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**Justice System in Pre- and Post-Merged Federally Administered Tribal Areas (FATA):  
A Case Study of District Bajaur**

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**Abstract**

This research presents comparative analysis of the administration of justice before and after the merger of FATA and examines its impact of merger on justice provision in District Bajaur. The study is qualitative in nature, employing comparative and exploratory designs. Semi-structured interview guide and purposive sampling technique have been used for data collection. The collected data has been analyzed and interpreted thematically in the form of separated themes. In light of the Legal Empowerment Theory, the study findings have revealed that majority of people in District Bajaur prefer and trust old Jirga system for justice delivery. Nevertheless, the analysis does not romanticize the Jirga, even though, widely preferred there are some demerits in Jirga system such as unfair treatment of women, absence of appeal system, and sometimes arbitrary decisions by powerful elders. Contrary to this, the formal judiciary system ensures institutional safeguards which maintain rights protection for marginalized population especially women.

**Key Words:** Justice System, FATA, FATA Merger, Jirga, Bajaur

**Introduction:**

FATA had a distinct justice system for a long time from the rest of the state. Tribal norms and colonial laws have historically governed the region, but in recent decades, Islamic law has a bigger impact on the justice system. The legal system of FATA emerged through multiple influences including British colonial regulations along with tribal traditions then followed by Pakistani legal modifications. British colonial administrators implemented the (FCR) as their system of control during 1901 for governing the region. The FCR functioned as FATA's core judicial institution because British colonial administrators directly controlled it while the courts in British India's official judicial system excluded FATA. The British officials imposed this system to govern regions indirectly through tribal governance structures (Bokhari, 2015). Under FCR tribal elders known as Maliks acquired the authority to deliver dispute resolutions through tribal customs independent of standard legal criteria. Tribal judicial proceedings under the FCR operated based on entirely different principles than the standard courts which existed across British India. Under this law all tribes became jointly responsible for their members' actions even when only a few individuals participated in wrongdoing. British punitive actions led to communal punishments as well as property destruction and displacement thereby diminishing their governing power and

contradicting traditional tribal law practices (Siddique, 2015). The legal structures of FATA became extremely complicated through a combination of British colonial governance and traditions of the tribes combined with subsequent Pakistani legal reforms. The British colonial administration established the (FCR) for area governance during 1901. Under direct British control and separate from British India's official court system the FCR established its position as the basic foundation of justice throughout FATA. British administrators justified this approach by stating it served dual purposes of maintaining operational control without interference in tribal governance (Bokhari, 2015). To further solidify control over the area, the FCR also gave the Political Agent, a colonial administrator, complete power over the tribes and their legal affairs (Khan, 2022). In this system, the Jirgas, or tribal councils, played a vital role. These councils, which were made up of elders and Maliks, were entrusted with settling disputes according to tribal traditions rather than written law. Jirgas offered a venue for settling conflicts involving minor criminal offenses, family matters, and land. But they were also infamous for being unjust, especially when it came to matters of honor crimes, discriminatory practices, and women's rights. Since women were not allowed to participate in these male-dominated councils, decisions were mostly tilted and their access to justice was restricted (Shah & Tariq, 2013). Because the FCR did not provide for official judicial monitoring, the rule of law was frequently determined by tribal politics rather than fairness or due process (Khan, 2023). While tribal justice procedures such as Jirgas existed long before the British arrived, the FCR legalized them within the context of colonial administration. The FCR's absence of British India's formal court system from FATA enabled the British to keep an indirect but firm hold on the territory, repressing any kind of independence or self-government. Tribal customs and the interests of the colonial government would rule local governance, and the legislation guaranteed that the area would continue to be outside the scope of constitutional law (Siddiqui, 2015). From 1973 to 2010, the court system in FATA was formed by the Frontier Crimes Regulation (FCR), a colonial legislation that had governed the region's legal framework since 1901. Despite Pakistan's political and constitutional developments, FATA was largely excluded from the greater national legal system, with a justice system profoundly based in tribal customs and colonial governance. The FCR, which enabled political agents to govern the region and enforce collective responsibility, remained the principal legal framework, preserving an authoritarian and undemocratic legal system (Alam, Muhammad, & Shah, 2014). From 1973 to 2010, despite the development of constitutional reforms in the rest of Pakistan, FATA remained same in terms of justice system. The Pakistani Constitution (1973) made several improvements, although FATA was purposely kept outside of Pakistan's mainstream legal and judicial systems. The 1973 Constitution was not applicable to FATA, and the territory remained under the administration of the FCR, which deprived FATA from fundamental rights which are provided to other regions of the country (Hussain, 2019). FATA reform efforts were limited during the 1970s and 1980s. General Zia-ul-Haq's dictatorship (1977–1988) implemented Islamization program, however they had little impact on FATA's tribal justice system. While the Hudood Ordinances and other reforms were adopted throughout Pakistan, FATA's court system was still ruled by tribal laws and Jirgas, rendering the province legally isolated. Jirgas, made up of tribal elders, continued to play an important role in conflict resolution, but these informal groups were regularly criticized for biased decision-making and gender discrimination, particularly against women (Shinwari, 2012). By the 1990s, FATA's isolation from mainstream justice systems had gained national attention. As militancy and extremism increased in the region, there was a growing demand for reform. However, the FCR remained largely unquestioned due to its deep entrenchment in regional governance and the refusal of local tribes and political elites to modify the existing system. The tribal councils or Jirga managed to handle all kinds of civil, criminal, and domestic relation cases by using tribal law rather than formal regulations. As a result, there is still a conflict regarding

interests between Pakistan's formal or official institutions and the informal judicial system of FATA (Hussain, 2019). Despite sporadic calls for reforms, such as the 2011 FCR amendments, little progress was made in FATA's judicial unity and constitutional reform during the 2000s. Although limited participation in political procedures began with 2008 elections in the region, FATA remained significantly cut off from Pakistan's national court. However the FCR was eventually amended in 2011, many argued that the changes did not adequately address the fundamental injustices in FATA's legal system (FATA Seminar Series Report, 2012). Despite the amendments, human rights violations were still documented in FATA, raising fears about the region's separation from the country's constitutional guarantees. The main problems were women's rights and their access to justice, as local Jirga maintaining a patriarchal environment that marginalized women and deprived them from legitimate procedure. As a result the FATA justice system has been blamed for continuing violations of human rights such as murders of honor and marriages by force, with victims having little hope under the legal framework (Taj & Nicol, 2011). The necessity for judicial reforms in FATA was more widely recognized by the citizens and government prior to 2010. Although these reservations, political resistance and the challenges of incorporating the area into Pakistan's broader legal system continued to be significant barriers towards complete transformation. Though a positive move, the 2011 FCR amendments failed to bring about required changes to FATA's legal system (Hussain, 2012; Shinwari & Gauhar, 2013). From 2011 to 2017, important reforms emerged in FATA, especially with the passage of ADR act 2011, which aimed to address the flaws of the traditional tribal justice system and link it with formalized legal systems. The 2011 ADR act was a crucial step toward reforming the FATA justice system and improving access to justice for its residents. The ADR 2011 act sought to govern informal justice procedure like Jirga, which had handled in past a significant portion of FATA's legal problems, but lacked state legal monitoring (Jurgees, Suleman, & Shahid, 2023). The ADR act authorized the establishment of organized dispute resolution processes regulated by specific officials, thereby merging the tribal informal justice system with the formal judicial system of Pakistan. This hybrid technique was designed to accelerate resolution of problems while also retaining tribal customs and traditions that were deeply embedded in FATA culture. However, complications also developed with the ADR act 2011 implementation. Many tribal elders and local politicians opposed governmental control, preferring to maintain their traditional or old justice systems free of state interferences. The lack of local understanding of reforms, as well as lack of skilled specialists to resolve these disputes, raised concerns about the effectiveness and fairness of ADR system (Siddique, 2015). Despite these drawbacks and shortcomings ADR Act was noticed as a significant move toward enhancing FATA's justice system and developing a legal framework conflict settlement that might lessen pending cases and ease the burden or pressure on formal court system of Pakistan. Moreover, opponents claimed that the ADR act did not adequately address the rights of women in these processes, and gender-based violence and prejudice against women continued in the traditional legal system (Dawar & Mehmood, 2024). The adoption of legal reforms during that period was regarded as an encouraging move towards integrating FATA into Pakistan's broader judicial system. However, the successful execution of these reforms relied on continued efforts, legal expert training, and increasing community involvement in the formal judicial systems.

### **Literature Review**

All these philosophical traditions give us a full picture of what justice means in many different countries and legal systems. They have an impact on current legal and moral disputes around the world. Every thinker adds to our knowledge of what fairness is, which affects both our moral judgment and the way legal systems work in the modern government. Formal and informal systems

make up the two main types of justice systems in the world. Each has its own important role to play in running society. Formal justice systems run by the government include written laws, clear processes, and well-known institutions like courts and police. These kinds of methods are meant to make decisions that are fair and impartial by being consistent. The major goal is to keep things in order and uphold the rule of law, making sure that everyone gets the same justice (Trebilcock & Daniels, 2009). Informal justice systems, which are also called customary or traditional justice, are based on community norms and aren't usually set by the government. Restorative rather than punitive measures are often used in these systems, which try to fix problems and restore social peace through community-based methods such as mediation (Galanter & Krishnan, 2003).

**Legal customs are very different in different places and cultures:**

In the US and UK, common law systems use past cases to decide how to handle new cases. This tradition stresses that judges are responsible for how they understand the law (Merryman & Pérez-Perdomo, 2007). There are also civil law systems, which are used in France and Germany and are based on detailed legal rules. Judicial decisions are driven by comprehensive statutes rather than precedent, with a focus on applying formal statutes (Zweigert, 1998). Customary law systems are found in Africa and Asia. They use group customs and practices to handle personal and property issues, often along with formal legal systems (Menski, 2006). The way justice is done is a mix of old and new methods. Traditional ways of solving problems put an emphasis on working with the community, making peace, and mediating disputes. These kinds of methods are common in societies that value social cohesion a lot (Moore, 1986). To get justice today, formal legal processes and the rule of law are given the most weight. Modern systems use a standard way to settle disagreements so that justice is given consistently and fairly (Damaska, 1986). In many places, customary laws and state laws work together in a complex way. Customary laws, which are based on community customs, can be useful in situations where formal legal systems are seen as distant or unfair. They are especially important for giving people in rural or neglected areas access to justice (Nader 1990). State laws are uniform rules that are made by governments to make sure everyone is treated fairly. They want to keep social order and protect human rights, which can be hard to do when customary rules are more open (Santos, 2002).

Many different legal and cultural customs can be found in the world's judicial systems, ranging from formal, written rules to more casual, community-based practices. Formal judicial systems, which are run by the government, make sure that everyone is treated fairly by following set rules and laws. They do this by documenting laws and following established processes (Silvers, 1998). On the opposite hand, informal justice mechanisms encourage techniques for making things right and keeping the peace, which are deeply rooted in community customs and norms, and they offer solutions that are flexible and fit with the culture. This wide range shows how different cultures comprehend and carry out justice, highlighting how important it is to know about both official and unofficial processes as they meet the statutory and cultural demands of their own communities (Galanter & Krishnan, 2003). Erstwhile Federally Administered Tribal Areas (FATA) comprise of 27,220 square kilometers, with a population of approximately 5 million (Pakistan Bureau of Statistics, 2017). It borders with Khyber Pakhtunkhwa and Baluchistan to the East and Afghanistan to the Western and Northern proximities. It consists of seven administrative agencies (now districts) including Bajaur, Kurram, Khyber, North Waziristan, South Waziristan, Orakzai and Mohmand and six Frontier regions (FRs) including Bannu, Kohat, Dera Ismail Khan, Peshawar, Lakki Marwat, and Tank districts. FATA and the Frontier Crimes Regulations (FCR) have a complex history which is deeply rooted in the colonial era of British Rule in the Indian Subcontinent (Khan, Ali & Khan, 2023). Bajaur is one of the smallest agencies (now Districts) in Erstwhile Federally Administered Tribal Areas (FATA), occupying around 1,300 square kilometers having a population of round about 1.2 million (Government of Pakistan, 2017). It is

bordered by Afghanistan to the north, the Malakand Agency to the southeast, the Dir District to the northwest, and the Mohmand Agency to the southwest. The Utman Khel and the Tarkani are the two most prominent tribes in the region of Bajaur.

There are two sub-divisions in Bajaur named Khar and Nawagai. Khar sub-division is comprised of khar, Utman Kheel and Salarzai while Nawagai sub-division is comprised of Nawagai, Mamund, Barang and Chamarkand. Majority of the Utmankhel reside in the southeast, the Mamond in the southwest, and the Tarkani in the north. Most of the people of the Bajaur are living in joint family system (Noor, Hashmi, & Bukhari. 2018). FATA and the Frontier Crimes Regulations (FCR) have a complex history which is deeply rooted in the colonial era of British Rule in the Indian Subcontinent (Khan, Ali & Khan, 2023). The Frontier Crimes Regulations (FCR) Act of 1901, an act that was passed during the colonial era and granted the government more power than in other areas, has had a long-lasting impact on the administration of ex-FATA, influencing everything from governance to administration of justice system (Khan, 2022). The FCR gave tribal leaders, called Maliks, the power to settle disagreements according to tribal rules, often without using established legal standards. In the FCR, the tribal courts were very different from the official courts in the rest of British India. Collective responsibility or accountability was recognized by the law. This means that the actions of a few people can hold whole group responsible. This harsh method often involved group punishments, destroying property, or moving people, all of which undermined British authority and didn't take into account native legal customs (Siddique, 2015). Zeb and Nawab (2023) argued that FATA has remained for a long time under the direct supervision of the federal government through a unique legal framework known as FCR, which was instituted by the British in 1901 to administer FATA and safeguard British colonial interests and further highlighted that FATA remained an anomaly under Article 247 of the 1973 constitution. Efforts to reform or modify the FCR were limited and often ineffective, perpetuating the marginalization of FATA's population. Various changes and suggestions were made to FCR over the years, but they failed to address the dire situation in FATA.

FCR was criticized due to denial of fundamental human rights i-e, the three core rights were not available to citizens of FATA: appeal, wakeel (counsel), and daleel (plea and argument) (Ali, 2011). But, some elements of FCR were also designed according to the nature of the soil (masses) of the tribal area and it was compatible with the social, cultural and tribal norms of the local populace. Before the merger of FATA, certain traditional mechanisms like the Jirga system played an important role in the dispute resolution among the pakhtun tribes (Mahsud, 2017). Ex-FATA has a traditional lifestyle or code of life known as Pakhtunwali including joint family system, clan, tribe, and confederacy. It has its own unique dispute resolution mechanism or justice system. However, people view collective punishment under FCR as harsh and incompatible with human rights (Saeed & Khan, 2017). The Jirga system was a traditional conflict or dispute resolution mechanism in tribal areas, involving adults making decisions based on local customs and Islamic sharia. It is used to resolve minor disputes, long-lasting hostilities, major family conflicts, and inter-tribal conflicts. However, educated tribes argue that it is incompatible with modern justice systems, which require a free and fair judicial system. Many young people argue that Jirga decisions are unjust and heavily influenced by a powerful party in the conflict. Women are often victims of patriarchal tribal traditions (Nasrullah & Ahmad 2021).

### **Discussion and Analysis**

The study covers an in depth discussion and analysis of the collected data, which investigate the justice system transformation and its impact on the people of District Bajaur after the merger of FATA with Khyber Pakhtunkhwa through 25<sup>th</sup> amendment in 2018. The data is collected through semi-structured interview; specifically purposive or targeted interviews with those plaintiffs who

have direct experienced of both the pre- and post-merger justice system such as Jirga system and court system. These plaintiffs or users of both the justice system, provide firsthand knowledge about the administration of justice before and after the merger of FATA, especially focusing on different aspects of justice system i.e., accessibility, affordability, cultural relevance, complexities, speed, fairness, effectiveness and trust. The study's findings reveal a strong preference for the traditional Jirga system among Bajaur residents, which is based on its cultural relevance, efficiency, and accessibility. For many people in this region, the Jirga is more than just a means of resolving disputes; it is an institution that is deeply rooted in Pashtun society. Respondents generally complimented the Jirga for its quick decision-making, affordable prices, and ability to maintain societal harmony. This significant preference for informal justice indicates the persistent strength of indigenous institutions in areas where the state's legal frameworks are either ineffective or incompatible with local norms. The preference for Jirga system corresponds with the arguments of Wardak (2011), who claim that indigenous systems such as Jirga gain recognition due to cultural attachment and ability to maintain community cohesion. According to their study, Jirga system is trusted because it is not perceived as distant or foreign, but rather as authentic reflections of communal wisdom and moral authority. It emphasis on reconciliation rather than punishment resonates deeply with tribal values, particularly the importance of restoring honor and avoiding long-term hostility. The results also corresponds with the findings of Barfield (2022) who stated that due to wasting much more time and money than expectation, the Pashtun communities avoid court system. On the other hand, Jirga system is an easy one and the community members saves time and money. However, the study conducted by Ali and Islam (2024) while the current research highlights strong support for the Jirga in Bajaur, contrasting views are emerging in other regions of (FATA). Particularly, recent developments in judicial reforms and public awareness show that some regions are gradually shifting towards a formal judicial system. In this context, Ali and Islam (2024) conducted a comprehensive appraisal of the newly established judicial structures in the tribal districts of Khyber Pakhtunkhwa. Their study concludes that most of the people particularly the well-educated and younger generation view the judicial system positively. The established laws, transparent procedures, and right to appeal decisions have justified the legitimacy of the formal judicial system. Furthermore, Ali and Islam (2024) stated that the formal judicial system is a real guardian and protector of the constitutional and legal rights, which were not there in traditional system. The provision of legal rights provides a sense of justice and the most of the youth consider it far good than Jirga System based on the oral memory. These findings concluded that legal awareness and education play crucial role in shaping public attitudes and perception regarding justice system in the post-merger era. A report by Khan and Ijaz (2021) also supports the transition toward formal judiciary system. It explored how the constitutional merger affects the legal rights of individuals in the erstwhile FATA. The report revealed that the development of constitutional protections and access to formal court proceedings has resulted in a significance increase in citizen participation with state institutions. It also highlighted that Women's access to justice has increased dramatically, but sizable investment is needed to make legal institutions more gender sensitive. The second point aligns with my research findings also. However, the findings of this study also validate several ongoing criticisms of the formal justice system, particularly in the context of Bajaur. As echoed by respondents, the court system is often viewed as complex, corrupt, time-consuming and expensive. Issues such as a lack of knowledge about filing (FIRs), limited legal literacy, and delay tactics have hindered the acceptance of court system. The same issues are highlighted by Bilal and Khokhar (2021) in their paper titled justice delayed or denied: the myth of justice in Pakistan. They argued that Justice in Pakistan has become a myth and an unachievable tool. In Pakistan only the concept of delayed justice exists as the delayed justice which actually is a denied justice. They highlighted several reasons for delayed justice including

complex procedures, old and ineffective laws, attitude of judges and lawyers, and the backlog of the pending cases in the superior as well as lower judiciary of Pakistan. In a nut shell, the government of Pakistan merged tribal areas known as FATA into the province of Khyber Pakhtunkhwa and established a formal justice system. This change greatly impacted the people of District Bajaur in terms of justice. While the amendment aimed to replace the Jirga with a formal court system, it wasn't completely abolished. Residents of district Bajaur still prefer and rely on the Jirga. Integrating a formal judicial system in the former FATA regions such as Bajaur faces significant hurdles due to the continued prevalence of the informal, indigenous Jirga system. Residents are accustomed to the Jirga's cost-effective and swift dispute resolution mechanisms, readily accepting its decisions due to its local nature and perceived legitimacy. Furthermore, inadequate government attention towards these areas further impedes the successful establishment of a formal judiciary. These factors contribute to the challenges faced by the formal system, including building trust with the local population. People are unfamiliar with the formal judicial process and are not accustomed to it. Their strong inclination towards their customary systems hampers their access to new systems. The formal legal system, with its delays due to procedural formalities, may pale in comparison to the swift and seemingly judicious solutions provided by the Jirga system, to which the people of the region are innately drawn. Hence, the formal justice system is extended to district Bajaur but provision of justice is not ensured due to which majority of people prefer old Jirga system in most cases.

### **Recommendations and Conclusion**

Educated and well-qualified police officers are required to be recruited as most of the police are uneducated in district Bajaur which leads to procedural flaws. Female Police, Judges and lawyers should also be appointed to handle cases of women to avoid cultural sensitivity and promote women's access to justice. Secondly, the government may establish proper monitoring system for the evaluation of police performance, specifically during the FIR registration and other investigation phases. Thirdly, awareness sessions and campaigns are needed to be initiated in village and union councils regarding court system procedures. This will improve legal literacy and educate people about their rights and processes related to court system. Fourthly, in today's era of technological advancement, the government may introduce electronic filing systems and online FIR registration. Fifthly, a special bench is required to be introduced for land disputes cases in District Bajaur. Strict laws along with proper penalties will help control improper use of the court system. Lastly, the government shall update the entire justice system with modern approaches to meet societal requirements. The government should also appoint extra-judicial staff to handle cases in off-hours to reduce load on judiciary and ensure speedy trials.

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