give security was founded, and it shall not be necessary to prove any fresh facts to justify an order to give security for a

¹²⁷**[47. Modified applications of Chapters VIII and XLII, Act V of 1898.**— Where, within the territories in which all or any of the provisions of this Regulation are for the time being in force, it is found necessary or expedient to take security under this Regulation from the inhabitants of the Federally Administered Tribal Areas against whom all or any of the provisions of section 40 to 45 may for the time being in force, the provisions of Chapters VIII and XLII of the Code of Criminal Procedure, 1898, shall be read as if for the words “High Court”, “Court of Session” and “Sessions Judge” wherever they occur, the words “FATA Tribunal and the Appellate Authority” be substituted, and all references to any such Court shall be deemed to refer to FATA Tribunal or the Appellate Authority, as the case may be.

CHAPTER VI APPEAL AND REVISION

¹²⁸**[48. Appeal.**— An appeal shall lie to the Commissioner or Additional Commissioner if authorized so by the Governor, within thirty days from the date of any decision given, decree or sentence passed, or order made by the Political Agent or District Coordination Officer, as the case may be, under this Regulation,".

49. Revision. Omitted¹²⁹

¹³⁰**[50. Powers in exercise of criminal appellate jurisdiction.**— The Appellate Authority may, in the exercise of its appellate jurisdiction in any criminal proceedings, exercise the powers to direct tender of

further period under this section; but such an order, if passed shall have the same effect and be enforced in the same manner as an original order to give security under Section 40 or Section 41. (4) Notwithstanding anything in this section, no person shall suffer, for failure to give security under this Chapter, continuous imprisonment for more than six years or, without the sanction of the Commissioner for more than three years.

¹²⁷ 47. Modified applications of Chapters VIII and XLII, Act V of 1898. 1) Where, within the territories in which all or any of the provisions of this Regulation are for the time being in force, it is found necessary or expedient to take security under this Regulation from Pathans or Baluchis or any other classes against whom all or any of the provisions of Section_40 to 46 may for the time being be enforced, the provisions of Chapters VIII and XLII of the Code of Criminal Procedure, 1898, shall be read as if for the words "High Court", "Court of Session" and "Sessions Judge" wherever they occur, the word "Commissioner" were substituted, and all references to any such Courts shall be deemed to refer to the Court of the Commissioner. 2) Subject to the provisions of Sub-section (2) of Section 42 and Sub-section (1) of this section, the provisions of the said Chapters of the Code of Criminal Procedure, 1898, shall, so far as they are consistent therewith, be applicable to every proceeding under this Chapter relating to the taking of security; but all applications for revision in respect to any such proceeding shall be made to, and be disposed of by, the Commissioner.

¹²⁸ The original section 48 read as: "48. Appeals barred. No appeal shall lie from any decision given, decree or sentence passed, order made, or act done, under any of the provisions of this Regulation." The original clause barring appeal was substituted by the Frontier Crimes (Amendment) Regulation, 1997 "48 Appeal, ---An appeal shall lie to the Commissioner within thirty days from the date of any decision given, decree or sentence passed, or order made by the Deputy Commissioner under this Regulation."

¹²⁹ Section 49 was omitted by the Frontier Crimes (Amendment) Regulation, 1997. It read: "49. Revision. The Commissioner may call for the record of any proceeding under this Regulation and revise any decision, decree, sentence or order given, passed or made therein."

pardon conferred by section 338 of the Code of Criminal Procedure 1898, and any of the powers conferred on an Appellate Court by sections 195, 405 to 410, 422, 423, 426 to 428 of the Code of Criminal Procedure, 1898 (Act V of 1898), and may also enhance any sentence after issuance of show cause notice to the convict:

Provided that nothing in this Chapter shall be deemed to authorize the Appellate Authority to set aside the findings on any question of fact of a Council of Elders, where such findings has been accepted by the Political Agent or District Coordination Officer, as the case may be, unless it is of the opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice. The Appellate Authority shall dispose of the appeal within sixty days.

¹³¹**[51. Sentences which may not be passed on appeal.**– No sentence shall be passed by the Appellate Authority in the exercise of its appellate jurisdiction which the Political Agent or District Coordination Officer, as the case may be, could not have passed under this Regulation.

¹³²**[52. Powers in exercise of civil appellate jurisdiction.**– The Appellate Authority may on appeal confirm, set aside, vary or modify the decision, decree or order appealed against or remand the case:

Provided that nothing in this Chapter shall be deemed to authorize the Appellate Authority to vary or set aside any decision, decree or order given, passed or made in any civil proceedings under this Regulation, unless it is of the opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice or that the decision, decree or order is contrary to good conscience or public policy.

¹³³**[53. Record of reasons.**– Where the Appellate Authority, in the exercise of its appellate jurisdiction

¹³⁰ 50. Powers in exercise of criminal revisional jurisdiction. The Commissioner may, in the exercise of his revisional jurisdiction in any criminal proceeding, exercise the power to direct tender of pardon conferred by Section 338, and any of the powers conferred on an Appellate Court by Sections 195, 423, 426, 427 and 428 of the Code of Criminal Procedure 1898, and may also enhance any sentence. *Provided* that nothing in this Chapter shall be deemed to authorize the Commissioner to set aside the finding on any question of fact of a Council of Elders, where such finding has been accepted by the Deputy Commissioner, unless he is of opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice.” Note: The Frontier Crimes (Amendment) Regulation, 1997, which provided for an appeal resulted in the substitution of word “*revisional*” with “*appellate*”.

¹³¹ The original section 51 read as: “51. Sentences which may not be passed on revision. No sentence shall be passed by the Commissioner in the exercise of his *revisional* jurisdiction, which the Deputy Commissioner could not have passed under this Regulation.” It was amended in the Frontier Crimes (Amendment) Regulation, 1997 to read: “51. Sentences which may not be passed on revision. No sentence shall be passed by the Commissioner in the exercise of his *appellate* jurisdiction, which the Deputy Commissioner could not have passed under this Regulation.” Note: The Frontier Crimes (Amendment) Regulation, 1997, which provided for an appeal resulted in the substitution of word “*revisional*” with “*appellate*”.

¹³² 52. Powers in exercise of civil revisional jurisdiction. Nothing in this Chapter shall be deemed to authorize the Commissioner to vary or set aside any decision, decree or order given, passed or made in any civil proceeding under the Regulation, unless he is of opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice or that the decision, decree or order is contrary to good conscience or public policy. [Note: The Frontier Crimes (Amendment) Regulation, 1997, which provided for an appeal resulted in the substitution of word “*revisional*” with “*appellate*”.]

¹³³ 53. Record of reasons. Where, in the exercise of his revisional jurisdiction in any proceeding under this Regulation, the Commissioner varies or sets aside any decision, decree, sentence or order, he shall record his reasons for so doing. [Note: The Frontier Crimes (Amendment) Regulation, 1997, which provided for an appeal resulted in the substitution of word “*revisional*” with “*appellate*”.]

in any proceedings under this Regulation, varies or sets aside or confirms any decision, decree, sentence or order, it shall record its reasons for so doing.

¹³⁴**54. Bar of review of order passed by the Appellate Authority, Political Agent or District Coordination Officer.**— The Appellate Authority, Political Agent or the District Coordination Officer, as the case may be, shall not review any decision, decree, sentence or order given, passed or made by itself.

¹³⁵**55. Enforcement of orders made on appeal.**— Every decision given, judgment and decree passed or order made by the Appellate Authority in exercise of its appellate jurisdiction shall be enforced as if it was a judgment, decree or an order of the Political Agent or District Coordination Officer, as the case may be, and the Political Agent or District Coordination Officer, as the case may be, shall do all acts and things necessary to give effect thereto.

¹³⁶**55A.** (1) A revision shall lie to the FATA Tribunal within ninety days against any decision given, judgment, decree or sentence passed or order made by the Appellate Authority under this Regulation.

¹³⁴ 54. Procedure where the decision, etc. to be revised was given by the officer invested with revisional jurisdiction as Deputy Commissioner.— No officer shall revise -any decision, decree, sentence, or order given, passed or made by himself in the capacity of Deputy Commissioner. Where any such decision, decree, sentence or order is brought to the notice of an officer invested with revisional jurisdiction under this Regulation with a view to the exercise by him of revisional powers such officer shall report the case to the Provincial Government and it shall be disposed of by the Provincial Government or by an officer other than the reporting officer, appointed by the Provincial Government. [Note: The Frontier Crimes (Amendment) Regulation, 1997, which provided for an appeal resulted in the substitution of word “*revisional*” with “*appellate*”.]

¹³⁵ Previous section 55 read as: Enforcement of orders made on revision. — Every order made by the Commissioner in exercise of his revisional jurisdiction shall be enforced as if it were an order of the Deputy Commissioner or District Magistrate, as the case may be, and the Deputy Commissioner or District Magistrate shall do all acts and things necessary to give effect thereto. [Note: The Frontier Crimes (Amendment) Regulation, 1997, which provided for an appeal resulted in the substitution of word “*revisional*” with “*appellate*”.]

¹³⁶ 55A was introduced through the Frontier Crimes (Amendment) Regulation, 1997. “55A. *Revision.*—(1) Subject to subsection (2) a revision against any decision given, decree or sentence passed, or order made by the Commissioner under section 48 shall lie to the Tribunal consisting of— (a) Home Secretary, N.-W.F.P.; and (b) Law Secretary, N.-W.F.P; “Provided that where any member of the Tribunal is unable to discharge his function as member of the Tribunal due to temporary absence for a period exceeding ten days or for any other reason to be recorded in writing, the Chief Secretary may, by order, nominate an officer, not below the rank of Additional Secretary in the Home Department or, as the case may be, Law Department, to discharge the functions of such member of the Tribunal for such period as he may specify in the order.” [This proviso was added by the Frontier Crimes (Amendment) Regulation, 2000] (2) If the members of the Tribunal shall differ in opinion, the case shall be referred to Chief Secretary, N.-W.F.P. and the case shall be decided according to the opinion of the majority. jurisdiction in any criminal proceeding, the Tribunal section 338 and any of the powers conferred on sections 195, 423, 426, 427 and 428 of 1898) and may also enhance any sentence: (3) Provided that nothing in this section shall be deemed to authorise the Tribunal to set aside the finding or any question of fact of a Council of Elders, where such finding has been accepted by the Deputy Commissioner, unless the Tribunal is of the opinion that there has been a material irregularity or defect in the proceedings of that the proceedings have been so conducted as to occasion a miscarriage of justice. (4) Nothing in this Chapter shall be deemed to authorise the Tribunal to vary or set aside any decision, decree or order given, passed or made in any civil proceeding under this Regulation, unless the Tribunal is of the opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice, or that the decision, decree or order is contrary to good conscience or public policy. (5) Where, the Tribunal in the exercise of its revisional jurisdiction in any proceeding under this Regulation, varies or sets aside any decision, -decree, sentence or order the Tribunal shall record its reasons for so doing. (6) Every order made by the Tribunal in exercise of its revisional jurisdiction shall be enforced by the Deputy Commissioner or the

(2) FATA Tribunal shall consist of a Chairman, being a person who has been a civil servant of not less than BPS-21 having experience of Tribal Administration and two other members, out of whom one shall be a person who is qualified to be appointed as Judge of the High Court, well conversant with *Rewaj*, and the other who has been a civil servant of not less than BPS-20 having experience of Tribal Administration.

(3) The Chairman and the members shall be appointed by the Governor on such terms and conditions as he may determine for a period of three years or during the pleasure of the Governor.

(4) The Tribunal shall have the same powers with which the Appellate Authority has been invested under sections 50 and 52 of this Regulation and may also call for the record of any proceedings or case from the subordinate forum and revise any decision, decree, sentence or order given, passed or made under this Regulation. The Tribunal may whenever it thinks proper, direct.-

(a) that a person within limits of its jurisdiction be brought up before the tribunal to be dealt with according to law;

(b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(c) that a person detained in any jail situated within such limits be brought before the tribunal to be there examined as a witness in any matter pending or to be inquired into such tribunal; and

(d) that a prisoner within such limits be removed from a custody to another for purpose of trial.

(5) The tribunal may from time to time, frame rules to regulate the procedure in such cases.

¹³⁷**[55AA. Review.**– The FATA Tribunal may, on an application of any person, filed within thirty days, considering himself aggrieved of any decision given, judgment and decree passed or order made by it, review the same to correct any mistake or error apparent on the face of record or for any other sufficient ground and shall record reasons thereof.

¹³⁸**[55AAA. False Prosecutions,**-(1) Where the Political Agent or the District Coordination Officer, as the case may be, finds that the accusation against the accused was false or malicious, he may call upon the complainant or the informant to show cause why he should not pay adequate compensation to such accused or, where there are more than one, to each or any of such accused, after considering any cause which such complainant or informant may show, and on the satisfaction of the Political Agent or

District Magistrate as the case may be, and the Deputy Commissioner or the District Magistrate shall do all acts and things necessary to give effect thereto.

¹³⁷ Added by the Frontier Crimes Regulations (Amednment) Order 2011

¹³⁸ Added by the Frontier Crimes Regulations (Amednment) Order 2011

District Coordination Officer, as the case may be, was false and malicious, he may, for reasons to be recorded in writing, order the complainant or Informant to pay adequate compensation to such accused or each of any of such accused keeping in view the nature of accusation and quantum of sentence of offence with which he was falsely or maliciously charged and in default of payment of compensation shall suffer simple imprisonment which may extend to six months.

In any civil matter the Political Agent or District Coordination Officer, as the case may be, finds that any claim or defence of any party to be false, frivolous or vexatious, he may direct to pay the cost of litigation and also grant compensatory costs corresponding to the false claim or defence, as the case may be.

CHAPTER VII SUPPLEMENTAL PROVISIONS

¹³⁹**[56. Protection of Property Rights.**— No person shall be compulsorily deprived of his property unless he is paid adequate compensation with consensus rate or Government assessed value as in vogue in settled areas.

¹⁴⁰**[57. Power of Political Agent or District Coordination Officer to order disposal of certain fines.**— (1) The Political Agent or District Coordination Officer, as the case may be, may make such order in writing for the disposal of any fine imposed under sections 12 and 22, deposited in Agency Welfare Fund to be regulated by the rules to be framed under section 62.

(2) Where, in pursuance of an order made under sub-section (1), a person has received compensation for an injury out of the proceeds of a fine, no Civil Court shall take cognizance of a claim to compensation based on the same injury.

¹⁴¹**[58. Maintenance of register.**— (1) Registers shall be kept and maintained, in forms to be approved by the Governor, of all cases dealt with by the Political Agent or District Coordination Officer, as the case may be, the Appellate Authority and the FATA Tribunal under this Regulation.

(2) The record of all sums received as fines under this Regulation and disbursed by the Political Agent or the District Coordinating Officer, as the case may be, shall be maintained and accounted for, which shall be audited annually. The auditing authority, audit mechanism and such other modalities to be determined in the rules to be framed under section 62".

¹³⁹ 56. Recovery of fines, etc., from relatives of person liable. Where by a decree passed under Section 8 or by a sentence passed under Section 12, any person belonging to a frontier tribe becomes "liable to pay a fine or other sum of money, the Deputy Commissioner may, on the recommendation of a Council of Elders and on satisfying himself, that such a course is in accordance with local tribal custom, by order in writing, direct that the amount shall be recovered from the property movable or immovable, of such of the relatives of fellow tribesmen of the person so liable as may be specified in the order.

¹⁴⁰ 57. Power of Deputy Commissioners to order disposal of certain fines. 1) The Deputy Commissioner may make such order as he thinks fit for the disposal of the proceeds of any fine imposed under Section 12, Section 18, or Section 22, and, subject to any order made by the Commissioner under Chapter VI, the proceeds shall be disposed of accordingly. 2) Where, in pursuance of an order made under Sub-section (1), a person has received compensation for an injury out of the proceeds of a fine, no Civil Court shall take cognizance of a claim to compensation based on the same injury.

¹⁴¹ 58. Maintenance of registers. Registers shall be kept up, in forms to be approved by the [Provincial Government], of all cases dealt with by the Deputy Commissioner and by the Commissioner under this Regulation.

¹⁴²[58A. **Jail Inspection.**– FATA Tribunal, the Appellate Authority and the Political Agent or District Coordination Officer, as the case may be, shall visit the jails where the tribal convicts or detainees have been kept twice a year.”.

59. Jurisdiction of ordinary Courts in cases under Sections 29, 30 and 37. Omitted¹⁴³

¹⁴⁴[60. **Finality of proceedings under this Regulation.**– Except as otherwise provided in this Regulation, no decision made, judgment, decree or sentence passed or order made or act done, under Chapter III, Chapter IV, Chapter V or Chapter VI of the Code of Criminal Procedure 1898, (Act V of 1898), shall be called in question in, or set aside by, any civil or criminal court.

¹⁴⁵[61. **Application of provisions of the Limitation Act of 1908.**– Unless otherwise provided in this Regulation, the provisions of the Limitation Act, 1908 (IX of 1908), for filing an appeal, revision and review before the Appellate Authority or the FATA Tribunal shall, *mutatis mutandis*, apply under this Regulation.

¹⁴⁶[62. **Power to make rules.**– The Governor may make rules to carry out the purposes and objects of this Regulation.”.

¹⁴⁷[62A. **Power to make rules for the issue and safe custody of rifles and ammunition and for the imposition and recovery of fines.**– (1) The Federal Government may make rules for the issue and safe custody of rifles and ammunition for border village defence, and for the imposition and recovery of fines for any breach of such rules.

(2) Fines imposed for a breach of the rules made under this section may be recovered in the manner laid down in section 386 of the Code of Criminal Procedure, 1898 (Act V of 1898).”.

62A. Power to make rules for the issue and safe custody of rifles and ammunition and for the imposition and recovery of fines.– (1) The [Federal Government] may make rules for the issue and safe custody of rifles and ammunition for border village defence, and for the imposition and recovery of fines for any breach of such rules.

(2) Fines imposed for a breach of the rules made under this section may be recovered in the manner laid down in section 386 of the Code of Criminal Procedure, 1898 (Act V of 1898).

¹⁴² *New insertion*

¹⁴³ 59. *Jurisdiction of ordinary Courts in cases under Sections 29, 30 and 37. An offence punishable under Section 29 or Section 30 may be tried by a Court of Session or by the Court of a Magistrate of the first class. An offence punishable under Section 37 may be tried by any Magistrate of the first class.*

¹⁴⁴ 60. *Finality of proceedings under Regulation. Except as therein otherwise provided, no decision, decree, sentence or order given, passed or made, or act done, under Chapter III, Chapter IV, Chapter V or Chapter VI, shall be called in question in, or set aside by, any Civil or Criminal Court.*

¹⁴⁵ 61. *Application of provisions of Indian Penal Code respecting fines and imprisonment. The provisions of Section 61, and those of Sections 63 to 74, of the Indian Penal Code, shall, subject to the provisions of Section 13 of this Regulation, apply to sentences passed under this Regulation.*

¹⁴⁶ 62. *Power, to make rules. The [Provincial Government] may make rules to carry out the purposes and objects of this Regulation.*

¹⁴⁷ [62-A. *Power to make rules for the issue and safe custody of rifles and ammunition and for the imposition and recovery of fines. (1)The [Central Government] may make rules for the issue and safe custody of rifles and ammunition for border village defence, and for the imposition and recovery of fines for any breach of such rules. (2) Fines imposed for a breach of the rules made under this section may be recovered in the manner laid down in Section 386 of the Code of Criminal Procedure, 1898].*

¹⁴⁸**63. Indemnity.**- No suit or other legal proceeding shall lie against any person for anything done or intended to be done in good faith under this Regulation.

64. Protection for persons acting under Regulation. (Omitted)

Repealed by the Repealing Act, 1938 (I of 1938), Section 2 and Schedule 1

The First Schedule [see section 4(3)]¹⁴⁹

PART I ----- Powers and Functions with which Assistant Political Agents may be vested by Political Agent or District Coordination Officer.

- (a) All or any of the powers and functions of a Political Agent or District Coordination Officer, 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);

¹⁴⁸ Substituted for the following: "63. No suit or other legal proceeding shall lie against any person for anything done, or in good faith intended to be done, under this Regulation."

¹⁴⁹ *THE FIRST SCHEDULE (See Section 2, clause (b))*

PART I — POWERS AND FUNCTIONS WITH WHICH MAGISTRATES OF THE FIRST CLASS MAY BE INVESTED BY DEPUTY COMMISSIONERS

(a) In the case of an additional District Magistrate — all or any of the powers and functions of a Deputy Commissioner.

(b) In any other case — all or any of the following powers, namely:

(i) power to make orders of reference to Councils of Elders under Section 8, Sub-section (1);

(ii) power to nominate and appoint the members of the Council when an order of reference to a Council has been made under Section 8, Sub-section (1);

(iii) power to nominate the members of the Council when an order of reference to a Council has been made under Section 11, Sub-section (1);

(iv) power to consider and dispose of objection made by an accused person to members so nominated, and to appoint the member of a Council of Elders under Section 11, Sub-section (2); and

(v) power to take security under Section 40.

PART II — POWERS AND FUNCTIONS WITH WHICH MAGISTRATE MAY BE INVESTED BY THE 36 [PROVINCIAL GOVERNMENT]

Power to nominate and appoint the members of a Council of Elders where an order of reference to a Council has been made under Section 8, Sub-section.

Power to nominate the members of the Council when an order of reference to a Council has been made under section 11, Sub-section(1); and power to consider and dispose of objections made by an accused; person to members so nominated, and to appoint the members of a Council of Elders under Section 11, Sub-section (2).

- (ii) power to appoint the members of Council of Elder 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 the 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.

PART II ----- Powers and Functions with which Magistrates may be invested by the Governor

- (a) power to appoint the members of a Council of Elders with the consent of parties where an order of reference to a Council of Elders is made under section 8(1);
- (b) power to nominate the members of the Council of Elders when an order of reference to a Council of Elders is made under section 11(1); and
- (c) power to consider and dispose of objections made by an accused or the complainant to the nomination of the members, and after disposal of the objections, appoint the members of Council of Elders under section 11(2).

**THE SECOND SCHEDULE]¹⁵⁰
[see section 3(3), 13(c) and 40(5)]**

1. Any offence punishable under any of the following sections of the Pakistan Penal Code, namely sections 121, 121-A, 122, 123, 124-A, 125, 126, 127, 131, 144, 148, 150, 193, 194, 195, 196, 201, 211, 212, 216, 216-A, 295-B, 302, 304, 307, 308, 324, 325, 326, 328, 354, 363, 364, 365, 365A, 366, 367, 368, 369, 376, 377, 379, 380, 381, 382, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 411, 412, 413, 414, 427, 428, 429, 435, 436, 440, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 489-B, 489-C, 494, 495 and 496A.
2. Any offence punishable under section 29 and 30 of this Regulation.
3. Any offence punishable under any of the provisions of the Custom Act, 1969 (Act No.IV of 1969).

¹⁵⁰ *THE SECOND SCHEDULE [See Section (2) Sub-section 1]*

1. Any offence punishable under any of the following sections of the 37 Indian Penal Code, namely, Sections 121, 121_A, 122, 123, 124-A, F125, 126, 127, 131, 144, 148, 150, 193, 194, 195, 196, 201, 211, 212, 216, 216-A, 295-B38 302, 304, 307, 308, 324, 325, 326, 328, 354, 363 to 369, 376, 377, 379 to 382, 386, 387, 392 to 399, 400, 401, 402, 411.to 414, 427 to 429, 435, 436, 440, 448 to 460, 439-B39-489-C39 494, 495, 497 and 498.

2. Any offence punishable under Section 29 or Section 30 of this Regulation.

3. Abetment of any of the offences aforesaid.

4. Attempt to commit any of the offences aforesaid, which are not themselves expressed to be attempts to commit offence.

4. Any offence punishable under the Prohibition (Enforcement of Hadd) Order, 1979 (President's Order No. 4 of 1979).
5. Any offence punishable under any of the provisions of the Employment of Children Act, 1991 (V of 1991).
6. Any offence punishable under the Control of Narcotics Substances Act, 1997 (XXV of 1997).
7. Abetment of any of the offences aforesaid.
8. Attempt to commit any of the offences aforesaid which are not themselves expressed to be attempts to commit offences.

THE THIRD SCHEDULE]¹⁵¹
[see section 1(3)]

Federally Administrated Tribal Areas include;

- (i) Tribal Area, adjoining Peshawar District;
- (ii) Tribal Areas adjoining Kohat District;
- (iii) Tribal Areas adjoining Bannu District;
- (iv) Tribal Areas adjoining Dera Ismail Khan District;
- (v) Tribal Areas adjoining Lakki Marwat District;
- (vi) Tribal Areas adjoining Tank District;
- (vii) Bajaur Agency;
- (viii) Orakzai Agency;
- (ix) Mohmand Agency;
- (x) Khyber Agency;
- (xi) Kurram Agency;
- (xii) North Waziristan Agency;
- (xiii) South Waziristan Agency.

¹⁵¹ *THE THIRD SCHEDULE [See Sub-section (2) of Section]*

1. *The Divisions of Quetta and Kalat.*

2. *The District of Lasbela.*


3. *Nasirabad Sub-Division of Jacobabad District.*

4. *The Added Areas of the Hazara District, specified in the First' Schedule, to G.G.O. No. 1 of 1952.*

5. *The Added Areas of Mardan District, specified in Schedule 'A' to G.G.O. No. VII of 1953.*

6. *The Added Areas of Hazara District, specified in the First Schedule to G.G.O. No. XIII of 1955.*

7. *The former excluded Areas of Upper Tanawal and Baluch Areas of Dera Ghazi Khan, specified in the Schedule to President Order No.III of 1961.]*



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