

18TH Amendment and its Impacts on Erstwhile FATA

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Contents

- [Introduction](#)
- [18th Amendment & 7th NFC Award](#)
- [Horizontal Distribution of Resources](#)
- [Education as a Political Dealing](#)
- [Post-18th Amendment Education in Khyber Pakhtunkhwa](#)
- [Judicial Reforms](#)
- [Challenges in Transition](#)
- [Analytical Arguments](#)
- [Conclusion & Policy Recommendations](#)

Abstract: *The impact on the erstwhile Federally Administered Tribal Areas (FATA) remained one the most profound subjects of debate and controversy since 2010 when parliament passed the 18th Amendment to the 1973 Constitution of the Islamic Republic of Pakistan. It was a groundbreaking legislation that focused on decentralizing power and empowering the provinces. I have always been fascinated by the legal and political dynamics of this region. My interest in this topic was further fueled by the struggles and resilience of the people of erstwhile FATA, who have been living a miserable life in the 21st century. This research paper is an attempt to explore the implications of the amendment on erstwhile FATA, with a specific focus on its legal and political implications, through a critical analysis of the amendment and its effects. Although this amendment was a remarkable contribution toward federalism and democratization, the ongoing challenges and opportunities remain an ongoing debate. I hope that this research paper will be a valuable addition to the existing literature on the subject and will discourse a better understanding of the significant issues faced by the people of erstwhile FATA.*

Keywords:

18th Amendment, Erstwhile Fata, Constitutional Reforms, Legal Reforms, Governance in Fata, Judicial System, Security Challenges, Impact On Local Governance, Post-Merger Challenges

Introduction

A constitution outlines the foundational principles that govern a state and its jurisdiction. A constitutional amendment is used to address new conditions. The Constitution of Pakistan, 1973 (18th Amendment) ratified in April 2010, is considered a remarkable and broader modification since the promulgation of the original constitution draft. The president's influence has been reduced with this, and the provinces have more autonomy from the national level.¹ This historic

¹ Alam, Jan. "Jirga System and Its Role in Peacebuilding and Development in Pakistan's Terrorism-Affected Pashtun 'Tribal' Districts." *Journal of Peacebuilding & Development* 16, no. 3 (2021). <http://dx.doi.org/10.1177/1542316620986138>.

amendment has 102 provisions, although none of them relate to FATA. FATA members, on the other hand, opted to endorse the aforementioned change.

Since independence, The federal institutions of Pakistan have caused conflict. Long-awaited reforms include reorganizing provinces along linguistic and ethnic lines and dividing resources along vertical and horizontal axes. With broad approval, the 18th Amendment to the Constitution substantially altered the federal system. But to what degree did these changes occur? As a result of the changes, disputes on the propriety of splitting core groupings, the establishment of ethno-federal units, and the proper number of units erupted. Despite considerable modifications, it has been concluded that more has to be done. The federal government should view Pakistan's diversity as a strength rather than a handicap.

The Constitution is divided into 12 parts which comprise 280 Articles, Articles 246 and 247 laid down the constitutional framework for FATA. According to Pakistan's constitution, FATA is governed by the same FCR that the British left behind in 1901. The land is a part of Pakistan even though it is not a province. The federation's executive branch is ostensibly in charge of the tribal areas. A total of 25,500 square miles constitutes FATA.² The President of Pakistan has the authority to either adopt regulations for the administration of the region or proclaim specific regulations to be applicable, as the national assembly is not permitted to approve legislation for this territory. The 18th Amendment gave the provinces more authority, but the situation in FATA remained the very same. Comprehending FATA's geography and history is crucial to understanding the region's issues.

There are two boundaries in Khyber Pakhtunkhwa (KP): the political boundary and the official boundary. The administrative boundary extends all the way to the base of the mountains, dividing the five districts from the tribal area. Afghanistan and British India were separated by the Durand Line, a political border. Pushtun tribes have lived in the area between the two boundaries. The Koh Safed Range and the Waziristan Hills are located below the Khyber River in the west of KP.³ There exist numerous high passes cut across the mountains, serving as trade and invasion routes linking the subcontinent plains for millennia with Central Asia. In addition to serving as a dividing line, this link was an ethnic frontier zone that played a crucial role in the history of the Indo-Pakistan subcontinent and remained a vital boundary. It encompassed Little Pamir, Chitral, Kohistan, Bajaur, Khyber, Tirah, Waziristan, and Baluchistan and extended along the Afghan border. Invaders from Persia, Greece, and Central Asia were drawn to the northwest highlands of the Hindu Kush in an attempt to penetrate India and leave their mark on the history of the area. Cyrus, Alexander, Changez Khan, Mehmud Ghaznavi, Mohammad Ghore, Timur, Bahbur, Nadir Shah, and Ahmed Shah Durrani were all forced to use this strategy. Redirect a Central Asian migratory flow to break water. This caused historical lines to be superimposed.⁴ In the 19th century, the British were concerned about a Russian invasion of the subcontinent through this pass. The most accessible pass is the Khyber Pass situated in the district Khyber (previously Khyber Agency) that links the subcontinent.

The Federation of Pakistan is impacted by several disputes. Tensions between the provinces and the federal government have increased, some of which have become violent, as a result of the

² Adeney, Katharine. "A Step Towards Inclusive Federalism in Pakistan? The Politics of the 18th Amendment." *Publius: The Journal of Federalism* 42, no. 4 (2012): 539-565. <http://dx.doi.org/10.2307/41682902>.

³ Johnson, Thomas H., and M. Chris Mason. 2008. "No Sign Until the Burst of Fire: Understanding the Pakistan-Afghanistan Frontier." *International Security* 32 (4): 41-77. <https://doi.org/10.1162/isec.2008.32.4.41>

⁴ Iqbal, Javed. "An Overview of British Administrative Set-up and Strategy in the Khyber 1849-1947." *IPRI Journal* 11, no. 1 (2011).

number of provinces, their involvement in national institutions, and the unequal allocation of resources. Ethnolinguistic factors are increasingly commonly included in these conflicts. The constitution has undergone numerous amendments since 1973, most of them by military rulers. To undo these changes, the Special Parliamentary Commission on Constitutional Reforms (SPCCR) was formed by President Asif Ali Zardari formerly holding office in 2009. A few months after an agreement was reached over the 7th NFC award, the SPCCR report was released to the public. This was mostly caused by the previously unheard-of level of cooperation between rival political parties and regions.⁵

18th Amendment & Its Effects on the Education System in Tribal Administrative Units

Pakistan's newly elected administration recognized the necessity for constitutional changes in 2008 because of the nation's ongoing security, federalism, and socioeconomic issues. Promoting sound governance, openness, organizational strength, democratic accountability, and a reduction in individual administrative discretion were the primary priorities.⁶ A committee to review the constitution was formed somewhere inside Parliament as a result of this. Between the middle of 2009 and the start of 2010, the Parliamentary Committee on Constitutional Reforms had 77 sessions totaling more than 400 hours.

This led to Twenty of the 280 articles of the 1973 Constitution being altered, seven new ones being inserted, and four being removed. This legislation was approved by the Senate on April 15, 2010, eight days after the National Assembly passed it. The president formally approved it and put it into effect on April 19, 2010. There is no doubt that an outsider would be impressed by the overwhelming number of amendments made in Pakistan's 18th amendment to the constitution.⁷ It fostered provincial autonomy and changed the current power balance of the nation from the center to the provinces. The modification recognizes prior struggles by all of Pakistan's provinces to influence policymaking in Islamabad and collectively run the country. This regulation demonstrates the idea that a strong province ensures a strong country while also allowing provinces to make use of their own natural riches.

The amendment had a significant impact on a number of important sectors, including legislation, rules and regulations, the creation and application of policies, and administrative organization. With the removal of the concurrent legislative list, 47 themes are now under the jurisdiction of the provincial administration. In order to resolve conflicts between the federal and provincial governments, it reinforced the Council of Common Interest (CCI). The Judiciary and Election Commission was granted independence, while the National Economic Council underwent a restructuring. Another important turning point was the elimination of the president's authority to dissolve the legislature, which made Pakistan a true parliamentary republic and changed its name to Khyber Pakhtunkhwa, or the NWFP.

⁵ Akram, Sidra, and Muhammad Azhar. 2021. "Distribution of Power Between the Centre and Provinces in Pakistan Under the Constitution of 1973." *Journal of Law & Social Studies* 3 (1): 01–10. <https://doi.org/10.52279/jlss.03.01.0110>

⁶ Gaho, Ghulam Mustafa, Ahmad Hussain Shah Bukhari, and Syed Anwar-Ul-Mustafa Shah. 2022. "REVISITING THE 18TH AMENDMENT IN THE 1973 CONSTITUTION OF PAKISTAN: DEBATE OVER CENTRE-PROVINCE POWERS." *Pakistan Journal of Social Research* 04 (02): 384–90. <https://doi.org/10.52567/pjsr.v4i2.486>.

⁷ Yousaf, Farooq. *Pakistan, Regional Security and Conflict Resolution: The Pashtun 'Tribal' Areas*. London: Routledge, 2020.

18th Amendment & 7th NFC Award

After consulting with the leaders of every political party represented in the federal parliament, the SPCCR was established. The minor parties were represented because the big parties sent fewer MPs than their party strength would have permitted. To satisfy the democratic and Islamic aspirations of the Pakistani people, the SPCCR is tasked with proposing constitutional amendments that take into consideration the 17th Amendment, the Charter of Democracy, and province autonomy. The SPCCR's discussions were guided by nine principles, including "Provincial Autonomy" and "Strengthening Parliament and Provincial Assemblies." The 133-page study was delivered in April 2010. The SPCCR's primary objective was to amend the constitution to undo the modifications made by Musharraf's Legal Framework Order, even though many of the 97 articles it suggested for reform increased provincial authority. Both academics and politicians have commended the strategy's efficacy.

Leaders of political parties were aware of the risks associated with a return to 1990s politics when politicians used the military to sabotage their political rivals. Politicians understood that the erosion of the democratic process outweighed the short-term electoral rewards of military action against their political rivals. Parties agreed to reassert their positions in a letter known as a Note of Reiteration, of which eleven were given, without compromising the committee's findings in order to keep the group unified. The SPCCR's degree of independence can be explained by the army's assumption that lawmakers would not be able to reach a consensus, notwithstanding the limitations it placed on the Committee, especially in relation to FATA measures. Following approval by both houses Pakistani parliament, President Zardari signed the 18th Amendment Bill into law.⁸ For the Pakistani confederation to manage diversity, the 18th Amendment's modifications were crucial. These include greater provincial autonomy, adjustments to the resource allocation formula on both a vertical and horizontal level, and growing ethnic diversity within the federation. The media instead focused on the president's little control over parliament and the disagreements between the legislative and judicial institutions, which prevented the general people from learning about many of these occurrences.

Increase in Powers & Resources of the Provincial Governments

The elimination of the Concurrent List is one of the topics that has generated discussion in Pakistan. Because it gives the federal government the power to preempt any provincial laws on the topics it addresses, the Concurrent List has long been criticized. Different strategies are used by federated governments to share sovereignty. There were 67 articles on the Federal Legislative List (FLL), as compared to 47 on the Concurrent List, which permitted legislation to be approved by both the federal government and the provinces. Provinces maintained control over all other matters of governance.

This constitution gave provinces greater autonomy than any other. However, the actual center of power is revealed by the provision in Article 143 that says that any legislation the Center passes on a subject over which it has the authority to pass legislation will take precedence over a provincial assembly's act. The Center also had the power to pass legislation on items on the Concurrent List. Although there is no evidence to support this claim, many claim that Zulfikar Ali Bhutto promised Balochi tribal chief Bizenjo that all of the Concurrent List's powers would be

⁸ Zahra, Sajjal. 2022. "Role of Opposition in the Development of the 18th Amendment." *Annals of Human and Social Sciences* 3 (II). [https://doi.org/10.35484/ahss.2022\(3-ii\)41](https://doi.org/10.35484/ahss.2022(3-ii)41)

handed to the provinces within ten years after the 1973 constitution's passage.⁹ As a result, some of Pakistan's smaller provinces have been clamoring for the Concurrent List to be removed prior to the most recent modifications. The FLL, which is split into two parts, is the sole list included in the Pakistani Constitution since the 18th Amendment's promulgation. Issues covered in Part I fall under the Federal Government's exclusive purview. The Council of Common Interests (CCI), which addresses concerns in Part II, seeks to improve collaborative oversight of Federal resources, collective conflict resolution, and decision-making on any contentious matters brought before them. Since most of the Concurrent List's functions had already been transferred to the provinces, seventeen ministries from the center needed to be given more autonomy. All remaining authority is still held by the provinces. To put these ideas into action, a large increase in government spending will be required.

The 7th NFC expanded the tools accessible to the provinces just months before the SPCCR's December 2009 plan to remove the Concurrent List from the public domain. According to a 2006 study by Muhammad Zubair Khan, the federal government received more than 93 percent of the federation's resources while spending 72 percent of them.¹⁰ The province received forty-five percent of the pool that was divided, which includes all taxes, Musharraf enforced the last NFC Award because there was no agreement in 2006. However, in 2011, about 57.5% and 42.5% of shares were allocated to provinces and capital respectively under the 7th NFC award. This increase was noteworthy. Going a step further, the 18th Amendment stipulated that the provinces must receive a greater share of the funds distributed between the provinces and the center and that their share of each NFC Award must not be less than their share of the previous Award (Article 160 3A). Now that resources are being distributed differently, this has significant economic and symbolic ramifications.

Federal Minister for Finance Hafiz Pasha anticipated in 2010 that increased federal funding would add around Rs 300 billion to the budgets of the four provinces, or more than Rs 178 billion if Musharraf's criteria had been applied. This amount is still considered appropriate in comparison to other federal systems, even if the province governments' share of public spending increased from 30% to about 36%. Germany, Switzerland, Canada, and Belgium all have provincial governments that spend between 60 and 70 percent of the entire. Provincial spending in federations typically ranges between 45 and 55 percent. Pakistan is one of the few federations that still maintains some fiscal centralization. Since the NFC was signed, the center has also gotten less tax money, which has reduced the amount that could actually be provided to the state municipalities.

Balochistan members of the SPCCR were authorized to sign the report under the 18th Amendment in an effort to allay their worries. All of the lands, minerals, and other significant assets in the continental shelf belonged to the federal government until the 18th Amendment was passed. The Province and the Federal Government must jointly and equally own natural resources such as minerals, natural gas, and oil discovered inside the province or in the nearby territorial seas, according to the recently updated Article 172. The resource base of natural resource-rich provinces, most of which are outside of Punjab, has been significantly increased by the modified Article. A province's administration must now be consulted before hydroelectric power projects are developed on its soil, under amended Article 157. Many residents of the riverbank who live near such structures are not content because this only partially satisfies the expectations of

⁹ Wani, Shakoor Ahmad. "The New Baloch Militancy: Drivers and Dynamics." *India Quarterly* 77, no. 3 (2021): 479–500. <https://www.jstor.org/stable/48650549>.

¹⁰ Akram, and Azhar. "Distribution of Power between the Centre and Provinces in Pakistan under the Constitution of 1973." *Journal of Law and Social Sciences* 3, no. 1 (n.d.). <http://dx.doi.org/10.52279/JLSS.03.01.0110>.

provinces like KP. The importance of these incidents must not be downplayed.¹¹ According to Asma Jahangir, who was the head of the Human Rights Commission of Pakistan and the Supreme Court Bar Association of Pakistan at the time, these reforms cut straight to the heart of organizations that rely on the generosity of the federal government.¹²

Horizontal Distribution of Resources

One of the primary domestic problems in Pakistan that has weakened ties between the people and the government is the allocation of resources among the provinces. Punjab has profited from the uncommon practice of distributing resources in a federal system exclusively based on population since 1973. Compared to other provinces, Punjab is already more populated and developed. For a long time, the other provincial governments have maintained that allocating resources according to population is inherently unfair. Sindh believes that payments ought to be based on how much each province contributes to the national coffers. Karachi's status as the nation's principal port favors Sindh. Underdevelopment should be one of the criteria, according to KP and Balochistan. These legislative recommendations have previously been rejected by the NFC.

In the 7th NFC, the majority of these problems were fixed. According to the revised formula, provinces received 82% of the resources, regions with high levels of poverty or other deprivation received 10.3%, areas with low population density received 2.7%, and regions with high levels of poverty or other deprivation received 5%. The revised technique reduced the share of Punjab by 5.6% compared to the consensus allocation in 1996. While Sindh rose from 1.3 percent to 24.6 percent, KP to 14.6 percent, and Balochistan from 3.8 percent to 9.1 percent, Punjab received 51.7 percent. A change in the NFC's sequencing allowed Punjab to reach an agreement. In contrast to past awards, agreement on vertical resource allocation was reached before the method for horizontal resource allocation.¹³ Many Punjab legislators were of the opinion that the center would be more affected by changes in how natural resource funds were distributed than the Punjab.

Education as a Provincial Subject

Education was one of the primary subject matters, with substantial parts under provincial operations such as the setting of standards, the construction of curricula, and the mandatory teaching of Islam till grade 12. This causes concerns about the provinces' capacity to manage the education system as well as national coherence, equality, quality, financial resources, and standard-setting. But, unlike other governments, the KP government responded fast and is currently attempting to provide free, high-quality education to its inhabitants aged five to sixteen.¹⁴ An in-depth assessment of the changes and problems caused by the 18th amendment as well as questions as to response and support by the administration authority, especially the KP government, responded to them in order to support provincial autonomy in the country.

Revisions in the Education Sector

¹¹ Ibid.

¹² Begum, " "General Election in Pakistan: A Critical Study." 2022. *FWU Journal of Social Sciences*, September, 132–43. <https://doi.org/10.51709/19951272/fall2022/10> ."

¹³ Munawar, Ch. Shahzad, and Muhammad Mushtaq. 2022. "EVOLUTION OF FEDERALISM IN PAKISTAN: A CONSTITUTIONAL STUDY." *Pakistan Journal of Social Research* 04 (04): 468–79. <https://doi.org/10.52567/pjsr.v4i04.831>.

¹⁴ Ahmad, Nasir, Nasir Shaheen, and Sajjad Hussain. "Professional Qualification: An Analysis of Khyber Pakhtunkhwa New Teachers' Recruitment Policy." *The Dialogue* 17, no. 1 (2022).

Right to Education

Article 25-A was added to the Constitution's list of fundamental rights by the 18th Amendment. The right to an education is emphasized in this paragraph's first sentence. According to the law, every child between the ages of five and sixteen should have the right to free, state-mandated schooling. According to this article, the state is required to offer education up to the secondary level, and it has been designated a basic right of its inhabitants.

Federal List

The Council of Common Importance (CCI), Part II of the federal legislative list, has been updated to address issues of national importance. The following entries have a clear educational connection:

According to Entry 6, A federal statute may establish any regulatory organization. Organizational homogeneity in scientific and technology companies, research institutes, and universities. Coordination and interprovincial issues are covered in Entry 13. The approval of extra authorities would give the provinces more clout in the Council of Common Interest on matters of national significance.

Concurrent List

Previously shared by the federal government and the provinces, education was one of the 47 subjects over which the 18th Amendment gave the provinces control. Additionally, the concurrent legislative list was removed. Two more entries (Entry 38 and Entry 39) were added to the aftermath of autonomy, giving the province governments the power to create laws, create policies, and oversee important facets of education, such as curriculum, Islamic education, educational standards, planning and policy, and centers of excellence.

Schedule 6th and 7th

Schedules 6 and 7 of the 1973 Constitution were repealed by the 18th Amendment. To repeal the 35 pieces of law that made up the sixth schedule, the president had to give his prior approval. With the removal of the sixth schedule, the former president's power to rescind the 1972 regulation on privately operated schools and colleges (taking over) was eliminated. Nine presidential orders were safeguarded when the 8th amendment to the constitution in 1985 added the 7th schedule. Cess Order of 1985, The National College of Textile Engineering governing body, the Lahore University of Management Science Order of 1985, and the Agha Khan University Order of 1983 were all linked to education.

Challenges in the Education Sector due to the 18th Amendment

The 18th Amendment enhances the federation by encouraging provincial autonomy, but it also presents a number of difficulties for both the federal government as a whole and the federating units. However, the institutional administration that was already in place at the federal level was the main source of the problem, and it was the most effective approach to begin a national response to the issues in education.¹⁵ The difficulties at the province level are related to having the resources and expertise to carry out the newly assigned tasks, as well as formalizing interprovincial

¹⁵ Justice R Dr Mughal and Munir Ahmad, "Constitutional Arbitrator," *Available at SSRN 3770337* (2021).

collaboration to protect the minimal set of standardized processes. The difficulties that provinces experience are described as follows;

Implementing Article 25-A

A number of questions have arisen, such as financing allocation—how and where the money may be allocated for it. This has been a big problem for the province, particularly KP. Or the provinces have the resources to deal with the issue. Other worries were who would establish the provincial education policy. How can it be consistent with other provinces' educational strategies? Buildings, instructional materials, and teachers are examples of educational resources that must be designed and provided for the furtherance of funded and worthwhile learning up to grade twelve. To address the issues posed by Article 25-A, comprehensive legislation was necessary.

Education as a Political Dealing

Each party is free to design an education policy that aligns with its political platform, and the province's education policy may be updated by the next administration. Students may find this difficult, therefore its academic purpose and intellectual standing may be forsaken in the name of political will.

Curriculum and Standards of Education

The 18th Amendment gave the provinces additional authority over curriculum, standard-setting, strategic planning, and management, allowing them to adopt new reforms in light of their unique cultures and situations but also causing major uncertainty in the nation. The head of the standing committee on education, the majority of political party leaders, and a number of other members of parliament opposed giving the provinces authority over curriculum creation, arguing that it may be harmful to the provinces and the country overall. Many were particularly concerned about the potential effects of disparate regional curricula on national integration. It opposes the country's standardized educational system. Under such a separating structure, which enables the emergence of ethnic groupings like Sindhis, Punjabis, Balochis, and Pakhtoon, Pakistan cannot be founded. Future generations' perspectives may be restricted to their own provinces rather than the entire country, suggesting provincialism rather than nationalism. The existence of five to six different educational systems inside one nation, according to critics, can cause uncertainty and ambiguity, which can undermine national cohesion and ideology.

Redefining Roles

In light of the devolution wave, the KP provincial education department has stepped up its efforts to define a variety of roles, such as those of Text Book Boards, BISEs, Education Foundations, Public Schools and Colleges, and Cadet Colleges. Within the provincial administrative structure of the Directorate of Elementary and Secondary Education, a Planning and Policy Formulation Cell is to be established. Additionally, the federal ministry has pledged funding to several development efforts, such as "Education for All (EFA)" and the "Millennium Development Goals (MDGs)," but after responsibilities are devolved, who will oversee these activities at the provincial level? Who might show up to its meetings, and what would happen as a consequence?

Equity Problem

Since our educational system is divided into multiple systems, such as public-private, urban-rural, military-madrassa, English-Urdu medium, and so forth, the concept of equity has been obliterated. Within a single nation, power devolution has further divided the system into five distinct systems. As a result, attaining educational equity has become challenging and time-consuming. Each province's education sector was given guiding principles by the 2009 Future of National Education Policy. It was the result of much deliberation and substantial financial outlay. Since every province may create its own curriculum according to its own standards, there might not be a single, cohesive curriculum. Because of the different educational standards utilized in each province, one country has five distinct education systems. It may be extremely harmful if one jurisdiction rejects a certificate issued by another province for any reason.

Monetary Challenges

The new responsibilities brought on by the 18th Amendment, including the need for free secondary education, school development, the establishment of learning environments, infrastructure, textbooks, and instructors, among other things, have led to a serious budgetary problem. The provincial budget was further strained as a result of the high expense of this. Terrorism, Internally Displaced Persons (IDPs), and natural catastrophes like floods, which have affected hundreds of schools, are already problems in the Khyber Pakhtunkhwa region. Before the 2013 elections, major political parties made promises to improve education and increase their financial share to the same level as the country's defense budget, but these promises were not met. The provinces are required to finance any development projects that are assigned to and carried out by the ministries, according to the Council of Common Interest (CCI). It tested the province's ability to handle its finances. How to rehire the staff who once worked in the ministries that were abolished presents another financial difficulty for the provinces. The personnel might either be accepted by the provinces together with their institutions and assets, or they could be assigned to their new departments. However, the procedure for requesting the absorption of federal staff was protracted. Every province throughout the country needs to create one.

Post-18th Amendment Education in Khyber Pakhtunkhwa

This was up to the provincial governments to create new laws, get the required financing, and monitor the execution of the changes when the provinces were given control over education. In order to achieve this objective, the following activities have been taken:

Legislation

Provinces required legislative modifications on the topic as a result of amendments made to the national constitution. The province government was in charge of developing the curriculum, designing and revising textbooks, and maintaining educational standards for Khyber Pakhtunkhwa's primary, middle, high, and upper secondary school levels. The province's then-education minister, Sardar Hussain Babuk, introduced the Khyber Pakhtunkhwa Right of Children to Free, Compulsory Quality Education Bill, 2013, and the Khyber Pakhtunkhwa Private Schools Regulatory Authority Bill, 2014. However, since the PTI administration seeks to implement its own education policy, as announced during its election campaign, these proposals cannot be considered in the provincial assembly. A new organizational structure was added to the "Elementary Education Foundation Ordinance 2002" to support elementary and secondary education in the province. The province established the Technical Education and Vocational

Training Authority (ANP) to offer excellent technical and vocational education. The Chief Minister of KP will serve as the chair of TEVTA's suggested planned organizational structure. The rules pertaining to previously employed teachers at all levels, such as PSTs, CTs, SSTs, and SSs, as well as lecturers, technical education facility instructors, and physicians employed by healthcare institutions, were explained.

Administration

The E&SED KP assumed control of the province's educational expansion after the provinces received responsibility for education. In accordance with the September 2011 Education Declaration, the E&SED KP amended and revised the "Education Sector Plan (ESP)," "Comprehensive Development Strategy (CDS)," and "Medium Term Development and Expenditure Framework." The financial projections, institutional procedures, and fundamentals of formulating KP education policy are included in these publications. As the appropriate body for curriculum creation and textbook clearance, the Directorate of Curriculum and Teacher Education (DCTE) had been established.¹⁶ To prepare for any form of calamity, whether natural or man-made, the KP government created a "Disaster Management Plan." The KP government established an Independent Monitoring Unit to manage absences, and low enrolment, and attain best-in-class performance in the province's public education system. The staff and kids are now more consistent and on time thanks to their monthly visits. In order to provide uniformity to the test system, it is also thought that the Inter Board Chairmen Committee (IBCC) has to be reactivated.

Implications for Tribal Administrative Units

Low educational standards are seen in the former Federally Administered Tribal Areas (FATA), which currently constitute a part of Khyber Pakhtunkhwa. This was criticized by the Senate Standing Committee on States and Frontier Regions (SAFRON) in 2020, which directed the federal government to take immediate action to improve regional educational standards and bring them up to par with the rest of the country. In the region, there is a severe lack of trained instructors. The government must thus start teacher training programs and offer incentives to those who desire to work as teachers in Indigenous communities. The latest orders from Prime Minister Imran Khan to continue funding higher education despite financial restrictions are notable. This is encouraging since it suggests that the government is prepared to fund educational initiatives in native communities as well. Additionally, according to the Academy of Educational Planning and Management (AEPM), 58% of tribal kids in grades K–12 are not attending school. This calls for a public awareness campaign in addition to awareness-raising activities run by ulema and tribal elders, two groups with significant influence in tribal communities.¹⁷ Third, there are massive issues that must be addressed, such as the scarcity of scientific labs and educational buildings. In many cases, schools are completely empty of furniture, allowing students to focus only on receiving an education. However, it is crucial to keep in mind that the government must be committed to providing funding for education in tribal communities at all costs. Authorities must maintain their resolve. Simply put, there is simply too much at stake.

¹⁶ Rid. "The Emergence and Evolution of Upper House (the Senate) in Pakistani Federalism (1947 to the 18th Amendment 2010 and Afterwards)." Accessed [date]. [http://www.nihcr.edu.pk/Latest_English_Journal/2019_40-2/1.%20The%20Emergence%20and%20Evolution%20of%20Upper%20House%20\(the%20Senate\)%20in%20Pakistani%20Federalism%20\(1947%20to%20the%2018th%20Amendment%202010%20and%20afterwards\).pdf](http://www.nihcr.edu.pk/Latest_English_Journal/2019_40-2/1.%20The%20Emergence%20and%20Evolution%20of%20Upper%20House%20(the%20Senate)%20in%20Pakistani%20Federalism%20(1947%20to%20the%2018th%20Amendment%202010%20and%20afterwards).pdf).

¹⁷ Yousaf, Farooq. *Pakistan, Regional Security and Conflict Resolution: The Pashtun 'Tribal' Areas*. London: Routledge, 2020.

Analytical Arguments

The 18th Amendment was a significant step toward federalism since it ensured that provinces had power over policy design and implementation in 47 areas, including education. Despite these obstacles, the national legislature trusted the provinces and gave them authority over a variety of subjects, including education. The NFC award also addressed the nation's financial concerns and development that had been stalled since Pakistan's inception is now on the horizon. One of many who appreciated the reform was the KP administration, which moved swiftly to assume accountability for newly delegated tasks. It is a significant improvement because separate governments are required under Article 25-A to offer free secondary education to the people of Pakistan, particularly in KP. The state officially approved fully funded and mandatory education up to that level as a right of all people, and secondary school governance as a fundamental right of its residents. The rate of enrollment growth has accelerated. Higher teacher and student attendance has led to better grades on secondary school examinations.

The "Right to Information Act" enlarged information system and the Independent Monitoring Unit's (IMU) stringent monitoring system have increased education governance openness, accountability, efficiency, and responsiveness. Participation in PTCs and portals based on complaints to abolish corruption and ensure efficiency and effectiveness. Syllabi and teaching techniques have evolved, and educational quality has improved. Through the National Testing Service's public procedure, political leadership has promoted merit-based hiring (NTS). Because a teacher shortage inhibits efficient service delivery, opportunities for teaching positions are publicized each year. In essence, the devolution of education to the provinces provided a locality to fully participate in decision-making, which fosters good governance.

Challenges and Prospects of Justice System in Erstwhile FATA

The former FATA comprised 27,220 square kilometers or 3.4% of Pakistan's total land area. FATA is home to 5,001,676 inhabitants, according to the latest recent census. In addition to having a low literacy rate, FATA has also been discouraged economically, as 60 percent of its population is in dearth. FATA was made up of six tribal regions that share a border with the most populated districts of the province such as Kohat, Bannu, DI Khan, Charsadda, Mardan, and Peshawar. Due to the Anglo-Afghan Wars of the 19th century, The British government emphasized on security of the western half of the empire and implemented strategic measures, given the government of Afghanistan's considerable power in the autonomous tribal region and its concerns about a Russian expedition in Afghanistan. Consequently, the Durand Line was drawn in 1893 as the initial line of demarcation between Afghanistan and British India. By creating a somewhat independent political system in the tribal countries of Khyber Pakhtunkhwa and Baluchistan, the British administration also implemented their intention to create a buffer zone between British India and Afghanistan. This provided the local elders the right to operate as a security force to maintain peace and order both inside the nation and at the western frontier.

Initially, British civil and criminal law applied to the major cities of KP. However, the law-and-order situation and increasing crime rate in the Pashtun region prompted the British Government to enact the first Frontier Crimes Regulation (FCR) in 1872. Despite being swiftly repealed, the FCR 1872 influenced the subsequent legal system in the area. In 1887, the Council of Elders was empowered to inflict sentences of up to seven years in prison under the Punjab Frontier Crimes Regulation, which was an enhanced version of the previous FCR with heavier

penalties. The FCR, 1901, which established judicial, administrative, legal, and governance institutions for the northwest frontier regions of the Indian empire, superseded the Punjab Frontier Crimes Regulation of 1887. For the whole time, the FCR operated as a de facto judicial system.

At first, FCR included Baluchistan, the whole NWFP, and the tribal area that borders both provinces. Even after Pakistan gained independence in 1947, things continued in this way until the creation of "One Unit" and the 1956 Constitution, which partially removed the NWFP province from the FCR. 13. Only a specific area was under FCR's territorial jurisdiction.¹⁸ Similar to colonial rule and the Government of India Acts of 1919 and 1935, the "Establishment of West Pakistan Act, 1955" identified the tribal regions of Baluchistan and the NWFP, as well as the princely states of Amb, Chitral, Dir, and Swat, as "special areas" under the direct administrative and legislative authority of the Governor General. Pakistan's 1956 and 1962 constitutions both used a similar layout. The old FATA was added to the FCR's coverage area in this manner. As authorized by the President, laws passed by the federal and provincial legislatures could not be enforced in the regions without the governor's approval, and the legal, judicial, and administrative systems remained in place. Following its approval in 1973, the FCR only applied to FATA as established by Article 246 of the Constitution. The FCR did, however, have an inherent enabling provision that gave the Governor the power to exclude or include any region from the application of any or all of the FCR's provisions. The Political Agent, who represented the federal government and was in control of the tribal agencies, was directly answerable to the Governor, who had full administrative and judicial authority. Under the leadership of the Political Agent, who served as the Deputy Commissioner of the neighboring district, the Assistant Political Agents managed the law enforcement and judicial systems in the Frontier Regions (APAs).¹⁹ FATA was separated between protected and unprotected zones for judicial purposes. In contrast to the former, where the Jirga judgment required the Political Agent's approval, in the latter, justice was speedily dispensed by the local Jirga. The Commissioner would then hear a challenge to the Political Agent's judgment. Additionally, the FCR Amendment Regulation replaced the NWFP Home Secretary's ability to reverse the Commissioner's decision in 2011 with a provision establishing the FCR tribunal.

Judicial Reforms

The erstwhile FATA's informal judicial framework had several shortcomings and differences with the generally acknowledged formal judicial system. Justice A.R. Cornelius discussed the need for legal reform in FATA in 1954 during a hearing for authorization to appeal against an order under the FCR. He claimed that the FCR's procedures went against every widely recognized contemporary standard governing the administration of justice and that it would be challenging to preserve public confidence in the fairness of rulings rendered in accordance with the aforementioned legislation. In 1958, the Supreme Court of Pakistan declared that all rulings against the FCR were void since the 1956 Constitution had been overturned and all laws that had been in effect prior to martial law had been restored.

In 2011, Pakistan's then-president passed the Frontier Crimes (Amendment) Regulation, which made substantial structural modifications to the FCR and incorporated new measures to safeguard

¹⁸ Caulkins, Jonathan P., Anne Gould, Bryce Pardo, Peter Reuter, and Bradley D. Stein. 2020. "Opioids and the Criminal Justice System: New Challenges Posed by the Modern Opioid Epidemic." *Annual Review of Criminology* 4 (1): 353–75. <https://doi.org/10.1146/annurev-criminol-061020-125715>.

¹⁹ Haroon, Sana. 2022. "Tribal Elders and Societal Inequities in Pakistan's Northwestern Borderlands (1947-2018)." *Archives De Sciences Sociales Des Religions*, no. 199 (December): 45–66. <https://doi.org/10.4000/assr.67101>.

women, children under 16, and seniors over 65 from arrest and incarceration under the concept of "collective responsibility."²⁰ Due to the political administration's restricted ability to hold and arrest people during security operations to maintain peace, adherence to the relevant Criminal Procedure Code, 1898 criteria became necessary. A human right to bail and compensation for property stolen by the government were among the other rights outlined in the amendment for persons living in tribal belts. The FATA Tribunal was given the authority to hear appeals from Indigenous people, and they were not permitted to remain imprisoned permanently. However, the amendment also created a Qaumi Jirga, which is made up of respected elders and members of all tribes, to provide guidance on extremely important issues.

It also mandated that commissioners, FCR Tribunals, and political agents inspect prisons at least twice a year. Hearing inmates' complaints and resolving them in line with the law and customs was the goal of the jail inspection rule. To counter some of the changes in the 2011 FCR Amendment Regulation, the federal government passed the Action in Aid of Civil Power Regulation (AACPR) in 2011. Nonetheless, this was done in reaction to growing local militancy and to protect national security. The government implemented financial and political reforms over time in addition to judicial, legal, and administrative reforms. A significant political change began with the 1964 presidential election and ended in 2002 with the expansion of the Local Government Ordinance 2001 and the application of the adult franchise principles, which gave rise to the Political Parties Order of 2002. The parties claim that 2013 saw the first-ever general elections in the tribal administrative units in the history of this country. But FATA's political change followed a similar route to the Malakand division's.²¹ The people of FATA were allowed to choose their senators and representatives to the National Assembly of Pakistan, just like the former princely states, but they were not allowed to pass laws for their area or represent the interests of their constituent elements, and no legislation could be progressively extended to FATA without the Administration's approval. Thus, the national legislature's elected members served solely as commemorative.

Challenges in Transition

The transfer of the erstwhile princely states of the Malakand division, which remained a major source of unrest throughout the entire province for more than 20 years, is akin to the last FATA merger. The elite and general public's disagreement over the new system's acceptance and the disparate responses of various community groups to it are two of the main reasons for the process's shortcomings.

Despite the fact that economic empowerment is critical for development and social transformation, the majority of people in the former FATA region remain impoverished. The area's conventional economy would suffer if all civil rules were implemented, yet poverty is undeniably one of the leading drivers of crime and violence. Challenges to the merger decision before Pakistan's Supreme Court, tribal attacks on toll booths in the Khyber District, property disputes between various tribes in the Khyber, and the stoning of a vehicle belonging to a newly appointed Civil Judge in TSD Darra Adam Khel are just a few examples of the people of FATA's growing

²⁰ Mahsud, NHK, and MS Ahmad. "Wasai. Frontier Crimes Regulation (FCR): From Introduction to Abolition." *Global Political Review* VI (2021).

²¹ Khan, Saeed Saeed. "Fata's Merger into Khyber Pakhtunkhwa (KP): Challenges and Way Forward." *Journal of Contemporary Studies* 10, no. 1 (2021).

dissatisfaction with how the merger was implemented.²² The existence of anti-state organizations in parts of the disputed regions and anti-establishment attitudes among some political organizations in the tribal districts and Khyber Pakhtunkhwa are further contributing factors. The maintenance of peace and order as well as the transition in the tribal regions will be significantly impacted by the political situation in Afghanistan, particularly in light of the recent Taliban takeover.

The government published the Interim Governance Regulation (IGR) on May 28, 2018, in order to manage the transition process of FATA's unification with Khyber Pakhtunkhwa prior to the 25th Constitutional Amendment. A preliminary foundation for governing, enforcement of the law, and administering justice was formed by this regulation. With a few notable changes, the rule largely replicated the structure for governance and decision-making set down in the long-gone FCR, 1901. The IGR allowed the use of both titles for the same positions and responsibilities as before, replacing political agent and assistant political agent with deputy commissioner and assistant commissioner, respectively. The Deputy Commissioner was granted the judicial jurisdiction of both a magistrate and a judge, in addition to the authority to call the Qaumi Jirga, submit cases to the council of elders, and/or grant pardons.

This government effort was a near-exact duplicate of the PATA Regulations of 1975, which attempted to create a hybrid system of governance and arbitration and had led to significant legal challenges and, in the case of PATA, ultimately, militant activity in the region. The Supreme Court of Pakistan dismissed the creation of a parallel legal system and the judicial provisions of the IGR in Writ Petition No. 3098-P/2018. Additionally, the petition mandated that the government establish an unbiased legal system in the area. This ruling has now significantly aided the region's transition from an informal to a more formal legal system. There is little doubt that FATA was quickly absorbed into Khyber Pakhtunkhwa, leaving little time for transitional planning. Managing human resources, the ability of the human resources that are accessible, financial resources, coordination between state institutions, civilian participation, basic development indicators such as employment, security, education, health, taxes, and the situation of human rights, and, most significantly, the populace's willingness to obey the law are all issues that the post-merger administration in tribal districts must deal with. The poor level of infrastructural projects due to financial constraints and municipality provision of services are two additional operational problems.

Due to a lack of inadequate development at district and tehsil headquarters, as well as the region's volatile security environment, several district courts function in established surrounding districts rather than the associated agency offices. Due to severe geographical circumstances, agency employees are also separated from one another. Local Jirga processes that are effective and quick to resolve conflicts have become familiar to the general public in tribal communities.²³ The distance and expense issues are thus a barrier to developing the local populace's trust and confidence in the forefront court system. The tribal people are ignorant of both the substantive and procedural laws, as well as the ideas of essential human rights that are protected by the law, as well as the fairness and equity of the legal system. They would evaluate the efficiency of the new

²² Alam, Jan. "Jirga System and Its Role in Peacebuilding and Development in Pakistan's Terrorism-Affected Pashtun 'Tribal' Districts." *Journal of Peacebuilding & Development* 16, no. 3 (2021).

²³ Parvez, Rauf, and Faiz. "Theory and Practice of Federalism after 18th Amendment: A Case Study of Education Sector Governance in KP." [*Journal Name, if known*]. [Year of publication, if known].

system that is based on aspects like availability, efficiency, price, and comprehending clarity rather than the genuine spirit of civil laws and justice.

Although the region's residents are naturally drawn to the informal Shariah and traditional legal systems, which offer quick and logical remedies, the official legal system, which is hampered by delays brought on by administrative red tape, may not hold up well in contrast.²⁴ The merger's implementation process is hurried due to the extensive constitutional modification that led to it, and no relevant institutional capacity development or citizen trust building through an awareness and social welfare plan has been done. Local discontent has increased as a result of the decision to put off addressing land settlement, property, and resource problems until after the merger.²⁵ The KPMDs issue is made worse by the fact that the bulk of income data is undocumented. The ADR Act, which has the potential to restore authoritarianism and executive influence over the judicial system, appears to be the government's latest attempt to move toward a dualistic legal and judicial system by creating optional mechanisms to circumvent an independent judiciary through constitutional modalities.

Analytical Arguments

An unexpected constitutional amendment without any planning or capacity development led to poor management, flawed justice administration, a legal emptiness, and an inability of the state apparatus to swiftly and efficiently recognize populist concerns in the case of the transformation from an unofficial to official justice and system of governance in Khyber Pakhtunkhwa's erstwhile FATA and defunct princely states. Religious organizations were inspired to engage in discrimination as a result. Therefore, the gradual merger of FATA, after organizational growth and stakeholder capacity building, was far more suitable. Notwithstanding the actions already taken in this regard, the provincial government must ensure that a strong, reliably responsive, and rigorously accountable administrative, judicial, and constitutional infrastructure is available and positioned in order to sustain the governance system.

Regularizing colonial idea security apparatus and transforming them into regular police is important for social and economic reasons in order to make the criminal justice system flexible and meet public expectations. They do, however, require appropriate instruction in contemporary policing and investigative techniques. If the judicial system in the combined districts was not quickly adaptable, there is no doubt that the social, cultural, political, and geographic characteristics of the former FATA and PATA are in fact extremely similar, unreliable, and difficult to access, and slow, there is every chance that yet another disagreement will arise in the region, prompting a large-scale exodus in quest of alternatives.

Conclusion & Policy Recommendations

In principle at least, the Pakistani Constitution of 1973 is a noteworthy document. The fundamental rights of the Pakistani people are covered in Part II of the constitution. Under its 25 Articles, Pakistanis are granted full political, social, economic, and legal rights. In addition to the rights guaranteed by the constitution, Pakistan has accepted several international treaties and agreements.

²⁴ Akram, Sidra, and Muhammad Azhar. 2021. "Distribution of Power Between the Centre and Provinces in Pakistan Under the Constitution of 1973." *Journal of Law & Social Studies* 3 (1): 01–10. <https://doi.org/10.52279/jlss.03.01.0110>.

²⁵ Iqbal, Hafiz Muhammad, and Muhammad Javed Sarparah. "War on Terror Resulted in Political Awareness in FATA." [*Journal Name, if known*]. [Year of publication, if known].

These include the Convention to Eliminate All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Convention Against Torture (CAT), and the Universal Declaration of Human Rights (UDHR). All national and international rights are prohibited to citizens in federally managed tribal lands, where a centuries-old judicial and administrative structure still exists. After FATA, there are still traces of colonization. There, the building is moving at a snail's pace. FATA must work in conjunction with other Pakistani provinces.

The eighth and seventeenth amendments to the 1973 Constitution, enacted a total of 22 times, have plunged Pakistan's parliamentary government system into turmoil. In contrast, the 13th and 18th Amendments reinstated Pakistan's parliamentary form of government. These changes rarely made a difference in FATA. The residents of FATA received certain rights through presidential decrees in 1997, 2002, and 2011, but essential constitutional changes in FATA still require consensus among legislative members. Either it should be included in the KPK or made into a separate federating organization. With 8,000 troops stationed there after 9/11, the Pakistani government has destroyed FATA's authority. The operation against domestic terrorists has resulted in permanent the displacement of individuals.

Terrorists and militants are the operation's targets. The Pakistani Army intends to settle internally displaced persons (IDPs) in their homes as the operation progresses, among other things by constructing new roads, schools, and communication networks. Because of the area's difficult geography and the conservative attitude of its population, political integration of FATA into the state is the only way to stabilize the border region. This population is dispersed across two sides of a vulnerable border with Afghanistan, and constructing an efficient administration and law enforcement apparatus would be prohibitively expensive.

Policy Recommendations

1. Since analogous systems can be found in other federations like the United States and Germany, which might serve as role models for Pakistan, the current structure of education governance in that country is not uncommon. Here, a number of suggestions are provided to support the province of Khyber Pakhtunkhwa and tribal administrative units' efforts to improve education governance and solve difficulties with the Eighteenth Amendment.
2. Resources have been a major issue for tribal administrative units. Federal government as well as the government of KP must engage and decide on the allocation of resources for the erstwhile FATA. Alone, the provincial government would be unable to do so as it is facing a number of challenges for its main districts in the province.
3. Health and Education sectors should be primarily focused and concentrated as they are the least concentrated sectors in the tribal administrative units.
4. Powers of Deputy Commissioners should be regularly checked as regular checked in all the administrative units as they have been previously reported to be engaged in the abuse of power.
5. Securitization and militancy in the region is one of the prime concerns that must be addressed and resolved amicably. The government of Pakistan (Federal Government) as well as the KP government in consultation with the security forces of Pakistan and tribal elders must take all the required initiatives that will actually facilitate establishing peace and stability in the region.
6. Pak-Afghan border has been a source of concern for the state of Pakistan. While the Afghans term it as Durand line and there is a controversy over the legality with the state of Pakistan,

fencing of the border must resolve all the outstanding issues and should address the conflict of infiltration of militants from across the border.

7. Though the 18th Amendment has decentralized the powers as well as the resources, the least focus has been given by the Federal government over the issues of erstwhile FATA, which is threatening the national security of Pakistan. The federal government must take into consideration the engagement of the KP government over the affairs of FATA and contribute its due share in the progress and development of the region.
8. Representatives in the National Assembly as well as the Provincial government and Senate of Pakistan must not be merely symbolic figures, rather they must be given the authority and powers to serve their people. They have been elected by their people to address their grievances and if these issues are not resolved; then the representation of these members in the respective houses of the country would not have any benefits.