

Administrative Models and Rational-Legal Authority In South Waziristan

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Abstract: *South Waziristan, a center of resistance to colonial power, observed many British administrative models, schemes and regulations to incorporate and control its indigenous population. This research paper applies Max Weber's theory of Rational-Legal Authority on South Waziristan's Political Administration, in which Frontier Crimes Regulation (FCR) and Sarkari (Official) Jirga had been used as a legitimized source for ruling. The study discusses initial administrative models for South Waziristan. It also focuses on research question that how Political Administration efficiently but unsuccessfully used Frontier Crimes Regulation and Sarkari Jirga to rule over FATA. This paper also emphasizes on how British India modified the traditional institution by altering the traditional Jarga into Sarkari Jarga. This research article intends to describe different procedures that had been adapted to regulate and control tribal affairs in a systematic way. Moreover, the indicators of resistance to colonial administration have been also thoroughly explained. This study is qualitative and both primary and secondary sources have been used for data collection. The qualitative data has been further analyzed through thematic analysis. A total of 10 interviews have been taken through purposive sampling by using unstructured open-ended type.*

Keywords: South Waziristan, FCR, FATA, Sarkari Jarga, Durand Line

Introduction

According to Max Weber, Authority (*Herrschaft*) requires a legitimate relation in which the right to command exists as a settled mutual expectation. There is always needed legitimization to execute commands. Authority further divides into three types: Traditional Authority, Rational-Legal Authority and Charismatic Authority (Coleman, 1997). In case of Rational-Legal Authority, obedience is owed to the rationally and legally established impersonal order. The rulers or institutions required legitimacy of codified rules and regulations to set policies and issue commands (Roth & Wittich, 1978).

I have applied Weber's Rational-Legal Authority on the colonial based Political Administration in former FATA including South Waziristan; in which FCR and *Sarkari Jirga* had been used as a legitimized source for ruling.

South Waziristan:

South Waziristan encompasses a total area of 6,620 square kilometers. It is further divided recently into two districts i.e., upper South Waziristan and lower South Waziristan. It is limited to North Waziristan in north, Afghanistan in west, Tank and Deerajat in east and Balochistan in South respectively (Aziz et

al., 2018)

1. Durand Line and Britain's intention:

The demarcation of Durand Line was to limit the frontier of Amir Abdur Rahman's dominions but, the British government did not intend to absorb the tribes into their legal, political, judicial and administrative system as implemented in other parts of India (Mazhar & Goraya, 2019). Riaz Khan, in an interview, told me that *colonial policy on the creation of tribal belt served as a bulwark against Russian expansionism as well as to create a buffer-zone between the British India and Afghanistan* (Khan R. , 2021).

2. Experiments on Administrative Line:

Sandeman System:

In order to pacify the tribal people of Balochistan, Robert Groves Sandeman, a colonial administrator, introduced a system called as Sandeman system. In this system, by using tribal chiefs and *Maliks*, the tribes were allowed to manage their own internal affairs according to traditions. The British government paid the levies who were enlisted by these chiefs (Bruce, 1932).

Bruce, a political agent, believed that the success of Sandeman system in Balochistan would have the same efficacy in South Waziristan. He once said, let there be *Maliks* and *Maliks* there were. The introduction of this principle ended in complete failure because government did not occupy and control the region in first phase. On the contrary, Sandeman first pacified the Baloch tribes and then implemented the system. Bruce selected 270 influential *Sarkari Maliks* and divided them into five classes. Each Malik received different allowances according to their category (Beattie, 2011). Moreover, Baloch and Brahui tribes believed in oligarchy system and pay great respect to their chiefs while, tribal people among Pashtuns were highly egalitarian in nature (Tripodi, 2009).

Merks' Scheme:

Merk introduced a new system in which the whole tribe would be payable to allowances called as *Tumani* or *Quomi* (tribe) allowances and scraped out Bruce model of oligarchy system. He also proposed to deal with the tribe as a whole and if any offenses occurred then the whole tribe would be accused instead of individual responsibility (Howell, 1979). It was decided to call for *Loya* (grand) *Jirga* of the Mahsud tribe, but what Merk did not understand the fact, was actually an assembling of disorderly mob never less than 5,000 strong-armed men at such a place like Tank (Davies, 1932). Johnston, the successor of Merk, termed this doctrine as unworkable and it was too dangerous to practice and expensive as well (Howell, 1979).

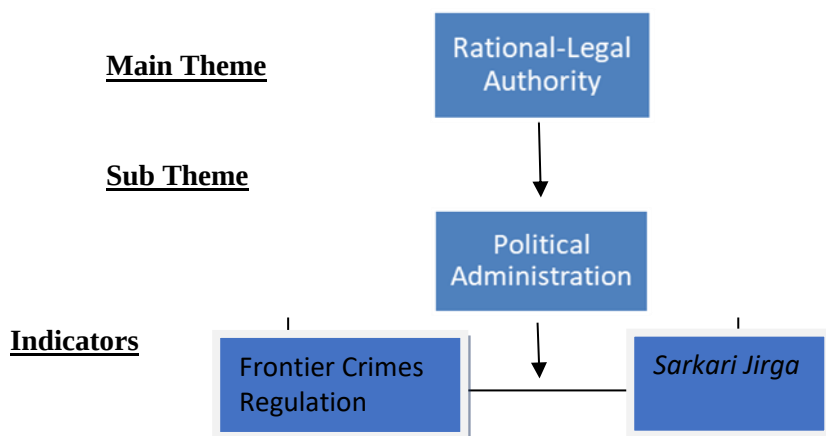
Johnston Scheme:

Johnston, the successor of Merk, modified the system in such a way to take account of both *Malaks* and *Tuman*, i.e., representatives and commonality respectively. He restored the *Malaki* system and the institution of *Khassedars*. The later institution, in return for keeping law and order, was an attempt to give benefits to the common people within the framework *Vesh* (distribution) based on *Nikkat* but that would be under the supervisions of *Mailks*. *Nikkat* word is used for heredity. It is symbolizing with the tribal system *Sarrishta* in which benefits would be distributed and liabilities apportioned (Quddus, 1990). According to Gohar Rehman, *Nikkat system is the most important feature of the relations between the tribes. It fixes share of each tribe, sub-tribe, clan and so on in all tribal gain and loss. It is non-negotiable law of tribal division. For instance, In South Waziristan, Nikkat comprises three-fourths for the Mahsud branch and one-fourth for the Wazir branch* (Rehman G. , 2022).

Viceroy Lord Curzon introduced 28 new militias in Waziristan, Kurram and Khyber such as Mahsud militias, Tochi scouts, Khyber Rifles and Samana Rifles to maintain law and order situation (Gunther, 2013).

3. Three Components of Administrative System:

There were three main fundamental components of administrative system, around which the whole fabric of FATAs' administrative, political and judicial structure revolved. These are Political administration, Frontier Crimes Regulation and *Jarga* system.



1) Political Administration:

Former Federal Administered Tribal Areas had been divided administratively into two categories i.e., protected areas and non-protected areas. The protected areas were governed by the central government through its political agents, while the later were controlled by the local tribes (FATA-RLCIP, 2015).

Protected Areas:

Viceroy Lord Curzon recognized the N.W.F.P. as a Chief Commissioner province in 1901 which comprised of both settled and tribal areas. Chief Commissioner had a dual duty of chief administrator over the settled districts and an agent to the Governor General of India for tribal affairs. Settled areas included five settled districts i.e., Kohat, Bannu, Hazara, Peshawar and Dera Ismail Khan. These areas had their own Deputy Commissioners who were answerable to Commissioner that had central office in Peshawar (Shah, 1989).

The central government decided to keep the tribal administration under the Governor of Punjab who was directly responsible to the Governor General of British India. Hence, the system of Political Agencies under political agents was launched in the tribal areas. When N.W.F.P. was raised to the status of governor province in 1932, then the political administration was responsible to the apropos provincial governor. British government created a new buffer to buffer zone between the Afghan border and the settled districts (Bangash, 2014).

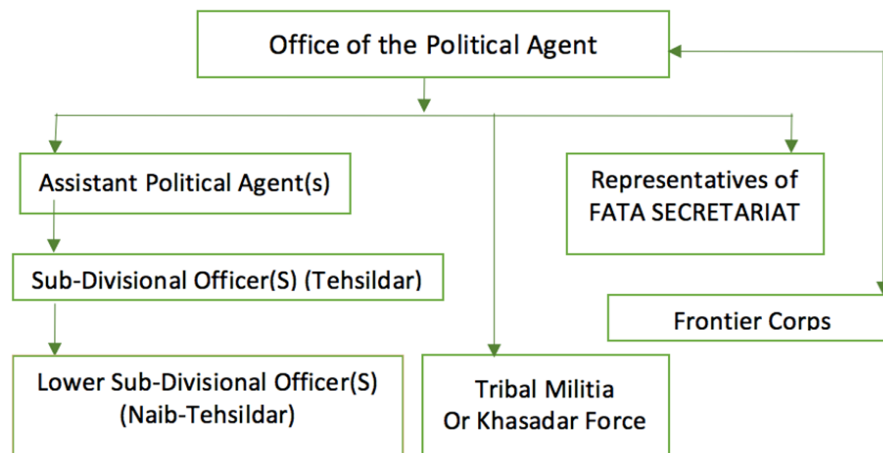
FATA comprised of both Political Agencies and Frontier Regions. The former was formed during Second Afghan War when government appointed a special officer in 1878 for the Khyber and then Kurram became a second Political Agency in 1892. Waziristan, administratively, divided into two political agencies i.e., South Waziristan Agency and North Waziristan Agency respectively in 1895 while, the Malakand formed Agency in 1895 (Baha, 2017).

The Frontier Regions had been governed by the Deputy Commissioners (DCs) of the related districts like FR Kohat had been controlled by DC Kohat and so. By and large, the administrative control of these officials performs their respective duties under Governors Secretariat FATA (Yousaf et al., 2018).

Weberian hierarchical structure:

The Political Agent (P.A.) was the political appointment by the federal government and at times provincially. He closely looked out the administration and governance of the concerned political tribal agency. P.A. was as much an ambassador as a governor and exercised a blend of executive, judicial and

revenue powers. He suppressed crimes and criminal activities and maintained law and order situation in the former tribal agencies. Political Agent was supported by levies (tribal militias), *Khassadars* and paramilitary forces to keep all these responsibilities (Williams, 2015). P.A., on military grounds, may direct the removal any village, could contain erection of hamlets and detain all members of tribe that act in an aggressive manner. He could levy fine on village and community as a whole (Ahmed, 1980).



Source: (Khan, 2016).

A Weberian bureaucratic hierarchical structure existed from P.A. to Assistant Political Agent (APA) and then to Assistant Political Officer (APO or *Khan Bahdur*), subsequently of specific sub-division to carry out administrative activities. Other political officials included political Tehsildar, Naib Tehsildar and political Moharir (Pakistan-FATA, n.d.).

Non-Protected areas:

Role of local elders had a pivotal importance in controlling non-protected areas. Local *Jarga* helps to resolve all matters, but here is the difference; the findings and verdict of *Jarga* in protected areas were implemented by the then Political Agents while the responsibility to implement the judgement of *Jarga* in non-protected areas had been given to the local tribe. These *Jargas* had been given huge power; they could expel an accused and its whole family from the village. *Jarga* could set on fire their homes or confiscate it, even imposed heavy fines (Ahmad, 1976).

2) Frontier Crimes Regulation:

British government strengthened their basis of power by promulgating Indian Penal Code and Code of Criminal Procedure in 1860, which assisted them in tax collection arrangement and maintaining public order during the mid-nineteen centuries in British India (Rajalakshmi, n.d). Government considered criminal activities as a direct menace to the British Empire and therefore, also designated Criminal Tribes Act of 1871 through which certain criminal tribes were watched and controlled (Bej et al., 2021).

Soon, the central government realized that the velocity of crimes in Peshawar valley in general and in the Afghan border regions in particular increasing day by day. To curtail the high rate of killing, robberies and violence, government developed and implemented the Punjab Frontier Crimes Regulation in 1872 (Hopkins, 2015).

The government of British India extended the same Punjab Frontier Crimes Regulation of 1872 with some minor modifications called as Frontier Crimes Regulation (FCR). It was a legal, judicial and administrative system for the North West frontier province which was implemented it on 24th April, 1901. FCR was promulgated via regulation III of 1901 and consisted of seven chapters that spread over sixty-three sections (Qayum, 2020).

Frontier Crimes Regulation promulgated and implemented on newly created Chief Commissioner

Province N.W.F.P. in 1901 which comprised of five settled districts and five tribal agencies. It was the only formal document which constitutes a comprehensive system of governance for FATA (Barfield, 2017).

Provisions of Frontier Crimes Regulation:

One of the critical features of FCR was collective territorial responsibility. In this provision, if a crime initiates on any tribal land, then the whole tribe on whose territory the crimes were committed, was held accountable to the political administration. An innocent man may be held liable for the committed crime of another person (Ullah, 2013).

Another provision was collective responsibility and the idea was articulated by John Coke, an in-charge colonial officer of Kohat Pass. In this type, on criminal behalf, his whole tribe's or sub-tribe's belongings in settled areas might be seized; the Political Agent could close the pass at once for them, put them in jail, stop all their allowances and put fines. These types of penalties continued unless the criminal brought it before political administration (Spain, 1972). For instance, a political moharrar in the name of *Khalifa* might capture any person, transport or ban their business of criminal belonging tribe in district Tank (Rehman M. M., 2022)

Moreover, the people of FATA could not enjoy the right to appeal, *Wakeel* (the legal right of representation in judicial courts), *Daleel* (the legal right to present evidences in front of judges) in any court of law. Yet the Commissioner acted as a revisional court but in 1997, FCR was modified and the second appeal was allowed before the tribunal composed of home and law secretaries and chief secretary of Khyber Pakhtunkhwa (former N.W.F.P.). The appellate body also comprised of civil bureaucrats that would obviously rely on PA's or Commissioner's decree. Section 40 of FCR says that the P.A. could arrest anybody and they had no right to redress the accusations against them (Ullah D. A., 2012).

By and large, FCR was operated not as a parallel system against the ordinary process of law as implemented in other parts of India but as the sole and substitute code whenever the parties belonged to the tribesmen. This Regulation had no procedure for enforcing the sanctions and central authority of the State rather used as a means of adjudication on custom, until and unless the crime had outraged both the authority of the government and custom (Iqbal et al., 2017).

According to certain orientalist like Olaf Caroe, the FCR was an operational failure as it neither justified the custom nor the law. Without being recognition of the Pashtun values and honor, it became nearly an easy mean of punishing crime for the state (Caroe, 1958).

Explaining the nature of FCR, Supreme Court Chief Justice Alvin Robert Cornelius once wisely said in *Sumunder vs State: PLD 1954 FC 228* that "FCR is obnoxious to all recognized modern principles governing the dispensation of justice" (Anwar, 2015)

Frontier Crimes Regulation was recently amended by Presidential Order of Pakistan in 2011 which had a semblance of judicial respectability and prohibited the penalty under collective responsibility. A new appellate body in the name of FATA Tribunal formed but the former citizens of FATA were not provided the access to justice by petitioning or appealing in Supreme Court of Pakistan (Akhtar, 2016).

3) *Sarkari (official) Jarga:*

Quarrels that arise out of the blood-feud, disputes about women, and other reasons generally affecting Pashtun honor were authorized to settle by customary methods under FCR. Political Moharrar Attaullah Khan says that, *the Political Agents delegated power to Sarkari Jarga for arbitration. Jarga then withdraw cases related to customary criminal or civil cases except those crimes that affected states jurisdiction* (Attaullah, 2021).

Muhammad Akbar Malak added further that, in official *Jarga*, a group of *Malaks* designated by

magistrate and also acceptable to both rival parties are called. They were directed to provide findings of the accused either as innocent or guilty. It works like a sort of tribal jury, where members were not bound by the law of evidence, but they were expected to visit the place of the crime and enquiries to find the facts and solution (Malik, 2013).

All the details about *Sarkari Jirga* have been given in Chapter III (section 8-20) of FCR. The Council of Elders has been defined that consist of three or more respected persons (*Mutabars*) to try the civil or criminal cases (Islam et al., 2013).

Hassan M. Yousufzai and Ali Gohar describe different cadres of representation to lead the *Sarkari Jirga* which are following:

- A noble aristocrat, *Khan*, who is known for his magnanimity and hospitality,
- *Jargamars* who are Professional intermediaries and popular for their experience and role in peace building,
- *Masharan* possessing leadership qualities in the community,
- white bearded (*Spin Zhiri*): aged and elderly wise men in the area, and
- *Qazi* or *Mulla* (religious clergy), usually consulted in family laws, sometimes in civil and criminal cases as well (Yousafzai & Gohar, 2005).

In order to provide speedy justice to the people, *Jirga* plays an important role in resolving different nature of disputes such as inter-tribal and intra-tribal conflicts, public and personal quarrels. In fact, it was an attractive diplomacy of the colonial authorities to incorporate the institution of *Jirga* in FCR, while demonstrated that they had proper regard for tribal traditions and sentiments. On the other hand, Political administration retained the actual authority that was not bound to the findings and decisions of *Jirga*. FCR used extensively the word Council of Elders for *Sarkari Jirga* but instead, in Article 247 (6) of the 1973 Constitution of Pakistan, the term tribal *Jirga* used (Shinwari, 2017).

When the Political Agent (PA) informed about a civil dispute, he refers the dispute to the Council of Elders (*Jirga*) within fifteen days for findings in accordance to the *Rewaj* (custom). On the other hand, in criminal reference, the accused shall be produced before the Political Agent within twenty-four hours and then P.A. shall appoint the *Jirga* within ten days. In both cases, *Jirga* provides findings on the issue within ninety days. P.A. can pass judgement in accordance with the findings of *Jirga* or remand the case to another *Jirga* for further inquiry (Khan & Khan, 2021). According to clause (9) of sub-section (3), P.A. had the authority for passing decree of imprisonment or fine or might be both for the offence but the sentence shall not exceed more than fourteen years (ibid).

After independence of Pakistan, the elections for National Assemblies in erstwhile FATA took place in an open *Jirga* before 1996 and there is nothing like secret ballot. The right to vote was only given to *Malaks* or *Khans* under The Preparation of Electoral Rolls (FATA) Order, 1975. For example, a Mahsud *Jirga* could decide between candidates by just showing of hands and say that this is our man. Government of Pakistan tried to meddle the Pashtun ideas of tribal organization with the Western concept of democratic representative institutions (Khan S. , 2010).

People of FATA believe that *Malaks* and *Khans* always favored the FCR due to their political and financial benefits. They enjoy all perks and privileges provided by the political administration to control the community. Civil society members emphasize that *Malaks* and *Khans* were the main obstacle in bringing changes in FCR (Alam, 2013).

James W. Spain writes that the *Jirga* under FCR was far away from its natural state of classic *Jirga*. The *Jargas'* verdict in tribal system was recommendatory and sometimes obligatory in nature, while in political administration, Political Agents had all the authority to convict or acquittal and even passing

sentences. The decision of the PA was binding and cannot be challenged in any court of Justice (Spain, 1963).

4. How Tribal Areas Controlled?

The Policy of Attrition and Force:

Pashtun tribes along with Durand Line resisted to colonial penetration and even made hurdles in implementing their system. Military expedition seemed to be the only viable option. Whenever military force required, authorities applied it. During World War II, British government gained some sort of law-and-order situation through a policy of attrition. She bombarded the region through air craft, used five times of manpower and armored vehicle against the Mahsud tribe (Baqai, 1999).

Agreements:

Many agreements were negotiated and then signed with the tribal people in an open *Jarga*. The elders of the tribe would affix their seals and even their thumb impressions. An agreement would possess a number of clauses like protection of communications, declaring friendship and good-will, a clause binding the tribe to deny sanctuary to outlaws. In return, tribe would guarantee an annual allowance (Baha, 2017).

For instance, the Shaman khel section of the Mahsud tribe signed an agreement with the Deputy Commissioner (DC) of Bannu, Captain Munro, on Wednesday, 19th June 1861, another agreement with the same tribe on 28th April 1873, a petition presented by Mahsud *Malaks* to R. I. Bruce, DC, on 19th January 1890, and agreement by Mahsud *Jarga* with British officials on 5th April 1902 (Bangash, 2016).

Muwajib (Allowances):

For the sustainability of British authorities, the allowances were issued by political administration to the *Sarkari* (official) *Malaks*. Its importance faded due to the available other fruitful economic channels, such as services in tribal police, in civil irregular corps, or in the army (Ahmed, 1980).

Bandish (Blockade):

In *Bandish*, criminal tribes or families were blocked from entering into markets, land, or grazing in the neighboring settled district as a mean of exerting economic pressure by disconnecting the tribe. This policy covered in Section 21 of FCR. The Mahsud blockade, for instance, started from 1900-1902 which was finally removed through an agreement with the Mahsud *Loya Jarga*, comprised of no fewer than 1,565 *Malaks* in numbers (Keppel, 1977).

Baramta:

Baramta is a Central Asian Turkic origin word which means the seizure of persons, property, or animal belonging to tribe or an individual at fault, in order to put pressure for compensation. Both *Baramta* and *Bandish* depend on the existence of a communal sense of responsibility in the tribal society. It was acknowledged that the justice of *Baramta* used as an effective tool for securing claims and rights (Caroe, 1958).

5. Indicators of Resistance to Colonial administration:

Every British agreement with the tribal people includes an undertaking to not harbor any outlaws from justice. This conditioning clause never carried out due to the *Pashtunwali* tenets of *Nanawatai* (coming in or supplicating for mercy and peace). It is impossible for Pashtun to deny sanctuary to guest and asking for *Nanawatai*. Even if enemy approaches, it cannot be refused. This practice is considered as a national point of honour and was, unfortunately, wrongly misused by the *Mafrur* or *Farari* (outlaws or fugitives) from British justice who fled to hills for asking sanctuary from influential elders (Benson & Siddiqui, 2014).

Qawm (tribe) is another indicator to resist colonial government in South Waziristan. It requires a system of loyalty in order to determine self-identification and equates to being part of ethnic group or national identity. Loyalty helps to oppose any intruder or external usurper government (Durkin, 2017).

Hamsaya is another value of *Pashtunwali*, in which a client that lives in the shadow of his *Naik* (protector) to protect him/her from enemy. Muhammad Ibrahim, in an interview says that, *any person can demand shelter at the time of crisis like murder of person and even poverty can compel people to ask for Hamsaya* (Ibrahim, 2021).

James W. Spain had similar view, saying that *Farari* was serious issue as many of them asked for shelter in tribal areas and to honor *Pashtunwal*, *Naik* would essentially provide *Hamsaya*. In return government had to use other options like *Bandish* (Spain, 1972).

Mahsud tribe inspired by a deep-seated instinct, that drove the tribe to resist subjection at all cost and to preserve their own tribal way of life. To achieve this aim, they were always prepared to make use of other alternatives like help in finance from Kabul, or even exploiting pan-Islamic flavor (Caroe, 1958). Of all the Pashtun tribes, it was considered that Mahsuds were the most intransigent tribe. The Mahsud land was first penetrated in 1860 by a military expedition. Then it continued until six full-scale hard-fought battles held between 1919-1921 (Davies, 1932).

Moreover, Wazir tribe stubbornly refused to compromise with the British government. They had large part in revolt which followed eventually third Anglo-Afghan War in 1919-20. In two years of guerrilla warfare that occurred in 1936 and 1937, they tied down almost 50,000 regulars of the British Indian Army (Hussain, 2000).

6. Double Standard on Bureaucratic Models:

Professor Sardar Amin Khan expressed his opinions that British government attempted to deal with the Pashtun in dual administration; as for the settled areas of N.W.F.P., the administrative structure was according to the standards of an imported European model, while tribal belt was dealt in a state of undiluted tribalism. He cites, that *the tribal territory beyond border of settled district was commonly referred to as Ghirilaqa/Ilaqaghair (unadministered territory) or Yaghistan (the land of rebels)* (Khan, 2021). It was a common parlance not only with the British India but with the ruler of Kabul also. Beyond the frontier of India, neither Kabul nor Calcutta acknowledged as suzerain. For them, it was no-man's land of an unknown extent. The tribal territory was titled different names such as the land of free, land of insolent, and land of unruly (Shinwari, 2017).

British India government adopted different methods and developed different schemes to rule over Pashtun especially tribal people. They believed that by establishing tribal regulations based on customary law institutions like *Jarga* would help them better control over the tribal areas but that approach resulted unsuccessful (RRC, 2009).

Conclusion:

To pacify South Waziristan, which was avowed as Hells Door Knocker by the British army, many experiments had been conducted in the field of administration. Sandeman system, Merks's scheme, Johnston scheme, administrative division of FATA into protected and non-protected areas and three components of administration i.e., Political Administration, FCR and *Sarkari Jirga* had applied on tribal areas including South Waziristan. Indigenous people resisted to an extent that government used policy of attrition, *Muwajib*, *Bandish* and *Baramta*. But, the double standard of bureaucratic model to deal whole India with an imported European model and the tribal region was dealt in a state of undiluted tribalism, never successful.

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