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**From FCR to ADR**

Since Independence, the erstwhile Federally Administered Tribal Areas (Fata) were governed through the draconian Frontier Crimes Regulation, 1905.

Until repealed in 2018, the FCR was not only quoted as ‘incompatible with international human rights law’ by human rights institutions but was found “contrary” to the principle of separation of powers and “independence of the judiciary”, as defined by the constitution and by the superior courts.

The FCR entrusted administrative as well as judicial powers on deputy commissioners, famously termed as ‘political agents’. There were official jirgas called Council of Elders, appointed by the political agent, for decisions in civil as well as criminal references. The jirga’s judgments, if assented to by the political agent, had legal binding and were not appealable in the country’s constitutional courts.

After a prolonged struggle, finally the FCR was repealed, and the jurisdiction of the apex courts was extended to Fata, as the federal government promulgated the Fata Interim Governance Regulation 2018, once again created a parallel judicial system akin to the FCR, by introducing the official jirga system.

Later on, the Supreme Court in the case ‘National Commission on the Status of Women versus Government of Pakistan’, reported as PLD 2019 Supreme Court 2018, held the jirga system illegal and against Pakistan’s international commitments. The apex court declared that “the operation of jirgas/panchayats, etc violated Pakistan’s international commitments under UDHR, ICCPR, and CEDAW which place a responsibility on the state of Pakistan to ensure that everyone has access to court or tribunals are treated equally, before the law, and in all stages of procedure in courts and tribunals.”

The Supreme Court further held that “in the manner in which jirgas/panchayats etc function is violative of Articles 4, 8, 10-A, 25, and 175(3) of the constitution”. The government of [Khyber Pakhtunkhwa] KP was directed to develop infrastructure to take steps to spread a uniform system of courts of ordinary jurisdiction in KP, mandating the local law-enforcement agencies to ensure that rule of law is observed by reducing jirgas/panchayats etc to arbitration forums which may be approached voluntarily by local residents to the extent of civil disputes only.

Resultantly, with the advent of the 25th Amendment, Fata was merged with KP and ordinary courts finally started working in tribal areas at the doorstep.

Soon, in the latest such tests, with the objectives to “facilitate the settlement of disputes without resort of formal litigation and to ensure inexpensive and expeditious justice to the citizens”, the government of KP enacted the KP Alternative Dispute Resolution Act, 2020.

The KP ADR Act, 2020 introduced the Salis and Saliseen (mediators) who shall be taking out the process of ADR, appointed by the Saliseen Selection Committee. Interestingly, the Saliseen Selection Committee comprises seven or more members, in which only one member is from the judiciary, while the rest are bureaucrats and officials of the law-enforcement agencies.

Why is the appointment procedure of the Saliseen and ADR process dominated by bureaucracy? If the objective of the KP ADR Act, 2020 is the provision of speedy and inexpensive justice through ADR, then would it not be appropriate that this appointment committee be headed and managed by the judiciary, and not by other departments that have little concern with the justice system? Is it not contrary to the principle of separation of judiciary from the executive under Article 175 of the constitution that a deputy commissioner would be handling the administration of justice, even in criminal cases?

Like the repealed FCR, the KP ADR Act introduced references to Saliseen in civil disputes and all compoundable criminal cases. But, most irrationally, against the principles of independence of the judiciary, a deputy commissioner, who has no cognizance in civil or criminal cases can refer cases to the Saliseen for ADR. Hence, the KP ADR Act 2020 creates serious doubts on the state’s intentions to prosecute criminals, since most heinous crimes are compoundable under the national penal laws.

Similarly, ADR does not explicitly provide any procedure for women's participation nor does it discuss their due representation. The law is silent regarding the misuse of the informal jirga system with no penal provision, in case the ADR proceeding violates the basic human rights protected by the constitution and international human rights instruments.

Did policymakers not realise that legalizing the jirga system in the shape of Saliseen through the KP ADR Act, 2020 would indirectly encourage informal jirgas, already declared by the Supreme Court of Pakistan as illegal and unconstitutional?

Similarly, in mainstream parts of the country, successive governments have introduced various temporary reforms with the objectives to ensure speedy and inexpensive justice. Sometimes, extraordinary circumstances and a weak judicial system were cited as the main reasons for the enactment of special laws and the establishment of special courts.

After years, Pakistan’s civil justice still stands at 118 among 128 countries in the world on the Civil Justice Index, assessed by the World Justice Project and Gallup and Gilani Pakistan, while the average conviction rate in Pakistan is just 11.66 percent.

From FCR to ADR, successive governments have introduced temporary and short-term measures, by involving irrelevant forums and offices instead of strengthening judicial institutions through the provision of resources and legal reforms.

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