



Constitutional and judicial setup of erstwhile Provincially Administered Tribal Areas (PATA) of Khyber Pakhtunkhwa, Pakistan

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Abstract:

This study explores the constitutional and judicial setup of the former Provincially Administered Tribal Areas (PATA) of Khyber Pakhtunkhwa, Pakistan. This study questioned what factors contributed to the unique and distinguished status of Provincially Administered Tribal Areas (PATA) constitutionally and judicially within the province of Khyber Pakhtunkhwa and why PATA was not made a complete part of KP. Until May 2018, PATA had a distinguished status compared to the rest of mainstream Pakistan. It's found that the marginalisation and distinguished status of PATA was not accidental but had roots in the region's history. It is argued that Pakistan's state and government had inherited a centralised attitude and security-centric approach to governance of the PATA region from British India. Rather than changing that negative attitude toward the region and incorporating the PATA region entirely in Pakistan's provincial and federal constitutional and legal structure, PATA was kept under transitional status in the form of the constitutional status of PATA and judicial setup under PATA regulations for a long. The bureaucratic interests, geo-strategic concerns, and the influence of local political leadership, or lack thereof, were other fundamental drivers for continuing the discriminatory and marginalised constitutional and judicial setup in PATA.

Keywords: PATA reforms, Constitutionalism, Marginalisation, Constitutional setup, Judicial setup, Legal setup, Provincial autonomy, Centralisation of powers, Decentralisation.

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1. Introduction

After the independence of Pakistan in 1947, some semi-autonomous regions were established. These regions and some princely states were directly governed by the federal government. Before the 25th amendment to the 1973 constitution of Pakistan, a region known as Provincially Administered Tribal Areas (PATA) existed in Khyber Pakhtunkhwa.¹ and PATA, a region comprising ten districts: Swat, Dir Upper, Dir Lower, Chitral, Malakand, Buner, Shangla, Tor Ghar, parts of Lower and Upper Kohistan, and the area of the former state of Amb, held a unique position within Khyber Pakhtunkhwa. Despite being part of the province, PATA districts and other areas had distinct judicial and constitutional setups and statuses, setting them apart from other districts of the province. This unique status forms the basis of our study, as we aim to understand the factors that led to this distinctiveness.

The marginalisation and distinguished status of PATA were not accidental but had roots in the history of the region. Since colonial times, PATA has carried a special, distinguished constitutional status with a different nomenclature. The rules of administration were the same. During British rule, PATA consisted of four states: Swat, Dir, Amb and Chitral and a tribal agency (Malakand Agency). Under the Indian Act of 1935, PATA was declared a constitutionally excluded area of British India. Excluded meant the 1935 act was not applicable, and the governance of the area was directly looked after by the Governor General of India through his political agents and had other special laws for it. The Indian courts, Indian parliament and provincial assembly of Khyber Pakhtunkhwa had no jurisdiction in PATA. Resultantly, PATA became a Centrally Administered Tribal Area, a special area supervised by the Governor General of India.

Till 2018, the region remained largely under the supervision of the central government of Pakistan. The provisional Constitution of Pakistan (1935 Indian Act) and the subsequent constitutions promulgated by the government of Pakistan (1956 and 1962 constitutions and the present 1973) have kept the area's law-making authority under the jurisdiction of the central government of Pakistan. The constitutional setup for the area remained largely the same within all the constitutions except, in the 1973 constitution, the area with the name of the erstwhile PATA region was made a partial constitutional part of Khyber Pakhtunkhwa province (Ali, 2012). Articles 246 and 247 of the Pakistani Constitution of 1973 not only define the Provincially Administered Tribal Areas but also prescribe the process of law-making, law implementation, and area administration.

PATA was not only constitutionally distinct within the province but also differed judicially. Till 1969, the area was administered largely by the rulers of local states. When these states were merged by the government of Pakistan, initially to West Pakistan and later to Khyber Pakhtunkhwa province, then FCR and later other laws such as FATA regulations were implemented instead of Pakistan's mainstream criminal and civil regulations. Thus, the area (PATA), despite being part of Khyber Pakhtunkhwa, had a constitutional status and judicial set different from the rest of the districts of the province.

The inefficiency of the distinct judicial arrangements and constitutional setup proved important facilitators for militancy in the erstwhile PATA region (Adnan, 2012; Aziz, n.d.; Bangash, 2008; Fleischner, 2011; Gauhar, 2013; Yasir, 2015; ICG, 2012, 2013; Aziz & Luras, 2010; Majeed, 2016; Mehboob, 2011; Sebastian, 2013; Sultan-e-Rome, 2009). Furthermore, the

status deprived the people of important political goods such as national institutions, the rule of law, security to life, and fair and effective judicial setup and made the area like a “viceroy’s territory” (Ali, 2016).

1.1. Research question

The main research question was to study the status of PATA in the Federation of Pakistan and explain what contributed to its distinguished (i.e. marginalised) status both constitutionally and judicially within the province of Khyber Pakhtunkhwa and why, up to May 2018, PATA remained not a complete part of the province.

1.2. Significance of the research

Though a good amount of literature regarding PATA exists, explaining the historical overview of numerous states and Malakand agency, poverty, education, governance, drivers of militancy, modes and scale of conflict, social and cultural transformation, rise and birth of non-state actors such as Tehrik-e-Nifaz-e-Shariati-Muhammadi (TNSM) and Mullah Fazlullah led Taliban, military operations, and displacement of people. However, this research study is the first proper academic research explaining PATA’s constitutional and legal status as a region, as no such study is available focusing on this topic. Hence, this research work can be considered a pioneering research on the constitutional and legal status of PATA in the Federation of Pakistan. This research study is useful for students, researchers, decision-makers, and all those who want to know about the constitutional and judicial developments in PATA.

2. Theoretical framework

Fundamentally, two theories, Rotberg's theory of Weak state (Robert, 2004) and Ayoob's theory of nation-building (Thies, 2004), are employed in the Provincially Administered Tribal Areas (PATA) of Khyber Pakhtunkhwa. Both weak state and nation-building theories are more relevant and explain the judicial and constitutional status of PATA more appropriately. William Zartman (Zartman, 1995) and Rotberg (Robert, 2004) are two main theorists in the field of failed states. Here, the Rotberg theory suits best. He categorises states based on services into strong, weak, failed, and collapsed states. Rotberg's concept of the weak state applies appropriately in the case of PATA in Pakistan. Pakistan is unable to provide services such as fair constitutional rights, an effective judicial system, and the rule of law. William Zartman does not consider the Constitution, political participation, or the rule of law as a political good. Therefore, William Zartman's theory of the weak, failed, and strong state does not apply to the PATA region.

Ayoob (Thies, 2004), in his theory of state building, argued that States in Europe had four to seven centuries to develop, while modern developing states are attempting to consolidate at a much faster pace. They must accelerate their state-building efforts to compete as members of an interstate system founded on the European exemplar of the nation-state. The difference between the present and early modern Europe is that developing countries are asked to demonstrate adequate states quickly and perform state-making in a humane, civilised, and consensual fashion- all in an era of mass politics. This Ayoob theory on state building applies to the erstwhile PATA region in Pakistan. Pakistan is a developing, post-colonial, and multiethnic country. Its constitutions do not provide fair rights and autonomy to different ethnic

groups and federating units. The governance is less democratic, and the military has more say in the country's governance.

3. Research methodology

This research project uses the qualitative research method as an in-depth study of the PATA region. Moreover, the case study research method for PATA of Khyber Pakhtunkhwa was found more suitable for examining in-depth, detailed, and extensive information on PATA. This paper is based on desk research and supplemented with brief fieldwork to PATA, including documentary data and information collected from the relevant people. The fieldwork lasted for twenty days. During this fieldwork, the libraries being visited were the Directorate of Archives and Libraries, Peshawar, Khyber Pakhtunkhwa, PATA cell, International Relation Department of Peshawar University, and Swat Public Library. The collected data comprised of these sources: historical data on PATA such as the accession of Amb, Dir, Swat, Chitral accession to Pakistan, PATA regulation, Nifaz-e-Nizam-e-Shariah regulation 1994, Nizam-e-Adle regulation 1999, and Nizam-e-Adle regulation 2009 PATA. Moreover, the sources of data were the relevant official notifications, statements of government officials, research articles, and relevant books. At the end of conducting this study, all collected data were rationally analysed to derive logical results. All the data collected from the above sources were analysed, and conclusions were drawn.

3. Constitutional status PATA of Khyber Pakhtunkhwa under the 1973 Constitution

The Constitution of the Islamic Republic of Pakistan in 1973 largely maintained the same status as was given to them in the Indian Act of 1935 and the 1956 and 1962 constitutions of Pakistan. Articles 246 and 247 of the Constitution deal with PATA. Unlike the previous Constitution of Pakistan and British India, PATA was made a Provincially Administered Tribal Areas of Khyber Pakhtunkhwa. Before the 1973 Constitution, the same status was given to it in Articles 260 and 261 of the Interim Constitution 1972 of Pakistan. In 1996, Article 246 of the Constitution 1973 of Pakistan, the districts of Dir², Swat, Chitral, Malakand Protected Area, tribal areas adjoining Mansehra district and the former state of Amb.³ was declared a Provincially Administered Tribal area of Khyber Pakhtunkhwa. According to Article Clause (a) of Article 146, tribal area means an area which was the tribal area before the commencement of the Constitution of 1973. All the above areas were tribal areas under Article 3 Clause (1) of the Provisional Constitutional Order 1969 of Yahya Khan (Majeed, 2016). Sections (1), (2), (3), (4) and (6) of Article 247 draw the methods to be followed for the extension of existing laws, regulations, acts of the federal or provincial legislature, formulating policies and status of the directions of President to the Governor of Khyber Pakhtunkhwa. Section 1 of the same 247 article described very clearly that the executive authority of the federal government extends to the Federally Administered Tribal Areas (FATA) while the executive authority of the provincial government extends to the Provincially Administered Tribal Areas.

Section (3) of Article 247 described that no act of Parliament or Provincial assembly shall extend to PATA unless the President directs the Governor to execute the act in PATA. The Governor, under section (2), was obliged to follow the instructions of the President. Section (6) of Article 147 article granted the same power to the President as were given in the 1956 and 1962 constitutions, with a small difference that the President of Pakistan should determine the opinions of the people in the concerned areas through jirga while deciding the status of

Tribal Area. In section (7) of the 247 articles, the earlier presidential order no. 28 of 1970 was abolished, and the High Court Peshawar and Supreme Court of Pakistan were extended to the Provincially Administered Tribal Areas of Khyber Pakhtunkhwa.

3.1. Disadvantages of the constitutional status to the people of PATA

In the Independent, democratic and federal state of Pakistan, the constitutional status of PATA was unfair to the people of PATA. It deprived the people of the right of self-rule and was made like a colony of the central government. The status had created a sort of Diarchy in the PATA of Khyber Pakhtunkhwa; the administration was under the control of the provincial government of Khyber Pakhtunkhwa while it lacked the authority to legislate for PATA on its own. The supreme legislative authority at the federal level was the President, and at the provincial level was the Governor. The indirectly elected President of Pakistan is part of parliament, but in principle, it is not dependent on the National Assembly and Senate for the law or acts to be implemented in PATA. Normally, the President is a member of the ruling party. He/she follows the party and government decisions. Similarly, the Governor used to be appointed by the central government and regarded as an agent of the President in Khyber Pakhtunkhwa. The President, in the exercise of their authority, was not responsible to the people of PATA. Similarly, the Governor of the province, an agent of the President for the PATA, is not an elected person appointed by the indirectly elected President of Pakistan. The Governor is constitutionally bound to follow the President's direction in matters of PATA. Both the Supreme heads of PATA, the President and governors, were not answerable to the people of PATA (Sultan-e-Rome, 2009).

The chief minister of KP, who was responsible for the administration of PATA, was also not responsible for the people of PATA (Sultan-e-Rome, 2009). Strangely, the elected representative in the provincial and central assembly of PATA was constitutionally allowed to legislate for areas other than their own; however, they faced constitutional limitations with respect to their own areas. Only after the President's approval and recommendation could the representative of PATA legislate with the other members of the assembly for their areas.

3.2. Reason for the distinct constitutional status

The researcher has found several reasons for the distinct constitutional status of PATA. The first reason was that the central government considered it appropriate to give the area a transitional status before completely merging into Khyber Pakhtunkhwa. The second reason was that Pakistan inherited a centralised system of governance from the British, which was continued in its various constitutions. The third reason was the failure of Pashtun leaders to get a united and uniform province for Pashtuns. The fourth was the demonstrative effect of Qayyum Khan's atrocities on the people of states and Tribal areas. The fifth reason was the tribalism and backwardness of the people of the area. The last is that since 1947, Pakistan's laws and Constitution have not attracted the people of the area. The details are the following:

3.3.1. Transitional Setup

This PATA status was a transitional status under the 1973 constitution before the merger into Khyber Pakhtunkhwa, as claimed, was created with good intentions. The complete merger could prove dangerous because people were unwilling to adopt Pakistan's legal framework. So,

a slow and gradual method of integration was preferred. This status was according to the psyche of the people, and the people did not protest against this constitutional status. The people of former states and the Malakand protected area did not want to merge with Khyber Pakhtunkhwa, Pakistan.

After the dissolution of frontier states in 1969, Pakistan replaced the rulers with almost the same system of governance as it got under the 1973 constitution of the Islamic Republic of Pakistan. In lieu of rulers, provincial bureaucratic officials were appointed to administer the Dir, Swat, Chitral and Amb states. The appointment and general supervision of these governmental officers were given to the provincial government. At the same time, the area was continued as centrally Administered Tribal Areas (CATA) under the Provisional Constitutional Order 1969 of the President and Chief Martial law administrator.

The 1973 Constitution of the Islamic Republic of Pakistan maintained the same system of administration for this area. Under this Constitution, the area was almost partially merged into the province of Khyber Pakhtunkhwa. The provincial government of Khyber Pakhtunkhwa was given the authority to administer this area, and the central government maintained a law-making authority.

3.3.2. Inherited a centralised system

Pakistan inherited a very centralised type of governance. Total powers were with the centre, viceroy, governor General, and Governor of the province. After a long struggle, the Government of India Act of 1935 was promulgated, which provided certain rights to the province and its people. When the 1956 constitution was promulgated, seats were given to states so that West Pakistan had parity with East Pakistan. That was motivated by the purpose of equality with East Pakistan. Those members of the West Pakistan assembly were just to defeat all the rights of Bengalis. In 1956 and 1962, both the constitutions of Pakistan were more centralised in nature. The same attitude toward centralisation is reflected in the 1973 constitution of PATA of FATA (Ali, 2012).

The same centralisation of power since the promulgation of the 1973 constitution of Pakistan was not challenged. The government had not faced a demand to eliminate the status of the erstwhile PATA. The people of PATA were feeling happy and were easy. Moreover, the members of parliament of this area were not completely deprived of the legislation for their areas. Generally, the laws are made by the provincial legislature and parliament of Pakistan, in which the members of this area take part along with other members of the parliament. It is also true that there was no law that members of the parliament of this area have ever initiated legislation for their area.

3.3.3. Failure of Pashtun leaders to get united for a uniform province

Pashtun, Baloch, Sindhi, and Bengali leaders tried their best to extract maximum provincial autonomy for their people but remained unsuccessful (Khan, 2005). The governing authorities were very strong and forcefully suppressed the regional demands for provincial autonomy. The leaders and activists, especially Bengalis, Pashtuns, and Baloch, were severely punished. They were put in jail and were declared traitors. In the 1973 constitution of Pashtun, Baloch leaders tried their best to extract maximum autonomy for their people, but they remained unsuccessful.

Pashtun leader's demand was to get a single province for the Pashtuns in PATA, FATA, KP and Baluchistan with the name of Pashtunistan/Pakhtunkhwa/ Pakhtunkhwa/Afghania, but they remained unsuccessful. Still, Pashtun leaders of nationalist parties such as Aftab Ahmad Khan Sherpao, Asfandiyar Wali Khan, and Mehmood Khan Achakzai have not left the demand for a single, uniform Pashtun province. In the form of 18th amendment in the Consitution, the Pashtun leaders extracted some further provincial autonomy and Khyber Pakhtunkhwa's name for the former NWFP.

3.3.4. Unfair use of Pakistani laws and constitutional powers

The unfair, cruel, unjust, repressive measures of Chief Minister Qayum Khan against the Khudai Khidmatgar Movement (KKM) affected a demonstration of the people of tribal areas and states that they did not opt for the Constitution and laws of Pakistan. Bach Khan did a great service to Pashtuns. He developed a sense of nationalism and a mass non-violent movement to liberate the Pashtun areas from the British. His movement was so pervasive, a mass movement that it involved everybody, every young man, every old man. They were fighting for liberation. Unfortunately, during the partition, Bacha Khan could not gain anything. Rather, on the contrary, partition, atrocities, cruel treatment, unfair treatment, and illegal treatment against the Pashtuns were so dominant that Pashtuns were always sent to Jails, their properties were confiscated, and the court, FCR, and other laws were used against them in order to repress them, in order to isolate them, in order to intimidate them (Khan, 1988), especially the Qayum Khan era of six years; it was the most repressive era in the history of this province and Pakistan. That fear and unfair treatment of Pashtun also affected people in Swat, Dir, Malakand, Buner, and tribal areas (PATA). They observed that this type of unfair treatment was done with the people under the cover of the law and Constitution of 1935.

There were hundreds of laws applicable to NWFP, but Qayum Khan twisted the laws, and the Pashtuns were subjected to the most suppressive treatment. Thousands of people were sent to jail, hundreds of people were insulted, they were turned naked, and their household was put into the dirty pond of water. That frightened the Pashtun people. If people are governed by law and the Constitution and such treatment is given to them, then we should remain free; we must not opt for law and the Constitution. Because that is unfair, cruel, unjust, and repressive, this also affected a demonstration in these tribal areas and states that people did not opt for the Constitution and laws of Pakistan.

The people of Dir, Chitral, and Malakand were fearful of the name of the police and the regular laws of Pakistan. They were not prepared for the regular laws and police entry. In 1973, there was a violent protest against the police system and regular laws. That's why the laws were not implemented. And instead of police, levies were introduced in Dir, Chitral, and Malakand. So, the government, after taking over the states and the Agency of Malakand, gave them a transition setup. This separate status was later organised in the form of PATA of KP and PATA regulation. So, in PATA regulation, there was a reward, jirga, so people accepted it, and it continued for many years.

3.3.5. Tribalism and backwardness

Due to tribalism and backwardness in education and political awareness, the people of the area were kept out of the mainstream Constitution and legal system of Pakistan. The tribal elements

and values were dominant in the lives of the people of PATA. Their lifestyle, blood feuds, and property disputes all were tribal features. This tribalism was present in different shades in different areas of Pashtun.⁴ Generally, the people of this area were educationally and politically backward, so it was considered best to let the people live according to their customary tribal system. It was thought that the people were dependent on their needs, such as sugar and agriculture, in the settled district of Khyber Pakhtunkhwa, so with the passage of time, they would acclimatise to the Pakistani system of laws.

3.3.6. Unattractiveness of Pakistani laws and the Constitution

The rulers of the states of Dir, Chitral, Amb, and Swat were impressed by the governance and lifestyle of the British, but they did not introduce their laws and democracy in their states. They continued with their own system of governance and justice system. Among these states, particularly in Swat, the administration of justice and other welfare activities were cheap, fast and transparent (Sultan-e-Rom, 2008). From 1947 to 1969, the people of these state and tribal areas observed the use of Pakistan laws and constitutions against their fellow Pashtun brothers. Due to this, after the elimination of the states of PATA, they refused to adopt Pakistani laws. Even after 1973 and until 2018, the performance of the parliament and Pakistani laws had not attracted them. Ergo, there is no demand for the complete merger of their areas into Khyber Pakhtunkhwa and the elimination of PATA status.

4. The judicial setup of PATA: history and reasons

As a result of the termination of states in PATA, justice was drastically changed. Despite the laws of justice being mostly unwritten regulations, unwritten customs, and traditions, the rulers of the state ensured the correct implementation. The difference in any regulations or customs was easily soluble. In the presence of absolute rulers, differences over customary laws were less likely to emerge. The justice system and rulers of the state, particularly in Swat, were easy to approach for any injustice. They were absolute rulers, their words were laws, and they used to implement correctly the decisions of courts. After the elimination of the states, Pakistan could not maintain the government support for the laws, regulations and unwritten customs used to solve the case. All the concerned state laws, customs, and procedures for justice were maintained, even for further betterment. Frontier Crimes Regulation was implemented, but Pakistan remained unsuccessful in ensuring fast and merit-based decisions. Therefore, soon, a resentment developed against the arrangement of justice.

In 1974, Pakistan replaced the Frontier Crimes Regulations (FCR) with several Pakistani secular laws such as the Code of Criminal Procedure 1889, Code of Civil Procedure 1908, and Evidence Act 1873 through various statutes, regulations, and notifications. The changes in the constitutional, legal and judicial system were unable to solve the speedy and fair justice problem of the people of PATA. Session and district courts were established in Malakand Division. Consequently, Pakistan promulgated a full package of laws and procedures for justice dispensation while using the authority under 247 Article of the Constitution of Pakistan. This first Package of judicial regulations is called PATA regulation. Later, numerous other regulations, such as the Nifaze-e-Nizam-Shariah Regulation 1994, Shari-Nizam-e-Adle Regulation 1999, and Nizam-e-Adle Ordinance 2009, were implemented without the local people's consent. The details of all these continuously changing regulations and their reasons are followed in detail.

4.1. PATA regulation

To solve the judicial problem of the people of PATA, the government of Pakistan implemented PATA regulations I (Criminal Law special provisions) and II (civil procedure special provisions) in 1975. Both the regulations were amended in the following year, 1976. These two regulations were collectively called PATA regulations. PATA regulation implemented some provisions of common laws and retained some aspects of the previous administration of justice. Many provisions of the CPC, CrPC, and Evidence Act 1872 become inapplicable to dispute settlement through Jirgas. Under these regulations, FCR was abolished, regular courts were established, tax exemption was provided, electoral laws were extended, and representation in the National and provincial assemblies was provided (Naseer, 2015). Moreover, the act transferred the judicial authority in PATA from regular courts to the Deputy Commissioner of the districts of Malakand division. Normal District and Session Court though working in PATA, but the bulk of the cases used to be heard and decided by the Jirgas. In the presence of the Jirgas system, the courts were mostly limited to cases in which the government was used to be the contesting party, and a minor was involved. After the 1980s, the courts were authorised to decide cases based on Hadood Ordinance and Blasphemy law.

The regulation empowered the local civilian bureaucracy in enforcing law and order and conflict resolution. For the solution of civil and criminal cases, the Deputy Commissioner was empowered to appoint Jirgas to refer the case to them for their solution. A Deputy Commissioner or Tehsildar was required to head the Jirgas. In Criminal cases, the jirga used to have two members from each contesting side, while in civil cases, each contesting side was required to send one representative. The jirga solved cases through Shariah and local Pashtun customs and traditions. The Deputy Commissioner was the final authority in the districts to make the decisions. Under the regulation, the parties had a right of appeal against the decision of the Jirgas. They could appeal to the Divisional Commissioner. The Provincial Home Secretary also had the right to revise cases. Supreme Court and Peshawar High Court could also be approached for appeals in certain cases.

The PATA regulations were inherently confusing, obviously did not work, and were open to misuse. The PATA regulations were aimed at providing swift and cheap justice to the people of PATA. On the contrary, justice was neither on merit nor cheap nor fast. It had many loopholes that were exploited by civilian bureaucracy, clerics, and landlords, who were influential in their selfish interests. Due to this, generally, the PATA regulation becomes useless in terms of time, money, and quality of the decision. These PATA regulations were challenged in the Peshawar High Court and the Supreme Courts of Pakistan. Both courts declared the PATA regulation unconstitutional.

4.2. Petition against PATA regulation

The lawyer community's petition against PATA was, in fact, a step to end the exploitation of people and resources at the hands of bureaucracy, local elites and Mullahs. They wanted the same system as that of other areas of Pakistan. Common people and the educated class supported the petition, and there was not a single protest against the petition in court. While (ICG, 2013) argued that the controversy over PATA regulation was, in fact, a struggle of interest of a different section of society. The cancellation of the PATA regulation could have havoc on the power and prestige of civilian bureaucracy. The businessmen were men also not

in favour of regular laws because the extension of regular laws could bring the tax system. So, the Business community is against the petition due to the tax. There was also a blow to the power of Mullah, who used to solve the cases in Jirgas with the consent of the local bureaucracy. From 1975 to 1991, Mullahs did not call for a Shariah-based justice system even though, in some ways, PATA regulations were contradictory to Shariah. For instance, Shariah prescribes the death penalty for several crimes. However, the PATA regulations did not include such a penalty. Mullah did not protest because they benefited from the PATA regulations.

The bureaucracy was a big supporter of the PATA regulations, but it could not protest officially. Therefore, it deliberately engaged in intrigues to stop roads to cancel PATA regulations and implement regular laws of Pakistan. For this purpose, the bureaucracy deliberately nurtured Sufi Muhammad. His organisation flourished under the tacit support of the bureaucracy.

4.3. Decisions against the PATA regulation

Peshawar High Court, in its decision in 1990, struck down PATA regulation. Peshawar High Court said that PATA regulations are discriminatory. This decision was a substantial blow to the interest of bureaucracy. Then, the federal government immediately went to the Supreme Court to challenge the decisions of the Peshawar High Court in the interest of bureaucracy. Supreme Court of Pakistan in 1994, like Peshawar High Court, declared PATA regulation null and void under articles 8 and 25 of the Constitution of Pakistan. This decision was a big blow to Civilian Bureaucracy, Landlord, and Clerics. Consequently, to counter the new reforms and maintain their influence, the demand for Shariah emerged. They turned to use Sufi Muhammad, whom they supported and flourished. His demand for the implementation of Shariah instead of Pakistan's mainstream legal laws was then duly supported by Bureaucracy (ICG, 2013). Landlords, businessmen, and clerics subsequently supported Sufi Muhammad and his organisation for their own benefit. Thus, the bureaucracy hijacked the efforts of social activists and the law community to provide the same legal system to the PATA region as was in mainstream Pakistan.

Supreme Court directed the government to restore the implementation of the Civil Procedure Code (CPC), Criminal Procedure Code (CrPC), and Evidence Act 1984 of mainstream Pakistan. Further, it was ruled that regular district and session courts headed by Judges would hear the cases. The decision of the Supreme Court brought PATA into the mainstream legal framework, but due to violent opposition from Tehrik-e-Nifaz-e-Shariati-Muhammadi (TNSM), the Provincial government, with the consent of the President of Pakistan, promulgated the Nifaz-z-Shariah Regulation 1994. Though this regulation implemented substantial laws of CPC, CrPC and the judicial setup got the colour of Shariah.

These nominal changes did not fully satisfy the members of TNSM. TNSM and Sufi Muhammad once again started struggling to compel the government to implement Shariah in the judicial setup. They violently protested for this cause and, in 1999, achieved another concession. The government implemented Nizam-e-Adle Regulation 1999 in the Malakand Division. Like the earlier regulation, this new one was meant to satisfy the TNSM. This regulation is a little more Islamic than the previous regulation. In the meantime, after the event of 9/11, the United States of America (USA), along with NATO forces, attacked Afghanistan. Sufi Muhammad and his followers went to Afghanistan to confront the invading forces. But

unfortunately, Sufi Muhammad lost almost all his followers. They could not confront the invading forces. Most of his followers were killed, some were imprisoned by the invading forces, and very few returned, including him and Mullah Fazlullah.

Sufi Muhammad and Mullah Fazlullah were imprisoned by Pakistan, and their organisation, TNSM, was banned, but the members of his group were passively working in the Malakand Division (Majeed, 2016). From 2007 to 2009, the movement for Shariah once again aroused, but this time was under Mullah Fazlullah. He was released by the government in 2002 while Sufi Muhammad was kept in prison. Mullah Fazlullah, after his release, became powerful in the Malakand Division. Ultimately, the government was compelled to implement the Niza-e-Adle Regulation 2009. This regulation was more Islamic than the 1999 regulation, but like the earlier three regulations, it is more procedural. Almost all the CPC and CrPC laws apply here. The regulation declared all un-Islamic laws, usages, and customs having a force of law illegal.

5. Conclusion

The government of Pakistan has largely deprived erstwhile PATA of important political rights such as national institutions and the rule of law, security of life, health and health facilities. The state apparatuses are weak in the region. The area is tax-exempt, but economic activities are weak, and developmental work is not prioritised by the government. In 2007, the central government of Nawaz Sharif introduced tax laws, but the law was withdrawn because of harsh resistance from PATA against the law. Tax collection is an important symbol of state building, which shows the state's inability to implement tax laws. The area has been brought under the mainstream by merging with Khyber Pakhtunkhwa through the 25th Constitutional Amendment. However, the region still needs the attention of the federal and provincial governments with the allocation of special funds and developmental projects to bring them to other regions of the province and the country.

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Notes:

¹ In April 2010, the province was renamed from North-West Frontier Province (NWFP) to Khyber Pakhtunkhwa. In this research, the word Khyber Pakhtunkhwa is used for NWFP.

² Dir was split into Dir Upper and Dir Lower districts. And still, both districts are part of PATA.

³ The area of the former state of Amb located in the Haripur district of Khyber Pakhtunkhwa.

⁴ Bacha Khan's movement (Khuddai Khidmatgar Movement) was a great service to the Pashtuns that was his movement and changed the tribal structure one step forward. They taught that Pashtuns are one nation, and Pashtuns have a common interest. Pashtuns got the idea of common Pashtun interest from the Bacha Khan Movement.