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**Betraying Fata reforms**

The introduction of the Khyber Pakhtunkhwa Alternative Dispute Resolution (ADR) Act 2020 in the former Fata districts has intensified the debate on Fata’s reforms, which were initiated three years ago by the 25th Amendment. The region is now part of the Khyber Pakhtunkhwa province, but the extension of such specific laws raises suspicion that it is still being treated as a colonial blackhole.

Seen together with other developments in the region, this is a new and more concerning attempt to roll back the gains of the 25th Amendment.

Alternate Dispute Resolution is celebrated as a community-driven inexpensive and speedy form of justice that complements the formal judicial system. As opposed to the formal court system, ADR prefers compromise and bargain among the parties. Keeping in view its benefits, many countries have adopted ADR as a part of the justice system.

The KP government had previously established Dispute Resolution Councils (DRCs) under the Police Act 2017 for resolving petty civil matters. However, what makes the present ADR Act controversial is that it has only been extended to the former Fata region. This runs counter to the aim of the Fata reforms – to treat the residents of the region under the same laws as the rest of the province. That the people of former Fata will not be treated as ‘tribals’ and ‘others’ anymore.

This act is being termed as a new version of the infamous FCR. The highly criticized jirga system of the FCR has been rebranded as a dispute resolution forum under this act. Following are some of the main issues in the act. First, ADR provides for a greater role for the executive officers in judicial matters. The commissioners will approve the names of the Saliseen (the arbitrators) nominated by the deputy commissioner (DC).

The DC’s authority in the appointment and removal of the Saliseen and referring civil and criminal cases to it, is akin to that of the former Political Agents. It is oddly reminiscent of the unbridled powers of the FCR jirgas. This scheme also runs counter to the principle of the separation of executive and judiciary as envisaged in Article 175 (3) of the constitution and upheld in various judgments of the Supreme Court.

Second, the new ADR Act brings criminal offences, in addition to civil disputes, under its purview. There’s a general consensus among experts that ADR can better resolve civil disputes and that trial of criminal offences should be left to the formal courts.

Third, the Confidentiality Clause of the said act runs counter to the idea of transparency that is the hallmark of any alternate dispute resolution mechanism. Meetings of Saliseen behind closed doors make them susceptible to influence and corruption. Even the traditional jirgas provided for some kind of transparency.

Fourth, the finality clause which bars any revision or appeal against any decree or order issued under this act is a novelty. The multilayer system of courts and appeals as practised in other parts of the country provide an opportunity of a thorough review of the decisions of lower courts before reaching finality. The ADR Act provides for a single and final stage dispute resolution, leaving no room for correcting any errors and omissions later.

Fifth, under this act, costs and fees of the ADR process have to be paid by the parties. One of the celebrated aspects of the alternate dispute resolution system is its affordability as opposed to expensive adjudication in courts. This clause is not different from the old practice of arranging feasts and costly gifts for jirga members to get favorable decisions. The Saliseen should either work voluntarily or the government should pay them honoraria.

Apart from these issues in the ADR Act 2020, the timing and the wider political context makes it even more controversial. Ever since the merger, a power struggle among various stakeholders in the region has rendered the reform process incomplete. The district administrations headed by DCs have been reluctant to give powers to the judiciary and the police. This has left a large vacuum in the criminal justice system.

The Levies and the Khasadar force that lacked the capacity to maintain law and order are now burdened with investigation and prosecution in courts. Policing has suffered and resultantly peace has deteriorated. The problem is further compounded by the indecision and confusion regarding merger of these forces into the provincial police and dearth of financial and human resources.

Apparently, both the federal and provincial governments have left the region to the whims of the bureaucracy. The bureaucracy has been trying to regain its lost power and prestige symbolized by the Political Agents and the Fata Secretariat.

The former Fata agencies are now called ‘tribal’ districts in official jargon – bureaucratic innovation that not only mocks the reform process but is reflective of their intentions of rolling it back. Now that the region is part of the province, the KP government should stop treating it as a provincial ‘Fata’, making special laws for it that deprives people of their rights.

The ADR act must be reviewed thoroughly and should not be selectively implemented only in the newly merged districts. People living in Khyber and Mohmand don’t need different laws from those living in Peshawar and Charsadda.

A new ADR system, in line with international best practices, should be adopted in all the provinces. And until that happens, the present problematic and Fata-specific ADR Act should be repealed immediately.

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