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Mainstreaming FATA: A Public Policy Imperative

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Abstract

The paper aims to analyze the situation of Federally Administered Tribal Areas (FATA) in the context of Frontier Crimes Regulation (FCR). It analyzes how a suitable public policy mechanism needs to be devised and implemented by replacing the old and an irrational FCR in FATA. It extensively examines the theoretical and conceptual perspectives on the public policy, the policy formation and policy factors. The Parsons' seven steps model of policy framework has been theorized on the study for developing the appropriate policy. The qualitative methodology has been used to get in-detail and in-depth information about the governance mechanism and prevailing issues of FATA. There are three main elements; first getting familiar with the problem, second relevant players and third devising a policy. The study proposes that new public policy for FATA must be carried out with the consultation of the official (legislative, judiciary and executive) and unofficial stakeholders (civil society, media, ethnic groups, public opinion etc).

Keywords: FATA, FCR, Governance, Public policy, Policy process, Policy mechanism, Policy reforms.

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Introduction

The United States' invasion of Afghanistan in 2001 made the bordering region of Federally Administered Tribal Areas (FATA) a focal point of the world attention. The Afghanistan-Pakistan (Af-Pak) border region was considered to be a safe haven for the Taliban and Al-Qaeda militants. After the United States' invasion of Afghanistan, the militants escaped from Afghanistan side to FATA (Aslam & Kang, 2015). In order to counter the threat of extremism and terrorism on Pakistan side of the border, military operations were conducted by the government against these militants in FATA. The operations resulted in elimination of some militants while the rest moved back to Afghanistan side. These operations also displaced a huge number of people from FATA to other settled areas of Pakistan. The Government of Pakistan is still dealing with resettlement of these Internally Displaced Persons (IDPs) (Khan, 2012). The war on terror has significantly impacted on the socio-political dynamics of Pakistan in general and FATA in particular. This challenging situation in war trodden FATA region demands an efficient policy formulation and implementation to give relief to the local people on one hand and ensuring the regional peace and stability on the other.

FATA is socio-economically deprived remote part of Pakistan. Geographically, its border touches the province of Khyber Pakhtunkhwa (KPK) in East, while in South, it connects with the province of Baluchistan. The province of Punjab is located in the South-East, whereas it links with Afghanistan on the Western Border (Khokhar et al, 2014). FATA is comprised of seven political agencies and six frontier regions, with total territory of 27220 Sq Km. FATA is home to multiple tribes and clans of *Pashtoon* population. The Census Report of Pakistan 2017 estimated that FATA has population of 5 million². FATA is operated and governed under The Frontier Crimes Regulation 1901 (FCR). FCR promulgated by the British contained seven chapters and sixty-three sections. FCR is a legal, political, formal and administrative framework that reflects the overall governance mechanism conducted in tribal areas since British rule (Wazir, 2007). In post-independence era, the Ministry of States and Frontier Regions (SAFRON) is responsible for monitoring and managing the development and other governance related issues. The 1956 Constitution of Pakistan under the article 103 and 104 used the terms "Excluded Areas", and "Special Areas" for regions included in FATA (Wazir, 2012). Article 104 of the constitution rests the administrative powers of FATA with president of Pakistan and governor KPK as its representative (Shah, 2017). Under this legal framework, Political Agent (PA) is assigned to undertake its responsibilities with respect to functioning of tribal areas of FATA. Over the decades, the PA has remained a very significant character in almost all matters of FATA (Nawaz & Borchgrav, 2009). The PA is appointed by the Federal Government and works under Governor KPK. The PA is extremely powerful and known as all in all in the tribal region. He enjoys extensive judicial, executive and revenue collection authority on behalf of Government of Pakistan (GoP). The PA can render three year jail term to anyone who he thinks could be a threat to peace and stability of the region. It is argued that this authority is heavily misused and many innocent are victimized (Cheema & Nuri, 2005). There was no means available for masses to challenge the PA decisions and actions anywhere in courts, depriving the locals from their basic human rights (Khan, 2016). The office of PA works as policy maker, implementer and evaluator.

FCR was originally devised and implemented to secure the vested interest of the British government rather than the efficient functioning and development of FATA. Even after getting independence from Britain in 1947, the legacy of FCR continued to operate and the policy regarding the functioning of FATA remained almost the same for seven decades (Shaw & Akhter, 2012). This traditional, absurd and irrational style of governance and policy have affected the lives of the people of FATA and increased their deprivation (Latif & Musarrat, 2013). Since independence of Pakistan, various attempts were made to mainstream FATA and enhance its political, economic and national role. Various policies and laws such as Adult Franchise Act,

² <http://www.statistics.gov.pk/census-results.html>

Local Government Ordinance, and Political Parties Order etc. were extended to the region. However, all these attempts failed to achieve desired results.

In a recent development, the government of Pakistan initiated a step to merge FATA with the province of KPK. It is pertinent to mention that few political parties including Jamiat Ulema Islam- Fazal ur Rehman Group (JUI F) and Pakhtunkhwa Mili Awami Party (PKMAP) has rejected the plan of merging FATA with KPK and instead suggested to make it a separate province, indicating the complexity of situation (Ullah et al., 2017). However, requisite constitutional amendment was carried out in National Assembly and Provisional Assembly of KPK in May, 2018. With this federal government has extended the jurisdiction of Peshawar High Court to FATA and in next five years FATA will be legally, formally and constitutionally merged into Pakistan (Yousaf, 2018). As an interim measure, FATA is governed by "FATA Interim Governance Regulation", signed by the President of Pakistan for the functioning of the legal and administrative framework. However, a complex process of requisite reforms encompassing multiple fronts, like social, political, legal, economic and security is to be devised and further executed in coordination with various formal and informal stakeholders. This newly developed multifaceted situation demands an efficient public policy making and execution to counter the challenges posed in the region (Shah, 2017). In this regard, policy making will play a crucial role for achieving the objective of the state.

Public policies are devised and aimed for the wellbeing and development of the citizens of the state. Certainly the programs and projects serve the various objectives like alleviating poverty, promoting peace and education, improving health indicators and bringing the overall development of the communities. Hence, the sole purpose of the government in policy formulation and implementation is to advance human development and progress of its citizens. However, in case of FATA, the government has failed to achieve its human development and progress targets for its residents. This paper will look into the role of public policy formulation and its further execution in context of FCR.

Problem Statement

In FATA, FCR is a vivid and clear example of failed government policy as it was not capable to handle and counter the effects of 9/11 particularly at the local level. The traditional FCR could not rationally respond to the challenges in the wake of Afghan jihad and global war on terror and subsequently, the region became hub of extremism and terrorism. Thousands of people died and the area became center for illiteracy, poverty, religious intolerance, underdevelopment and administrative chaos. Consequently, FATA was not the only area which had to face the negative effects of the conventional style of governance rather the values, harmony, development and progress of the rest of the country was also affected. The social, political and economic deprivations of the people of FATA are increasing in the absence of a clear, rational and acceptable state policy. Therefore, there is a serious need to comprehend and analyze the strategies and policy framework regarding the people of FATA. This paper will look into the multifaceted situation of newly merged FATA in the main stream in context of Parsons' (1996) seven steps policy process with respect to formulation and implementation of plan.

Literature Review

After Pakistan got independence from the Britain, the status of FATA remained intact under article 246-247 of 1973 constitution. The region remained marred with the status quo originally fabricated by the British for their own vested interests through the role of local elites. Tribal notables kept their hegemonic role, and the area remained politically deprived, socio-economically devastated and marginalized in every possible aspect from the rest of Pakistan.

FCR has been amended several times before since 1947, the year of independence. However, the changes were trivial and only reinforced marginalization leading to severe socio-political situation. As a result the forces of destabilization, ignorance, hatred, extremism, militancy and warlords kept recurring leading to regional stability (Javaid et al., 2016). Subsequently the law remained regressive and receding with growing politicization of the region adding to the chaos.

Devising a policy is not an easy task as it brings many positive or negative implications with it. Developing policy about FATA is even a harder task as the remote and under developed area is facing many political and economic challenges. Before going to develop or propose any policy for FATA, there is a severe need to be cognizant of the public policy, process, types and policy analysis.

Akindele and Olaopa (2004) stated that action oriented policy process has three to eight stages with four primary ones which are policy initiation, formulation, implementation and evaluation. These four distinctive activities facilitate government in identifying and defining the issues, generating policy ideas and developing the process of policy outputs. It gives an extensive picture of how governments select the policies, allocate requisite resources and make implementation.

Freeman (2006) shared that policies can be classified into different types based on their political behavior. There are four types of policies; distributive, redistributive, regulatory and constitutional, however policies vary issue to issue in context of the local dynamic prevailing in any society across time and space. He further elaborated the four types of policies indicating the difference among them.

Hill (2009) was of the view that the science of public policy deals with scientific knowledge applied to policy problems and usage of methods to understand how government decision making mechanism operates. He emphasized on the process through which policy issues are produced, progressed and permitted. In a study conducted by Dye (1976) proposed that policy refers to what government do, how they do it and what difference it makes. The ultimate goal of public policy is to satisfy societal demands and its overall welfare. Hogwood and Gunn (1991) linked the public policy with six dimensions which are policy content, policy process, policy output, policy evaluation, policy making, and policy advocacy.

Anderson & Ruhs (2010) termed the policy process as an activity and action based process that transforms a societal issue into existing policy. So the ability of transforming the issue might solve appropriately or even make it worse.

Birkland (2015) defined the government precisely by referring what government do or do not do. They demonstrated the functional role of the government that how government is supposed to view societal problems, identifies the solution, provides services to public, builds infrastructure and improves the quality of life of the citizens. In addition, the aim of the government is to provide benefits and create resources for the people in a given society and territory.

So in terms of the types of policies (as mentioned by Freeman, 2006), the distributive policies refer to the allocation of services and benefits among society such as building of roads infrastructure, public health and education where even individuals of community get benefit from this and there is low conflict over it among stakeholders.

Secondly, the redistributive policies would take allocation of resources from one group and distribute it among less privileged like taxing the high income and distribution of that tax revenue among low income. Same was proposed by Sefton (2006) in his study by indicating the positive impacts of redistributive policies with respect to the uplift of the deprived masses.

Thirdly, the regulatory policy is to control certain behavior of a group or individuals in a society through fines and sanctions by law enforcement agencies like traffic speed limit fines.

And lastly, the constituent or structural policies are those measures which create executive powers and constitute laws in some peculiar circumstances. In context of the current study FCR in FATA is an evident example of such policy.

All the above mentioned policies are a result of political interactions and processes in a policy environment and give a comprehensive picture of policy mechanism at a state level. From the analytical perspective, it is easy to separate different policies but when it comes to implementation phase; policies are overlapped. Nevertheless, while considering the mentioned policies, a new social, political and administrative mechanism for FATA needs to be devised with the consultation and coordination of all the stakeholders. This paper will look into the issue of policy formulation and its subsequent implementation in context of Parsons' sequential seven steps / stages model.

Theoretical Framework

Public policy process is described as a long term activity that transforms an issue into an established policy (Chari & Heywood, 2009). So it is a process by which societal issues are turned into policy matters for a better future and to make community prosper. Policy process consists of sequential steps or stages. According to Parsons (1996), policy process has seven steps and these include; recognizing the problem, defining the problem, identifying alternatives, evaluation of options, selection of policy options, implementation of policy options, and finally evaluation of the outcomes. This indicates that policy process is sequential step by step approach that has stages and actions associated.

It is further highlighted that each step looks for the synchronization of the objectives of various official and unofficial stake holders for better functioning of the plan. Gertson (2004) has proposed in his study that different people, groups, and public officials are involved at each stage and level with the capacity to influence the policy decision process. Berkland (2015) further elaborated the division of various stakeholders into official and unofficial actors. In this context official actors are the ones who have statutory or constitutional role and power to make and enforce policies. The legislative, judicial and executive components of the state are termed as official actors. Contrary to this, unofficial actors are those who do not have explicit official authority but exert substantial influence by virtue of their unique position in society with respect to prestige and support in the masses. These unofficial groups also termed as informal groups include civil society, religious leaders and groups, journalist etc. At every stage of the policy process, the nature and role of actors differs with respect to execution of the policy. For example at initial, formulation, implementation, and evaluation stages different kind of official and unofficial actors are involved. The conceptual framework for the undertaking of the study is indicated in the below figure.

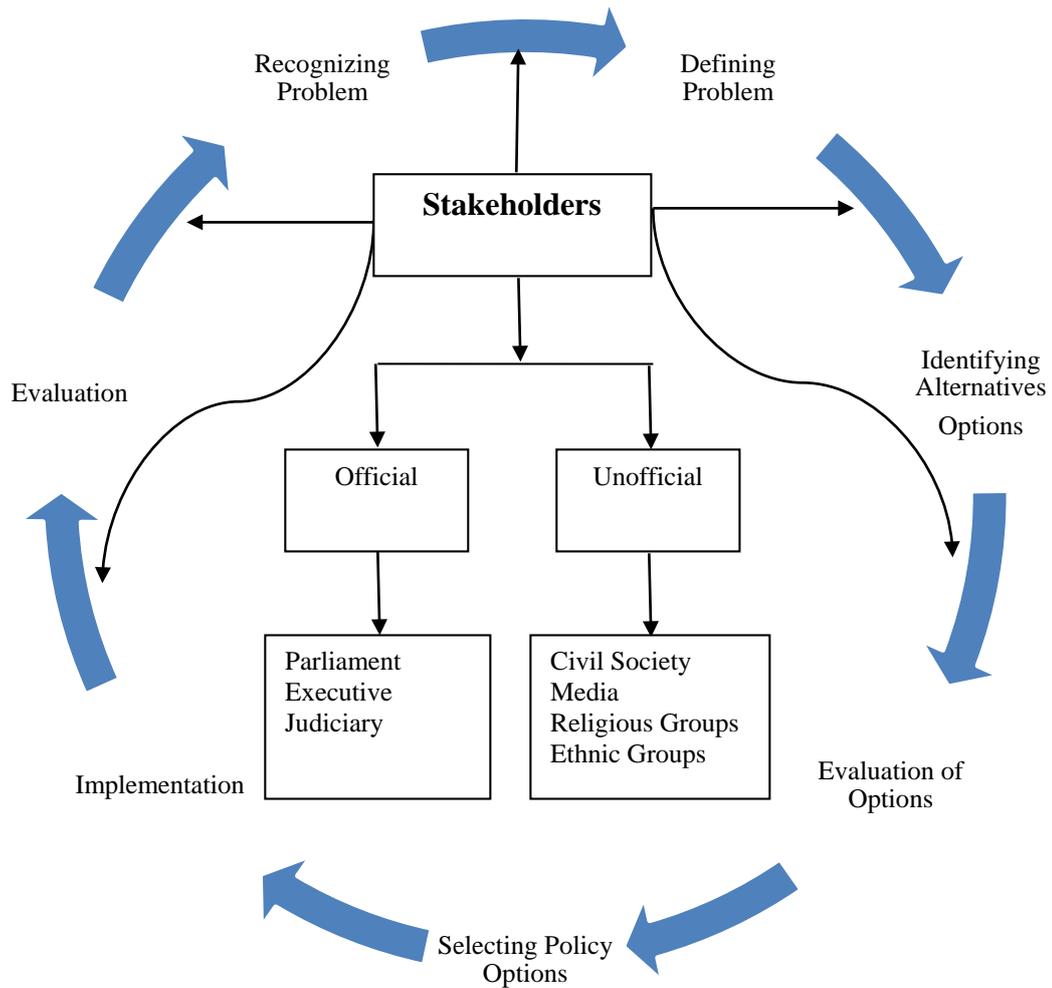


Figure 1. Stages of Public Policy Process

Research Methodology

Qualitative method was selected for the study. The qualitative approach was utilized to examine the data extensively as it gives an insight and in detail picture of the situation. For comprehensive understanding of the topic both primary and secondary source of data collection was used.

Primary and Secondary Data Analysis

Seven in-depth interviews from each agency were conducted from relevant stakeholders identified as students, political affiliates, policy formulators and subject area experts. Seven group discussions in total were also held (one for each agency) with common people, students, political activists, and individuals involved with policy making process. 350 quantitative questionnaires (50 for each agency) were also distributed among general public to gauge the public opinion on FCR. Fata Research Centre (FRC) provided resources for conducting survey and interviews. Some of the primary data was collected during FRC field work that was carried out for their studies. The author has worked with FRC as Program Manager.

Multiple documents on FATA and policy mechanism were also consulted since secondary data come from variety of documents. The latest articles published in last few years were given priority since these were

the most significant and reliable source. Different types of official and unofficial documents and articles were utilized during the study that gave the detail about policy process, policy formulation, and policy analysis and policy implementation with respect to FATA with different angles. In summation, the variety of documents that were consulted during the course of study are mentioned as follows;

- Constitution of Pakistan
- Research articles on FATA
- Academic articles on Public Policy
- Official and unofficial reports on FATA
- UN reports and their recommendations on FATA
- Political perspectives on FATA
- News Stories on FATA

The aforementioned documents comprise of interviews, conceptual and theoretical literature, quantitative and qualitative researches in the context of objective of the study. The objective of analysis of the documents was to get an understanding with respect to different positions proposed for the formulation and execution of the policy in context of the broader question of the study, i.e., what is the intensity of the issue and how do they address the issue of the policy making regarding FATA.

Results and Analysis

The study finds out different layers of governance and exclusion of key stakeholders from the policy process. Tribesmen have fewer avenues to voice their issues and accountability of public servants is poor. 53% of the survey respondents are fearful of being expressive. Women have no platform to express themselves. The cultural institution like *Hujra*, *Jarga* and *Pushtunwali* gives ample space to tribesmen to express themselves. These informal spaces are more effective than formal institutions and arenas.

People surveyed do not see media reporting as reflective of their situation. 52% believe media is biased and does not report independently. Tribesmen shared their increasing concern on corrupt practices in FATA and were frustrated at media for not reporting them accordingly.

79% survey responses indicate that formal institutions are strong in FATA and control policy process. The role of civil society is inadequate. 42% of survey respondent believe civil society has limited policy input. In addition, 37% believe that civil society has no role in policy making.

Interestingly, the non-governmental organizations are viewed with skepticism however their service delivery in some agencies was appreciated. This is because the quality of Government service delivery is viewed as of poor quality and unsatisfactory. Tribesmen, however, opined that these organizations should pay more attention to local cultural norms while serving the community.

PA is considered the center of extraordinary powers. 51 % survey respondents consider PA as all in all for decision making. However, 34% respondents believe security related decisions are made by Military establishment. For dispute resolution, tribesmen prefer Jirga system over courts.

The study finds that 77% of the survey respondents acknowledge an overall level of frustration, deprivation and lack of satisfaction for security situation in FATA, basic health facilities, corruption, depravity, unemployment and ills of FCR.

Public opinion on the administrative system reveals that the main actors who benefits from FCR are the PA, Maliks and Public Servants. These formal actors are vested with administrative powers which create a power nexus. Tribesmen believe this need to be diluted so that the actors are held accountable to their actions. This will also ensure democratic and just practices which could lead to political and legal enlightenment of FATA.

Improving Policy Inputs

The views expressed during interviews and group discussions on policy inputs were mixed. Both endorsing and opposing points were made. The informed respondents pointed out number of reasons for poor policy process. From defining problem, identifying alternatives, selecting policy option to implementation these respondents pointed out that key stakeholder were kept out of the process. For example, the Members of National Assembly (MNAs) and Senators elected from FATA were unable to legislate for the area they were selected for. These MNAs and Senators could legislate for the rest of Pakistan but not FATA. This was mentioned as a major policy dilemma. Though majority were against FCR, some pointed out that it is not the FCR and mentioned that till 9/11 no major issues were attributed to FCR. They opined that FCR is best suited for FATA culture and it should be reformed gradually as per the wishes of the people. Respondents mentioned that any attempt at fixing issues of FATA from outside will not work. There has to be an inside out approach.

Majority of opinion prefer a democratic form of administrative structure for FATA. The study finds that the people of FATA are peace loving and do not support violence. They want to grow democratically by adhering to political norms. They believe in equal human rights, transparency, and political participation. Tribesmen will support any reform that considers their input to the policy process.

Policy Mechanism in FATA

The FCR is a total failure and it never delivered efficiently at any level not for the masses nor for the state. Therefore, a new all-inclusive policy needs to be devised and strategized that delivers at legal, judicial, economic, political and social spheres of the life of the people.

Recognition of the problem is a primary step in which the existence of a problem is observed and realized. The issue of the FATA existed and realized by the decision makers but unfortunately the problem was not realized in a rational and comprehensive way. FATA is comprised of seven agencies and every agency has different political, economic, ethnic issues. Therefore, the problem of FATA must be realized extensively through macro and micro lenses. The extremism, poverty, lawlessness, illiteracy etc. are the problems of the region and above all, governing FATA through FCR itself is a big problem that further generates more problems at local and broader level. The officials already identified the problem however feedback of the unofficial stake holders is necessary as well.

Identification of the problem depends subsequently on how the identified problem is defined appropriately for all the stakeholders. The defining of problem is a critical step because the problem needs to be defined in a broader way that cover all the relevant elements such a philosophical, economic, political, legal, social and cultural angle. The language or particular words play a key role here as well. The selection of the words, terms and language for the presentation of the problem must be simple, logical and convincing. The individuals, groups, officials and unofficial actors have to be familiar with the definition of the problem and the meanings of the issue. For example, the political or economic rights of the FATA should be defined and presented in simple words. The role of official and unofficial actors can never be ignored as they really can help in defining the issues in many ways. In the past, the input of civil society was not incorporated into the amendments in FCR. The local political and ethnic groups opinion have also influence on the social structure

of the FATA. Hence the incorporation of the local wisdom is essential for achieving the objective of the policy.

The recognizing of the multiple options to address the problem is also a hard task. The more a problem is defined extensively, the more it demands on the extensive alternative options for its solution. As the problem is defined through different dimensions so as the alternative options are searched by examining further those dimensions. It may become quite complex, but in the longer run it serves the purpose. For example, what sort of political system suits FATA? The multiple political systems need to be examined. The survey and discussion give divided views on future political alignment for FATA. These divided views should be examined in-depth before making any policy decision. While considering this question, one needs to be familiar with the cultural values of local people and the social structure of FATA. Without addressing the social structure, the alternative of political system may not work in the right direction. The *Jirga* is a centuries old justice system in FATA and if government wishes to abolish it what will be alternative? As per the survey 74% respondent approve Jirga system. So, Government can suggest any alternative but if it is developed without the consultation of the local tribes and local stakeholders; it will face many challenges before and even after implementation.

The element of the evaluation of the options is another very important thing which shapes and reshapes the policy. The existence of multiple alternative options gives intellectual strength to the policy makers in analyzing and prioritizing the options. The purpose of devising and identifying the various alternative options is to see the issue that how this particular issue can be addressed via supposedly defined options. 94% survey respondents were not satisfied with current political setup. 46% goes with FATA as independent province while 37 % goes with merger with KPK. So the evaluation of the options make the things easy for the policy makers and help them in finalizing the most suitable and apt options. For the policy of FATA, the feedback of the unofficial and particularly the local community should matter most. People or their representatives may evaluate the options as per their interest and priorities. Most women were of the opinion that they do not have access to public spaces for sharing their views due to cultural hindrances. These also need to be looked into.

Once the options are decided, these need to be formally selected and prioritized. Another important step is the implementation of the policy. In practical implementation, various challenges emerge which can be from the administrative side or from the community. The implementation phase always faces huge challenges particularly if it is not going into desired direction. The dissatisfaction of any stakeholders brings challenge. Survey results and discussion ranked Military as the influential decision maker followed by Political agent and Jirga system.

Finally, the policy of implementation is evaluated. The pros and cons of particular polices should be captured and evaluated. Respondents in NWA and SWA however opined that militants make the important decisions in their respective influential areas. They even stopped polio eradication campaign in their respective areas. The evaluation does not only help in rectifying the old mistakes rather support in understanding the new challenges.

Before identifying problem, making and implementation policy, the relevant stakeholders (both official and unofficial) should be taken into confidence about the policy. In the context of FATA, the official stakeholders are legislative, executive and judiciary whereas unofficial stakeholders are civil society, media, ethnic or religious groups, academicians, NGOs, indigenous organizations etc.

Recommendations

Recommendations for the success of new policy for FATA are as follows;

Proactive and Reactive Approach

Proactive approach needs to be disseminated through various channels like media, social media, literature, socialization. Systematically supporting, establishing and sustaining the proactive factors for combating the socio political and economic issues are necessary and would leave a long term impact on the region. However the reactive mechanism must also be developed to counter the problems. FATA should be made rid of safe heavens, if they exist, so that no state or non-state actor should affect policy implementation.

Rule of Law

FATA need conflict prevention and transformation measures to improve the security situation. Root causes of conflict needs to be addressed while addressing inequality and social injustice. Rule of law is the foremost thing for developing a peaceful society. New laws should be made and implemented equally on all the citizens without any discrimination. Policies and programs in accordance with constitution of Pakistan should be made that take into account the social and cultural norms of the area. Since FATA has been governed through FCR which was law and order oriented, exploitative, non-participatory, and unaccountable in nature for a very long time, gradual move should be made through legal reforms.

Funding

FATA needs a continuous flow of funds for its various socio economic programs to succeed. There should be a state guarantee of funds in the annual PSDP for FATA.

Local Government System

A new local government system should also be introduced gradually with the consultation of the local actors. The social structure of the region must be kept in mind in developing local government system.

Empowerment of Tribesmen

The people of FATA were kept apolitical and marginalized for a very long time; women who constitute 50% of the population should also be empowered and mainstreamed. Freedom of expression should also be restored in public places like *Masjid*, Market and *Hujra*.

Role of Media and Civil Society

In the context of fifth generation war and hybrid warfare, media should play its due role. Government should ensure security and independent reporting from FATA. Civil society should be given an opportunity to play its due role in policy input. Civil society organization should also reform their conduct to adhere to local norms and cultural practices.

Conclusion

The policy for governance in FATA for decades was considered as success. This was primarily because the system was not exposed to outside pressures. After 9/11 the extraordinary circumstances exposed the vulnerabilities of the system. The weak areas were exploited by state and non-state actors. The current policy process for FATA is not sequential and the respective decision making stages and associated actions are devoid of tribesmen participation. Key stakeholders, both formal and informal state institutions are not integrated well in the process. The whole area has become socially, economically and politically stagnant.

This has resulted in FCR as defunct. A new social contract with tribesmen is the need of the time. Bringing peace to the area should be the utmost priority for the government. Proper financial resources should be allocated for socio-economic development. Women empowerment should be prioritized. Media should also be allowed to report independently. The most important area is to involve ordinary tribesmen in the policy process and its stages so that fears, reservations, and grievances are addressed and taken to its logical conclusion.

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