

## **Frontier Crimes Regulation (FCR) and Writ of the State: A Study on Local People's Perception in Khyber Agency**

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### **Abstract**

The present study was conducted in Khyber Agency, one of the seven agencies of the Federally Administered Tribal Areas (FATA) of Pakistan, with the sole objective to ascertain the local people's attitude towards the Frontier Crimes Regulation (FCR). FCR is a law implemented in FATA being different from the state law but approved within the constitutional framework of Pakistan. The study units include intellectuals, business community, Internally Displaced Persons (IDPs) and students hailing from the target agency, and personnel from the political administration. A sample size of 380 respondents from the categories mentioned in the foregoing line was chosen for interview. Uni- variate and bi-variate analyses were drawn through percentage based presentations cross tabulation respectively. Chi-Square was used to determine the level of association between FCR and writ of the State. The study findings reveal major flaws of FCR as: FCR is a law but with no proper protection to the legal rights of the people; FCR is an inhuman and injudicious legal system; it promotes the exercise of unchecked and deliberate power by the political administration; and the unchanged status of FCR after implementation created numerous problems for which the local Maliks were held responsible to block the way of changes for the sake of their selfish designs . The study recommends overtime amendments in FCR, so as it could meet the challenges of the day and promote the zeal to strengthen the writ of the state.

### **Keywords**

FATA, FCR, Writ of the State, Local People's Perception

### **Introduction**

Frontier Crime Regulation (FCR) was first introduced as law in series at different times in 1871 and 1876 in tribal areas and then extended to some other parts of Pakistan in 1901, conferring judicial power on the administrative officers. These areas included Khyber Pakhtunkhwa, Larkana (Sind) Sargodha (Punjab)...After independence of Pakistan in 1947, the FCR was restricted to the FATA which is still in vogue there. The Governor of Khyber Pakhtunkhwa, a province of Pakistan, is empowered to legislate/amend this legal document on behalf of the president of Pakistan; and has the authority of surveillance over the affairs of these areas (Guantana and Nelson,2008; Ziad, 2009). It is pertinent to mention that Pakistan has a state law but the tribal belt (FATA) is legally governed through the FCR. Under the 1973 constitution of Pakistan, it is the State responsibility to establish the writ of the law in order to ensure the smooth functioning of the State affairs. But unluckily, the 21<sup>st</sup> century witnessed some turbulent situations in different parts of the world;

creating challenges to the writ of the state in divergent geo-political and social scenario. Pakistan is also included in the list of the countries suffering from chaos and turmoil. The problem of insurgency has erected here for the last few decades shrinking the socio-economic and political stability which has direct effects on the development initiatives, security measures and social fabric of the country. Insurgency has become a matter of great concern not only for Pakistan but also for international community, mainly fueled by the USA attack on Afghanistan in 2001. In view of no proper administrative and constitutional surveillance, FATA has become an easily accessible habitat for insurgents belonging to different outfits and their subversive activities have converted the tribal belt into a war land, making the role of FCR questionable. These elements are operating on both sides of Pak-Afghan border for bringing their lost destiny back (Rotberg, 2004; Ziad, 2009; Towshead, 2009; Haider and Arthur, 2008 and Aziz, 2009).

### Objectives of the Study

- To study the people perception regarding keeping FCR as a law in FATA
- To ascertain association between independent variable and dependent variable
- To make policy recommendations on basis of study inferences

### Materials and Methods

There are seven agencies of the Federally Administered Tribal areas (FATA) situated around Khyber Pakhtunkhwa, a province of Pakistan. The present study was conducted in Khyber Agency, one of the seven agencies and being the turbulent one, with main focus on problems of FCR creating challenges to the writ of the State. A sample size of 380 respondents including intellectuals, business community, Internally Displaced Persons (IDPs) and students hailing from the target agency, and personnel from the political administration were interviewed through an instrument developed on Likert scale. The data was presented in percentage along with ascertaining the relationship between independent variable (Frontier Crimes Regulation) and the writ of the State (Dependent Variable), by indexing and cross tabulating through the application ( $\chi^2$ )-test statistics as outlined by Tai (1978: 353).

$$(\chi^2) = \sum \sum \frac{(f_{ij} - F_{ij})^2}{F_i F_j F_{ij}}$$

Where

( $\chi^2$ )= Chi-square for two categorical variables

$f_{ij}$  = the observed frequencies in the cross-classified category at  $i$ th row and  $j$ th column

$F_{ij}$  = the expected frequency for the same category, assuming no association between variables under investigation

The formula simply directs to take squared summation of the frequencies for each cell, divided by the expected frequency. The resulting frequency is distributed as chi-square with relevant degree of freedom. The degree of freedom is calculated as follows;

Df =  $(r-1)(c-1)$  where

Df = Degree of freedom

r = the number of rows

c = the number of columns

The assumptions for the test were that the subjects for each group were randomly and independently selected, the groups were independent, and each observation will qualified for one and only one category. Furthermore, the sample size was fairly large that no expected frequency was less than 5, for  $r$  and  $c > 2$ , or  $< 10$ , if  $r = c = 2$ . These assumptions, however, were violated several time in the data therefore, Fisher Exact Test which also is known as Exit Chi-square Test was used instead of simple Chi-Square to overcome the violation of Chi-Square assumptions. The relationship developed by Fisher to overcome such violation is given in equation below (Baily, 1982).

$$\text{Fisher Exit Test Probability} = \frac{(a+b)!(c+d)!(a+c)!(b+d)!}{N!a!b!c!d!}$$

Where a, b, c and d were the observed numbers in four cells of contingency table and "N" the total number of observations.

## Results and Discussion:

### Frontier Crimes Regulation

Table No. 1 depicts the opinion of sampled respondents on multi aspects of FCR. 85.5 % of them termed FCR as inhuman and injudicious, as providing no proper lego-judicial right and privilege to the local population. Bangash (1996) considered FCR as negating provision of judicial norms and justices; Bibi (2005) viewed it contradictory to the rights and privileges granted to women in Islam and by the laws of Pakistan; and Rana (2009) thought it a black law having draconian provision which denies the fundamental rights of the tribal people. In response to a

question regarding amendments to the FCR, 83.9% respondents looked for overtime changes in the existing draft of the FCR as the present one is outdated and goes beyond the needs of the tribal people. A report of CRC (2008) supports the data and stresses upon gradual changes in the FCR to bring it at par with the requirements of modern age. The report also apprehended the abrupt abolition of FCR as a source of legal vacuum in the region.

Majority of the respondents (79.2%) agreed that the entire tribal belt was punished for the wrong acts of few elements under the umbrella of FCR. They mainly objected to the collective punishment inflicted upon the relatives or whole family of an offender in any crime, as provided under section 21 of the FCR. Amnesty International (2008) has also pointed to such flaw of the FCR and regarded it as an injustice.

The unchecked power of the political administration is included in the list of the factors weakening the bond of acceptability of the controversial legal document by the local people. Majority of the respondents (76.6%) observed the deliberate actions and unchecked power of the political administration in agency which has led to unfair practices. This result is in line to the findings of Bangash (1996) who concluded that concentrating of power in a single office usually leads to brutality, injustice and unfair play. Abbas (2009) has associated such situation to a theory of tragedy of commons wherein a man has been shown to be custodian of, and a hostile around property.

The targeted population (73.80%) observed FCR encouraging crime rate in the area. This result is consonant with the findings of (Haider, 2008) that lack of the writ and law across the bordering areas of Afghanistan and Pakistan has proven to be the breeding environment for terrorists.

Majority (66.1%) held the view that the local Maliks, being the beneficiaries of this law in the shape of financial and political benefits, favored FCR. The study findings of SPARC (2004), Hassan (2005), Khan(2005), and Rakistis (2008) have also referred to the Provision of privileges, perks and benefits to the local Maliks as compensation for controlling their community through FCR.

Majority of the respondents (62.1%) apprehended that abolition of FCR would lead to usurp their freedom like non-payment of taxes, smuggling and informal system of banking (Hawala system). Besides, 59.2% respondents perceived local Maliks and political forces as hurdles in the way of bringing about changes in FCR.

The data further showed that 51.1% viewed tribal people to be very difficult to be governed. The report of Amnesty international (2008) endorses this statement as the British Empires had its realization and imposition of FCR was the resultant phenomenon which served their two purposes i.e. controlling locals and

maintaining its status as buffer zone between United India and Afghanistan to stop Russian escalation. A reasonable number (49.5%) negated the role of FCR as law in protecting their legal rights sufficiently while 4.7 percent showed their ignorance in this respect. In a nutshell, the respondents of all categories thought FCR beyond the consent of ordinary population and a source of safeguarding the vested interests of specific sections.

Table I: Perceptions of Respondents Regarding Frontier Crime Regulation ( F C R ) in Sampled Area.

Statement	Agree	Disagree	Not Sure	Total
FCR is the only law through which tribal people can be governed	194 (51.1)	177 (46.6)	9 (2.4)	380
FCR as law sufficiently protects the legal rights of the local people	174 (45.8)	188 (49.5)	18 (4.7)	380
FCR as law needs amendments over passage of time	319 (83.9)	45 (11.5)	16 (4.2)	380
Local Malikis favor FCR	251 (66.1)	119 (31.3)	10 (2.6)	380
Political administration favors FCR	291 (76.6)	71 (18.70)	10 (2.6)	380
Political forces are hurdles in bringing about changes in FCR	225 (59.2)	120 (31.6)	35 (9.2)	380
In case FCR is abolished, would state law snatch the existing freedom like nonpayment of taxes, smuggling etc	236 (62.1)	122 (32.1)	22 (5.8)	380
FCR flourishes the crime rate in area	280 (73.70)	80 (21.1)	20 (5.3)	380
Instead of wrong doer, whole tribe is punished under FCR	301 (79.2)	67 (17.6)	12 (3.20)	380
FCR is inhuman and injudicious	325 (85.5)	44 (11.6)	11 (2.9)	380

Source: Field Survey, 2012Note: Value in parenthesis indicates percentage

## **Frontier Crime Regulation Association with Challenges to the Writ of the State in FATA**

FCR is a legal documented format for FATA belt in administrative terms. To know about the FCR and its important rules and regulations with governmental writ in the area and challenges in its implementation the following statements were asked in relevance regarding its vitality in governance as being sufficient enough for provisions of rights and privileges to significant effects or not. While observing certain flaws and then subsequently readdressed through constitutional power of the president of Pakistan, invoked by the incumbent president in 2001. It was passed as political parties act for extending political parties orders (2002) in FATA. This was aimed at streamlining this neglected area in the shape of bringing administrative, political and judicial reforms (Ziad,2009). This constitutional empowerment has also been underlined by(Gunaratana and Neilson,2008). Where in governor of KPK, as representative of the President of Pakistan has the administrative authority to monitor administrative functions of FATA. The significance of the issue, mentioned above was summarized into few attributes like FCR is the only law through which people are governed was found significant ( $p < 0.05$ ) with writ of the State. It obviously indicated towards the presence of FCR as State law which was framed and regulated by the rulers i.e British Empire in 1901 for bringing administrative containment to this wild belt bordering Afghanistan with the then united India (Bangash, 1996; Amnesty international, 2008; Rakistis, 2008; Alaiwah, 2008; and Rana, 2009).

Upon asking about FCR as law sufficiently contributing towards protection of legal rights of the masses was found highly significant ( $p = 0.00$ ) with the writ of the State. It is probably due to the enactment and implementation of the law which has controlled the people in study area in absolute terms. However, a significant relationship with respect to amendments to FCR was found ( $p < 0.00$ ) with the writ of the state. It could be detected from the above findings that the existing laws, though contributing towards bringing normal any as shown from its effectiveness. However, amendments in FCR from time to time and according to the demand of the situation were imminent. Furthermore, while asking about Malik's role in favoring the FCR, it was found that Malik's role was highly significant as discussed by its association ( $p < 0.000$ ) with the writ of the State. Malik's favored FCR due to their obvious role of dominance over the locals for resolving their issues and getting direct benefits from the administration and management due to that local Malik's and political leaders are opposing abolishing FCR for their personal gains like not paying tax and having a strong check over local people. This was further augmented while asking about forces which are the main hurdles in bringing changes in FCR ( $p < 0.00$ ) with the writ of the State. The main causes of not abolishing FCR with the

writ of the State was highly significant ( $p < 0.00$ ), and came up with certain obvious reasons like complete freedom to the local chieftain of enjoying non-payment of taxes and patronizing smuggling. While upon further probing, it was found that crime is escalating in the tribal areas due to FCR. Significant relationship was found ( $p < 0.00$ ) with the writ of the State as the writ of the State has weakened. Some probable assumption found were that the whole families suffered due to a single wrongdoer, which led to the poor state of the writ of law ( $p < 0.00$ ) and FCR was considered as inhuman as indication through significant relationship ( $p < 0.00$ ) with the writ of the State. It could be due to the dire consequences that FCR embodies and needs immediate legislative attention by replacing the existing law with widely acceptable rules. This would in turn contribute towards the culmination of smuggling; ensure timely payment of taxes and minimize the formidable crime rate along with all manifest modes like kidnapping for ransom, car theft, providing protection to offenders etc. Moreover, FCR flourishes the crime rate in the area, Instead of the wrong doer, the whole tribe is punished under FCR, FCR is inhuman and injudicious which resulted in significant ( $P < 0.00$ ) relationship with State writ in FATA belt. FCR supports crimes in the area and the whole tribe becomes the victims of these crimes. Therefore Fata crime regulation is totally against human rights. The decisions of Jirgas “are obnoxious to all recognized modern principles governing the dispensation of justice”. One of the worst aberrations of the FCR is the collective punishment clause no. 21 which is imposed on anyone in the tribal area for a crime committed by his or her relative, spouse, or even a person from the same tribe and area. Again, among the most damaging provisions in the FCR is the “seizure/confiscation of property and arrest and detention of an individual without due legal process, barring a person in the tribal areas from entering the settled districts”. All the members of a village are considered responsible for a murder if a dead body is found in their village. Under section 22 and 23 of the FCR fines are imposed on the entire community for the crimes of a single person. In section 56, if fines are not paid by relatives then the property of an offender is sold to realize the amount due.

Table II Frontier Crimes Regulations Association with Challenges to the Writ of the State in FATA

Statement		Within dependent variable (Government writ in FATA)			Total	Chai square (P Value)
		Agree	Disagree	Not sure		
FCR is the only law through which tribal people can be governed	Agree	65(17.1)	117(30.8)	11(2.9)	193	12.19(0.05)
	Disagree	78(20.5)	90(23.7)	9(2.4)	177	
	Not sure	0	9(2.4)	0	10.0	
FCR as law is sufficiently protects the legal rights of the local people	Agree	77(20.3)	92(24.2)	4(1.1)	173	38.19(0.00)
	Disagree	59(15.5)	116(30.5)	13(3.4)	188	
	Not sure	7(1.8)	8(2.1)	3(0.8)	19.0	
FCR as law needs amendments over passage of time	Agree	123(32.4)	186(48.9)	9(2.4)	318	3.50(0.00)
	Disagree	13(3.4)	21(5.5)	11(2.9)	45	
	Not sure	7(1.8)	9(2.4)	0	17	
Local Malik favor FCR Political administration favors FCR	Agree	99(26.1)	140(36.8)	11(2.9)	250	37.78(0.00)
	Disagree	40(10.5)	70(18.4)	9(2.4)	119	
	Not sure	4(1.1)	6(1.6)	0	11	
Political forces are hurdles in bringing about changes in FCR	Agree	127(33.4)	157(41.3)	7(1.8)	291	28.58(0.00)
	Disagree	12(3.2)	48(12.4)	10(2.6)	70	
	Not sure	4(1.1)	11(2.9)	3(0.8)	19	
In case FCR is abolished, would state law snatch the existing freedom like nonpayment of taxes, smuggling etc	Agree	112(29.5)	117(30.8)	7(1.8)	236	41.80(0.00)
	Disagree	31(8.2)	77(20.3)	13(3.4)	121	
	Not sure	0	22(5.8)	0	23	
FCR flourishes the crime rate in area	Agree	131(34.5)	137(36.1)	11(2.9)	279	46.11(0.00)
	Disagree	12(3.2)	59(15.5)	9(2.4)	80	
	Not sure	0	20(5.3)	0	21	
Instead of wrong doer, whole tribe is punished under FCR	Agree	123(32.4)	164(43.2)	13(3.4)	300	17.77(0.00)
	Disagree	20(5.3)	43(11.3)	4(1.1)	67	
	Not sure	0	9(2.4)	3(0.8)	13	
FCR is inhuman and injudicious	Agree	134(35.5)	181(47.6)	9(2.4)	324	40.84(0.00)
	Disagree	9(2.4)	25(6.6)	10(2.6)	44	
	Not sure	0	216(56.8)	20(5.3)	12	

Source: Field Survey, 2012



## **Conclusions and Recommendations**

The study concludes that the local population was not satisfied with the role of Frontier Crimes Regulation (FCR) promulgated in 1901 and then protected by the Government of Pakistan after its independence in 1947. They termed the FCR inhuman and injudicious in terms of usurping the right of appeal against any decision taken by the political administration. Furthermore, the local people were annoyed over infliction of punishment upon family members or other relatives on the charge of an offence committed by a criminal. FCR was considered a shield to protect the vested interests of local Maliks like non-payment of taxes and free mobility of smuggling goods; and those of political administration in regard to exercising their unchecked and deliberate power in the region. It also increased the rate of crimes in the tribal belt in view of the absence of the State law; rather it provided a safe way as well as habitat for the criminals and militants in light of its geo-political and cultural dimensions. The local community was unhappy with the stagnant status of the FCR as it did not undergo any change after its enactment and then implementation. The above-mentioned shortcomings have direct effects on the status of FCR which have promoted criminal tendencies in both tribal and settled areas, weakening the writ of the state. It is worth-underscoring that FCR is a law containing legal rights and privileges, but amendments to it are a requirement of the local people as desired so as it could come at par with the demands of the modern day. Revisiting the FCR must aim at safeguarding the basic needs and rights of the people and curtailing the unlimited power of the local Maliks through strong check on their disliked activities.

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