



Khyber Pakhtunkhwa
Judicial Academy



REPORT

Seminar on Newly-Merged Civil Districts/Sessions Divisions In Khyber Pakhtunkhwa: Legislative Development In The Post- Merger Scenario, A Way Forward Towards Rule Of Law

17 September 2019



KHYBER PAKHTUNKHWA JUDICIAL ACADEMY

One-Day Seminar on Newly-Merged Civil Districts/Sessions Divisions in Khyber Pakhtunkhwa: Legislative Development In The Post-Merger Scenario, A Way Forward Towards Rule of Law held on 17th September, 2019.



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1.0 Introduction

1.1 KPJA is statutorily mandated to provide training to all justice sector stakeholders, to hold conferences, seminars, lectures, workshops and symposia in matters relating to court management, administration of justice, law and development of skills in legislative drafting and to establish liaison with research institutions, universities and other bodies including the Federal Judicial Academy, towards the cause of administration of justice. (Section 4 of the Academy Act)

1.2 UNDP under Strengthening Rule of Law program has been assisting KPJA in the achievement of its aforesaid statutory objectives. Its recent manifestation was the signing of LOA between UNDP and KPJA on 7th December 2018. The LOA envisaged manifold activities. Seminar on Newly Merged Districts (the erstwhile FATA), a part of the LOA activities, was held on 17th September 2019. The seminar was intended for justice sector collaboration for strengthening the rule of law. The participants included judges, media personnel, police officers, prosecutors, probation and reclamation officers, and the lawyers of Newly Merged Districts. Spokesman of judiciary, media, and government was invited to brief the participants on the existing situation and the plans. That followed Group Discussion and the participant's recommendations.

2.0 Executive Summary

2.1 In this report:

a. We have

2.2 The report begins with a general layout of the training session including, information about the participants, contents of the lectures, the resource person details, followed by recommendations for future improvements.

3.0 Concept Paper

3.1 Introduction:

3.1.1 Federally Administered Tribal Areas ("FATA") had, ever since independence, remained as special areas. Frontier Crimes Regulation, 1901 ("FCR") used to govern these areas. Articles 1(2) (c), 246 and 247 of the Constitution of Islamic Republic of Pakistan, 1973 ("the Constitution") conferred special status thereon. Laws made by Parliament had no direct application thereto. The President, being a law-giver thereunder could either: i) by direction, extend any law made by the Parliament thereto, with such exceptions and modifications as might be necessary or ii) make a regulation for peace and good governance thereof, keeping in view their socio-cultural peculiarities and political dynamics. The system then so prevalent in erstwhile FATA, newly-merged districts ("NMDs") had been subject to a firing criticism owing to special status thereof as compared to the rest of Pakistan. It was thus an affront to rule of law. The system then prevailing there turned out to be an exception to "rule of law" in the long run. To wriggle out of shackles of stagnancy, various governments in past had though made efforts to introduce certain reforms, as evident from plethora of reports on the subject since 1976, yet no meaningful results could be achieved.

3.1.2 The 25th Constitutional Amendment of 30th May 2018 came as a redeeming factor as it set the long awaited controversy at rest once and for all. Seven (07) Agencies and six (06) Frontier Regions (FRs) stood thereunder merged into Khyber Pakhtunkhwa. It was a landmark in constitutional and political history of Pakistan. The omission of Article 247 from the Constitution brought about quite understandable legal and constitutional repercussions.

3.1.3 Prior to constitutionally declared merger as aforesaid, the President of Pakistan had made *FATA Interim Governance Regulation* ("FIGR") on 29.05.2018 which repealed the FCR. Its *vires* were called in question before the Hon'ble Peshawar High Court in Writ Petition No. 3098- P/2018 titled "*Ali Azeem Afridi v. Federation of Pakistan*". Per judgment dated 30.10.2018 in the cited *lis*, FIGR was declared *ultra vires* the Constitution, to the extent as indicated

therein. The august Supreme Court of Pakistan was pleased to uphold such decision vide judgment dated 16.01.2019 in C.P No. 24/2012 and C.P No. 737-P/2018. FIGR was declared *ultra vires* the provisions of Articles 4, 8, 10-A, 25 and 175 of the Constitution. The judgment of the august Supreme Court of Pakistan is self-contained in all material respects. It was a watershed constitutional case in the judicial history of Pakistan.

3.1.4 As a result, the Board of Revenue, Government of Khyber Pakhtunkhwa issued a notification on 19.07.2018 whereby such Agencies and Frontier Regions were declared as districts and sub-divisions of Khyber Pakhtunkhwa. The Government of Khyber Pakhtunkhwa in Home Department notified such districts and sub-divisions as Sessions Divisions and parts thereof.

3.2 25th Constitutional Amendment & judgment of august Supreme Court: Implications

3.2.1 Part-I Constitutional-n-legal impacts:

- a. All existing laws in force in Pakistan and in Khyber Pakhtunkhwa stood automatically applicable to NMDs;
- b. Laws to be made by the Parliament or Provincial Assembly of Khyber Pakhtunkhwa shall apply to NMDs without any further extension mechanism or regulatory formality;
- c. All fora operating under FCR regime to adjudicate civil, criminal, family, rent and other matters had ceased to exist;
- d. The cases and matters pending before such fora as aforesaid stood automatically transferred to the Courts established in NMDs under Civil Courts Ordinance, 1962, Criminal Procedure Code, 1898 Family Courts Act, 1964, Urban Rent Restriction Ordinance, 1959 and other statutes;
- e. The procedural laws shall have retrospective effect in relation to all pending cases so stood transferred as aforesaid;

- f. As regards substantive law or custom creating any right, the same shall have effect in NMDs in accordance with the provisions of section 6 of the General Clauses Act, 1897 and Article 264 of the Constitution because FCR stood repealed by implication;
- g. As regards the status of custom/*rewaj* prevalent in NMDs, the legality or constitutionality thereof shall be determinable in the light of judgment dated 16.01.2019 of the august Supreme Court of Pakistan. Even the regular Courts so established there shall now be having the power to see whether any custom or usage having the force of law was or was not inconsistent with the Fundamental Rights guaranteed under the Constitution. And if it was found that any such custom or usage was inconsistent therewith, it shall be liable to be declared as void and/or unenforceable, to that extent, within the meaning of Article 8 of the Constitution;
- h. The finding or report or decision of any *Jirga* in such pending cases, so transferred to the newly-established Courts in NMDs under the ordinary laws of the land, shall have no legal footing;
- i. As regards other proceedings, the Courts would proceed from the stage at which such cases were at the time they stood so transferred to them; and
- j. The regular Courts set up in NMDs shall follow CPC, Cr.PC, Family Courts Act and Qanoon-e-Shahadat Order as procedural laws and all other substantive laws having application in Pakistan and Khyber Pakhtunkhwa in relation to proceedings before them.

3.2.2 PART-II Establishment of ordinary Courts:

- a. Peshawar High Court, in consequence of 25th Constitutional Amendment and judgments noted above, was pleased to establish twenty eight (28) Courts in NMDs in March 2019, viz, I) seven (7) District & Sessions Judges (BPS-21); II) fourteen (14) Additional District & Sessions Judges (BPS-22); and III) seven (7) Senior Civil Judges-cum-Judicial Magistrates. The Courts, after brisk-n-hectic training at Khyber

Pakhtunkhwa on 4th to 7th March 2019, started full-fledged functioning and operation in NMDs.

- b. Peshawar High Court, Peshawar was pleased to have recruited Civil Judges-cum-Judicial Magistrates from Khyber Pakhtunkhwa Public Service Commission on emergency basis to enhance strength of District Judiciary in NMDs. Consequently, 21 Civil Judges-cum-Judicial Magistrates have been posted in NMDs in June 2019. Their attachment with Courts has commenced and they (newly-inducted CJs-cum-Jms) will be doing pre-service training in Judicial Academy during July-August 2019 and will start functioning from 1st September, 2019 in NMDs.
- c. Peshawar High Court has further been pleased to direct Anti-Terrorism Courts ("ATCc") of districts adjacent to NMDs to adjudicate all cases of terrorism pertaining to NMDs as a time-gap-arrangement. The cases have accordingly been sent to ATCc of adjoining districts which have commenced proceedings therein.

3.2.3 PART-III Development of law and jurisprudence:

3.2.3.1 In the meanwhile, the Courts set up in NMDs faced certain complex legal issues. For this purpose, two separate references filed before Hon'ble Peshawar High Court, Peshawar have been decided:

- (i) **Reference No. /2019** was decided on It answered number of legal issues of complex nature as hinted to therein; and
- (ii) **Reference No. /2019** was also decided on wherein other legal issues have been answered.

NOTE: In such references, there have been enunciated legal norms for guidance of Courts in NMDs to deal with unanticipated legal complexities.

3.2.4 PART-IV Role of national & international media:

3.2.4.1 National Print and Electronic Media gave coverage to establishment of rule of law through establishment of Courts in NMDs. They created awareness regarding rule of law through ordinary courts presided over by Judges in NMDs. Even International media in number of programmes took note of the new development in NMDs on the same lines. Rahimullah Yusufzai, senior journalist and expert on Afghanistan affairs and erstwhile FATA/MNDs and Salim Safi, senior journalist, also an expert on the subject delivered extensive talks regarding affairs of NMDs before Judicial Officers (Judges) posted in NMDs during training at Judicial Academy. The media highlighted role of judiciary in these areas. The role of media for this success story cannot be overlooked.

3.2.5 PART-V View point of public:

3.2.5.1 The people of NMDs welcomed this change as redeeming feature in their home towns. They are actual stakeholders of the system. Views expressed by them were that they were happy on 25th Constitutional Amendment, judgments of Peshawar High Court, those of the august Supreme Court and immediate action of Peshawar High Court in establishing Courts in NMDs. Legal fraternity from Khyber Pakhtunkhwa in general and from NMDs in particular viewed the change as a milestone in the constitutional and judicial history of the country.

3.2.6 PART-VI Role of government departments:

3.2.6.1 Role of provincial government in establishing NMDs is appreciable. Government departments of Khyber Pakhtunkhwa played good role in establishing NMDs. Federal Government also contributed its efforts in making the story a success. Government of Khyber Pakhtunkhwa is pro-active for peace and good governance in NMDs.

3.2.7 Part-VII Pakistan Armed Forces and peace in NMDs:

3.2.7.1 NMDs had been devastated during last more than one decade because of onslaught of terrorism. These areas had turned into deserts. It was Pakistan Armed Forces which very successfully restored peace in the area through gigantic sacrifices of its soldiers and officers. Nation is indebted to Pakistan Armed Forces for their sacrifices in restoring peace and rehabilitating NMDs. Armed Forces carried out rehabilitation works in the area with hectic speed through building schools and colleges and other offices of government. People, who became IDPs, have gone back their homes. Army succeeded in maintaining peace and tranquility in NMDs. Normalcy is prevailing in NMDs. Normalcy is prevailing in NMDs. The area is safe for human dwelling, business enterprises and socio-political activities.

3.3 POINTS TO PONDER:

3.3.1 District Judiciary is functional in NMDs. In the shortest period of 90 days, judiciary has made all out efforts to perform. Thing to be seen is how this system is functioning and what are the problems being faced by Judicial Officers in the NMDs while dealing with various cases. And how far other government departments have been able to act in aid of newly-established judicial system in NMDs.

3.4 Focal Points for study:

3.4.1 The transition from outmoded system to a workable judicial system is a challenge. Judicial Officers posted to NMDs need to be re-enlightened on the following aspects:

- a. What are socio-cultural peculiarities of NMDs;
- b. What are major political dynamics of these areas;
- c. How to make the transition a success story for all stake-holders; and
- d. Way forward.

3.5 Objectives:

3.5.1 The objectives of this seminar will be to enlighten the participants on aspects hinted to as a, b and c. Let participants give their valuable input for *way forward*.

3.6 Learning outcomes:

- i. To have a clear understanding of pre-merger set-up and post-merger legal system.
- ii. To see impacts of new judicial system in NMDs;
- iii. To suggest ways and means for making the system a success and beneficial to all.

3.7 FORMAT FOR SEMINAR:

- a. Presentation will preferably be bilingual. Urdu will be major vehicle of communication. Since it is not a routine discussion in mode of judicial tone-n-tenor.
- b. It will be 1-Day SEMENAR. There will be 3 sessions, each of 90 minutes duration (30 minutes presentation, 15 minutes Q&A and 45 minutes for group discussion & formulation of recommendations).
- c. Activities of three sessions will be: i) presentation by Judicial Officer on post-merger scenario; ii) view point of government of Khyber Pakhtunkhwa by its representative on post-merger scenario; and iii) opinion of media on post-merger dynamics.
- d. Schedule of Activities is enclosed herewith separately.

4.0 Proceedings

4.1 Session 1

4.1.1 The session began with the Holy Quran's recitation. Dr. Shakeel Azam Awan, Dean Faculty, moderated the session. Mr. Ahmed Iftikhar, Director Instructions, anchored the session. He invited DG KPJA for a welcome address. In his speech, DG expressed gratitude to all attending the seminar. He thanked UNDP for the seminar's financial support. He appreciated the UNDP's role in collaborating with KPJA to hold seminars, training, workshops, and thus playing a key role in strengthening the rule of law.

4.1.2 The DG gave a brief overview of the activities of the workshop, its aims, and expected results. The workshop, he said, was intended to provide a forum for all actors in the justice sector to work together to solve the problems of people long oppressed by the region's former laws. He added that the academy had invited acclaimed speakers from three sectors to speak on the subject, including the judiciary, media, and the government. He continued by saying that the real stakeholders are people of NMDS and that every effort should be made to provide them with quick and inexpensive justice. The DG concluded that feedback from all justice sector stakeholders will help set out a road map for success and devising a way forward for the rule of law.

4.1.3 The anchor invited the Registrar PHC for the seminar opening address. The Registrar expressed special gratitude to the dignitaries for their participation in the seminar. He called it a historic event as all worked to enforce the judgment of the Supreme Court, followed by the judgment of the Peshawar High Court. He said that the judiciary's representative would brief the participants on the judiciary's performance. Nevertheless, for him, judges had remarkably performed. They disposed of several cases. They finalized the recruitment process with all speed, efficiency, and integrity. The Registrar concluded that in the future every effort would be made by the judiciary to achieve the optimal performance.

4.1.4 Mr. Jahangir, Provincial Head, UNDP was also invited to address the gathering. He felt that being present in the seminar was his privilege. He said that it was very promising that the judiciary took the lead in showing a united support for the newly formed districts. He said he was pleased to support KPJA's efforts. He opined that access to justice in newly formed districts was a prerequisite for development. While the government may take the initiative to improve health, electricity, and other sectors, he said, the rule of law must be paramount. He emphasized the coordinated efforts of stakeholders of the justice sector. The speaker concluded that the area offers an opportunity to try innovative tools in the justice sector reforms.

4.2 Session 2

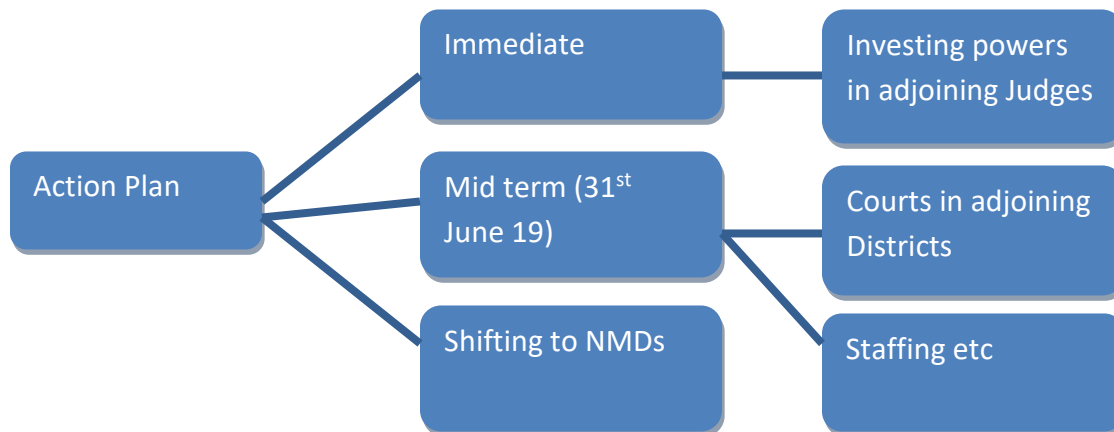
4.2.1 Views of Mohammad Zeb Khan, PSO to Honorable the Chief Justice (Focal person for Judiciary):

- i. My discourse is on the subject, "KPK's Newly Merged Districts: Past, Present, and Future."
- ii. It would be appropriate to refer to an author's opinion for the area's history who says, "Geopolitical and geostrategic considerations forced the British to introduce a peculiar form of administrative structure in the tribal areas. The inhabitants of these areas were subjected to systematic exploitation and unfair treatment. The subordination of the populace was implemented through military operations, intimidation, bribery and the divide and rule policy. The British complemented the tribal administration with the

Frontier Crimes Regulation (FCR), a law that has been frequently called an “engine of oppression and subjugation”.

- iii. The FCR's final death knell though was marked by the Supreme Court's latest decision. Nevertheless, since 1956, FCR has been targeted in the superior court's rulings. In PLD 1958, Lahore 853, the first judgment was reported. Chief Justice Cornelius described FCR as obnoxious to all recognized modern principles governing the dispensation of justice.
- iv. The government has been cognizant of the oppressive provisions of FCR. Thus galaxy of reforms was introduced at various times, including;
 - a. 1976: General (Rtd.) Naseerullah Babar’s Report
 - b. 2006: SahibzadaImtiaz Ahmad’s Report
 - c. 2006: FATA Sustainable Development Plan 2006-2015
 - d. 2008: Justice (Rtd.) Mian Mohammad Ajmal Report on Reforms in FCR
 - e. 2008: Mainstreaming FATA, Report by the Shaheed Bhutto Foundation
 - f. 2011: Extension of Political Parties Order 2002 to FATA and FCR Reforms
 - g. 2013: Political Parties Joint Committee on FATA Reforms
 - h. 2015: Ministry of SAFRON’s Recommendations
 - i. 2015: FATA Reforms Commission
 - j. 2016: FATA Reforms Committee.
- v. In the above reports, one can find a clue why reforms could not materialize. Point to ponder is where we are making mistakes. Is the government serious in implementing what it has found needs reforms? There are no two opinions that people wanted the old oppressive laws to be abolished. What is replaced now needs the full support of the government.
- vi. The tribal region's laws varied from the rest of the country. The Peshawar High Court could not remain indifferent to it. Thus, in the case of Ali Afridi, it declared the FATA Interim Regulation ultra vires the Constitution. The Supreme Court upheld this judgment. What followed, however, was an abnormal situation. People were behind the

bar and they had no forum to seek redressal of their grievance. In this state of emergency, we came up with the following plans;



- vii. The complicated process began for us in a matter of days. We asked for the necessary judges and staff from the government. We were able to receive approval for 7 District Judges posts, 7 Senior Civil Judges posts, 24 Civil Judges posts, and 14 Additional District Judges posts after much effort. We began the promotion process and finished it with the utmost pace. Meanwhile, the Public service commission also recruited a batch of civil judges. KPJA played its role by designing a crash course and also embarked on an exercise of compiling Rewaj. The order in which different notifications were issued at the relevant time are as follows;

29.1.2019 notification Sessions Divisions

29.1.2019 Law, Parliamentary & Human Right Department notification of Civil District, sub divisions

13.2.2109 Budget allocation made to Ex Fata Courts by PHC.

16.2.2019 PHC directed KPJA compilation of Rewaj by 31.5.2019

PHC started gathering pendency data from the DCs of NMDs. 26.2.2019 Cell established at High Court collection sorting and organizing record of ex-Fata Courts

16.2.2019 PHC asked Government for focal person Steering Committee tasked with coordination.

21.2.2019 Mr. Basharat Ahmad Deputy Secretary Law & Order Merged Areas nominated as focal person.

11.3.2019 police focal person Mr. Javed Ahmad Choghtai SP Courts and Litigation.

27.2.2019 PHC asked the Government makeshift arrangements in the adjoining Districts.

Khyber Federal Judicial Complex Hayatabad, BajaurTemergaraDir Lower, KurramThallHangu, SW Tank, OrakzaiHangu, MohmandShabqadarCharsadda, NW Bannu

- viii. PHC also established cell for getting cases from erstwhile political authorities for sorting and organizing. It also asked the government for nomination for the steering committee for liaison with all stakeholders. We posted the judicial officers on 25 Feb 2019 and finalized the entrustment of cases by 27 March 2019.
- ix. All credit goes to Honorable the Chief justice. Unlike merger in swat, Honorable the Chief Justice himself taking up the matter in a reference formulated guidelines for pending cases.
- x. From the former regime, we received 3780 cases. In a short span of 4 months, the figure went to 5147. It indicates people's confidence in the new system. Relevant to note that during this time, 1114 cases were resolved, while judges lacked adequate facilities.
- xi. I will refer to the recommendation of Sarytaj Aziz Committee Report and Special Report of United States Institute of Peace to show as to where lies the problem and what needs to be focused in future;
- xii. "The cause of failure of most such reforms could perhaps be found in the absence of an implementation mechanism, as an integral part of the recommendations for reforming FATA." (Report of the Committee on FATA Reforms 2016)
- xiii. "A primary concern, as with all previous FATA reform efforts, is a lack of implementation.
- xiv. (Special Report 421 March 2018 © 2018 by the United States Institute of Peace.)

- xv. Finally I will refer to the opinion of Rahimullah Yousafzayee acclaimed journalist on the recent situation;
- xvi. Peshawar High Court has already been extended to the tribal region and the latter has even started hearing appeals against the verdicts of Fata's previous political agents, building the new judicial system in the tribal districts has become a top priority. The Peshawar High Court has come up with a plan costing Rs. 14 billion for building courthouses, setting up district and sessions courts and hiring staff. The estimated time of putting in place the judicial system was mentioned as 10 to 14 months. The implementation of this plan could encounter resistance, face hurdles and require timely availability of funds"

Question & Answer

Question	Answer
The speaker has shared details of disposal figures of district judiciary. Figures of disposal from High Court and Anti-Terrorism Courts could also have been shared which I believe must be phenomenal.	FATA Cell at the High Court is looking after the cases pertaining to FATA. It has all the data available and complete figures will be published on the end of performance year (Registrar PHC).

4.2.2 Views of Mr. Saleem Safi, Senior Journalist (Focal person for Media):

- i. I was emotionally attached to and actively involved with the cause of the merger. When the Sartaj Aziz Committee contemplated the challenges of integration, the establishment of the judiciary was considered the primary concern. I, therefore, congratulate the judiciary on its achievements and must appreciate it further for the coordination of stakeholders of the justice system.
- ii. I have come here to understand your problems so that the same is projected in the media.
- iii. The media has been unable to play a proper role for various reasons. The region is a conflict zone, and it is a worldwide phenomenon that the media is unable to cover

incidents in such areas openly. Unfortunately, the media has also become market-oriented.

- iv. I will make efforts to ensure sufficient media attention is given to the area's future issues. However, one should not underestimate the role of local media in this regard.

Question & Answer

Question	Answer
We are satisfied with the judges ' performance, and so are the area's people. However, it is surprising to see that there are palaces for 14-grade Tehsildars whereas judicial officers live in a room. Isn't it against the prestige of the judiciary? There are not one but several courts functioning in the area, such as the deputy commissioner's court and assistant commissioner. Even the police are also in the race and forcing the people for Jirga's decision. Is it not against the Supreme Court's verdict? (President District Bar Bunair)	It is unbearable for civilized societies to think about the circumstance you described. It depends on what the government's priorities are. Over time, though, things are going to change. The old norms will change as tehsildar will have to appear in the court of law.
You hosted several programs on the FATA merger. We request you to invite us to a special program. We have got a lot to tell you about the actual situation. (Sanaullah Orakzai Advocate)	There has been a lot of change in the situation and a perceivable difference. It was previously not known who were the leaders of this area. Now the bar can take the lead as well as the civil society organizations. I commit that I will shortly convene the program and will invite you.

If you invite us for the program we will give you first-hand information. (President district bar south Waziristan)	I will convene the program shortly.
The media reports indicate the allocation of funds in lacs for the region. Whatever the reality in it, it is with limited resources, we have have been able to establish the institution. And yet our allied departments are abysmally short of resources. Is the government in general or bureaucracy to blame? What do you think? (Asad Hameed Bangash, District & Session Judge, Mohmand)	I compare it to the time of Pakistan's emergence when resources were not available. The difference, though, is that we had Quaid's political leadership at the time. A commitment was made to allocate funds from a divisible pool of 3 percent. No one is interested in calling a meeting of the NFC Award. Other departments can establish liaison with the media, but the judiciary cannot do so because of its peculiar position. Therefore it will be our efforts to highlight the issues faced by the judiciary.
Is the government serious about solving the problems of people? We may be asked to remain silent about resources that are lacking. But how can we remain silent about the rights of people? To date, Bajaur has had 100 criminal cases registered, 50 of which relate to murder. While this is the proportion of incidents, investigating officers are unable to write case diaries	Bajaur and Kuram people were comparatively more aware of their rights than other tribal regions. If the situation in these places is so bad, the deprivation of people from other districts can be easily guessed.

themselves and have hired different persons for this. (District Public Prosecutor Bajaur)	
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4.2.3 Views of Mr. Mehmood Jan, Senior Journalist (Focal person for Media):

- i. I have 23 years of media reporting experience in this area. During this period, I have seen society undergoing several changes. I will break such a transition period into post-independence 9/11 and post-9/11.
- ii. Until the year 2004, we encountered no resistance in reporting incidents from this area. Afterward, we saw a drastic change. Thus we saw the indigenous justice system uprooted, the Maliks killed and the media personnel targeted. The whole situation has left behind yellow journalism.
- iii. People have faith in the Jirga System. I would, therefore, request courts to allow it to function until the transition period is over and institutions get themselves established.
- iv. People do not understand court decisions. This problem needs to be sorted by the courts.

4.2.4 Views of Dr. Shakeel Azam Awan, Dean Faculty, KPJA:

- i. Court decisions after March 2019 are public property and open to public scrutiny.
- ii. The Supreme Court in one of its decision emphasized judgment writing in Urdu. It is recommended that judges follow this verdict.
- iii. Jirga cannot be held in criminal cases because it violates the Supreme Court's ruling. It is permissible, however, in civil cases.
- iv. After the 25th constitutional amendment, all laws in the settled area extended to newly formed districts, including the Arbitration Act.
- v. Except for Kuram, the area's Rewaj was not compiled for 100 years. The Academy compiled the Rewaj for the whole region in a short time. The draft Rewaj is now pending the High Court's consideration.

- vi. Looking at the concerns of the people, the High Court took the initiative for rule-making under 89-A CPC. Rules have been drafted and the High Court is considering them. A significant aspect of the rules is the establishment of mediation centers. However, if the government does not cooperate in establishing Special Courts such as Anti-Terrorism, Narcotics, Service Tribunal, what else can be done?. The region remained under the grip of terrorism, oddly enough, and it is also notorious for drug trafficking, yet the government is least concerned about the establishment of special courts.
- vii. We will try to develop SOPS for media coordination and court reporting.

4.2.4 Views of Mr. Mansoor Qaiser, Additional Secretary, Home Department, Gov of KP:

- i. Two news laws, namely the Khasadar Force Maintenance Regulation and Service Protection Act and the KPK Levies Force Transition Act, were enacted for the induction of levies and Khasadar in the police.
- ii. DPO was posted in all districts.
- iii. Twenty-five police stations have been set up.
- iv. Most senior police officers are assigned the task of training.
- v. Salaries of levies and khasadar have been regularized.
- vi. Elections were held in the Provincial Assembly's 16 seats.
- vii. Following the decision of the supreme court that no crime should go unreported, specific instructions were given to the police.
- viii. Planning and Development Wing is looking for special courts to be set up.
- ix. For police infrastructure, PC1 of Rs 9380 million will be approved shortly.
- x. 238 Prison Officers ' posts have been created.
- xi. Political lock-ups have been converted into sub-prisons.
- xii. Twenty-one seats of probation and parole officers have been created.
- xiii. Rs 4848 million has been allocated for District Public Safety Commissions.
- xiv. The settlement of land records has been planned. Originally seven tehsils are chosen and the GIS system will be used for the first time.

Question & Answer

Question	Answer
Has khasadar and levies force been merged in the police or they retain their special status?. Would it not have been appropriate to post police officers domiciled from tribal territory? (Mr. Asghar Mehsood, Judicial Magistrate)	They will be working under DPO and subject to the Police Act. Suggestions for posting police officers of tribal domicile will be conveyed to the police department.
We still have problems of handing over and taking over charge of the jail, which is being resisted by levies. (Superintendent sub-jail Jamrud)	Let the problem be reported in writing to the Home department for necessary action.

4.3 Session 3

4.3.1 The last session was about Group Discussion and feedback from the participants. There were three groups constituted. Group details are reflected in Annex A. To facilitate Group Discussion Questions had been formulated by the Faculty, KPJA. Such questions and Tri-group recommendations are reproduced verbatim; Group A:

4.4 Questions Formulated by Faculty of KPJA

4.4.1 Questions for Group A

1. What do you think are the major problems being faced by the Judiciary in terms of: disposal of cases; adjudication of cases keeping in view the customs and norms of locality; resource constraints, i.e., residences, court buildings, vehicles etc; human resource employment; legislative measures (mediation etc); adjustments with other stakeholders of justice system, namely:- police, prosecution, government pleaders,

prison department, lawyers and probation officers, to come up to the expectation of the people?

2. What are the immediate steps needed to be taken to restore the confidence of the public in the system?
3. What should be the long term measures to be adopted by the Judiciary ?
4. What do you think the major problems being faced by media in: creating awareness about the new system, giving due coverage to the problems of these areas, highlighting the problems being faced by the people in MNDs in relation to enforcement of their legal rights, and vindication of grievances against the functionaries; and reaching out the far-flung areas for enlightening them about the system and highlighting their genuine problems?
5. What are the immediate steps needed to be taken to strengthen the system for bringing these areas at par with other parts of KP?
6. What should be the long term measures to be adopted by the Media for reaping the fruit of the 25th Constitutional Amendment?
7. What do you think the major problems being faced by the government regarding: raising of infrastructure: offices, residences, court buildings; creation of posts, utilization of budget/funds allocated for these areas; formula respecting distribution of budget/funds amongst the various departments of government; establishing police stations, prisons, police lines, offices of PPs, GPs and probation officers and settlement of lands?
8. What are the immediate steps needed to be taken by the government to bring NMDs at par with rest of the Province?
9. What should be the long term measures to be adopted by the government to bring these areas at par with rest of Khyber Pakhtunkhwa so that people are enabled to reap the fruit of the 25th Constitutional Amendment?

10. Confidence Building Measures (CBMS)
11. SOPs for institutional coordination.

4.4.2 Questions for Group B

1. What do you think are the major problems being faced by the Judiciary in terms of: disposal of cases; adjudication of cases keeping in view the customs and norms of locality; resource constraints, i.e., residences, court buildings, vehicles etc; human resource employment; legislative measures (mediation etc); adjustments with other stakeholders of justice system, namely:- police, prosecution, government pleaders, prison department, lawyers and probation officers, to come up to the expectation of the people?
2. What are the immediate steps needed to be taken to restore the confidence of the public in the system?
3. What should be the long term measures to be adopted by the Judiciary ?
4. What do you think the major problems being faced by media in: creating awareness about the new system, giving due coverage to the problems of these areas, highlighting the problems being faced by the people in MNDs in relation to enforcement of their legal rights, and vindication of grievances against the functionaries; and reaching out the far-flung areas for enlightening them about the system and highlighting their genuine problems?
5. What are the immediate steps needed to be taken to strengthen the system for bringing these areas at par with other parts of KP?
6. What should be the long term measures to be adopted by the Media for reaping the fruit of the 25th Constitutional Amendment?
7. What do you think the major problems being faced by the government regarding: raising of infrastructure: offices, residences, court buildings; creation of posts, utilization of budget/funds allocated for these areas; formula respecting distribution of budget/funds amongst the various departments of government; establishing police stations, prisons, police lines, offices of PPs, GPs and probation officers and settlement of lands?
8. What are the immediate steps needed to be taken by the government to bring NMDs at par with rest of the Province?
9. What should be the long term measures to be adopted by the government to bring these areas at par with rest of Khyber Pakhtunkhwa so that people are enabled to reap the fruit of the 25th Constitutional Amendment?

10. AWARENESS STRATEGIES.
11. Significance of Special Courts.

4.4.3 Questions for Group C

1. What do you think are the major problems being faced by the Judiciary in terms of: disposal of cases; adjudication of cases keeping in view the customs and norms of locality; resource constraints, i.e., residences, court buildings, vehicles etc; human resource employment; legislative measures (mediation etc); adjustments with other stakeholders of justice system, namely:- police, prosecution, government pleaders, prison department, lawyers and probation officers, to come up to the expectation of the people?
2. What are the immediate steps needed to be taken to restore the confidence of the public in the system?
3. What should be the long term measures to be adopted by the Judiciary ?
4. What do you think the major problems being faced by media in: creating awareness about the new system, giving due coverage to the problems of these areas, highlighting the problems being faced by the people in MNDs in relation to enforcement of their legal rights, and vindication of grievances against the functionaries; and reaching out the far-flung areas for enlightening them about the system and highlighting their genuine problems?
5. What are the immediate steps needed to be taken to strengthen the system for bringing these areas at par with other parts of KP?
6. What should be the long term measures to be adopted by the Media for reaping the fruit of the 25th Constitutional Amendment?
7. What do you think the major problems being faced by the government regarding: raising of infrastructure: offices, residences, court buildings; creation of posts, utilization of budget/funds allocated for these areas; formula respecting distribution of budget/funds amongst the various departments of government; establishing police stations, prisons, police lines, offices of PPs, GPs and probation officers and settlement of lands?
8. What are the immediate steps needed to be taken by the government to bring NMDs at par with rest of the Province?
9. What should be the long term measures to be adopted by the government to bring these areas at par with rest of Khyber Pakhtunkhwa so that people are enabled to reap the fruit of the 25th Constitutional Amendment?

10. Institutional arrangements for grievance redressal

5.4 Recommendations

5.4.1 Group A

1. In consequence of 25th constitutional Amendment seven agencies and 6 FR, were merged in KP. In the light of the indigent of PHD, 28 courts were established in those districts, which started working initially in the joining district in the month of March 2019.
2. The main problem faced was allocation of funds, recruitments and then shifting of court to the Heard Quartered concerned.
3. Most of the problems were overcome tackled with collective efforts of the Judiciary and now the courts are effectively adverting Justice. Answer to Q1
4. Inadequate staff as must of the staff yet to be recruited through promotion and the staff so recruited yet to be trained in their allocated fields. The district administration through provided certain building with their choice but inadequate and center with the needs of the judges, staff, procetion and other all deptt jails needs special attention. Bar room, record room, store rooms and hostel for the staff are required to accommodate the stake holders
5. Ans 2) the govt of KP has to act fast for the reason that delay in establishing the allied offices might hamper the speed of the judicial function. The main problem of police force, levy and khasadars has to be resolved immediately and once for all. Basic Amenities to the General public to the local inhabitants and especially litigant's i.e water, sanitation, electricity availability of commodities at less price may boost the confidence of public.
6. Ans 3 Long term measure by the judiciary in order to bring prosperity and acceptability of judiciary in the area it is necessary that judicial system in its true spirit may be introduced.

7. All the main courts like juvenile, antinarcotics, consumer, labour, courts, ATC be introduced.
8. Establishment of judicial complex creation of new posts would certainly be the steps to be taken the long run..
9. During the troubled time most of the media personal have left the Area. The sanity risk still remains. There are no media offices including press or electronic media. Internet facility has been introduced but with weak signals.
10. Ans 5) Improved infra structure education, health facilities, road.
11. Ans 6) the youth should come forward and establish media groups
12. Ans 7. The government is showing lack of determination to resolve the problems at the instant and has created hype of non-available/scarcity of funds, which are otherwise available for their less important project.
13. Ans 8) Funds should be released immediately to all the depts. and unnecessary hurdles have to be removed. Jobs to the deserving and to strengthen all the allied depts.
14. Ans 9) The govt should take steps for NFC award so that NMDS may be provided the basic fund.
 - a. police system should be improved.
 - b. Fundamental rights protection
 - c. Quick services delivery.
15. A joint committee of all stake main stake holders at district level be formed.
16. The reports be published.
17. Follow-up of decisions for implementation..

5.4.2 Group B

1. Q1: The major problem faced by judiciary is the backlog of more than 1.7 million of cases.
2. Moreover, there are large no. of vacancies of presiding officers and staff of special courts.
3. Inadequate infrastructure especially in the NMD is very huge problem and extra infrastructure and human resource is required.
4. The police should be given special training in investigation of international standard; beside there should be a uniform law in whole Pakistan.

5. The prosecution department should be made independent without any govt control and no-challan should be put in the court first okayed by the prosecutor.
6. To reduce the prison population the trial should be decided expeditiously, adjournments should not be ordinarily given and it should be the duty of prosecution to produce each and every witness on time.
7. The court processes should be served through modern means such as emails, SMS.
8. The Human resources capacity of probation officers increased with career progression like other cadres.
9. 2 : Immediate steps
10. The various law reforms reports submitted from time to time should thoroughly be reexamined so that all steps required for expeditious disposal of cases could be taken. All the law reforms proposals and the decisions of supreme & high courts, regarding the curtailing of delay in cases should also be studied and a report submitted to the high court in this regard. An honorable Judge of the High Court may be appointed by the Honorable CJ PHC for holding regular meetings with the judicial officers appointed in the NMD so that all the problems may resolved. Along with the representatives of Home, Finance and Police Departments.
11. 3: Long term measure:
12. Immediately filling of all vacancies both judicial officers and staff, full automation of courts from civil judge to supreme court. Refresher training courses of court staff. Periodic liaison with the govt and other justice sector stake holder, so that the problems could be addressed when they arise.
13. 4: What do you think major problem by Media
14. The High courts may appoint PRO for the interaction with the media and interaction with government functionaries.
15. 5: Immediate steps for KP
16. Detailed reply has already given
17. 6: Long term measure
18. The media should inform the general public that all the laws of Pakistan in KPK are applicable to NMD's.
19. And all forums under FCR are abolished. And they should also inform that all procedural laws shall had retrospectively addressed in relation to all pending cases. The laws and customs

prevailing before article 25 shall have the same effect in NMD's. The Jirga will have no legal footing.

20. 7: Major problems faced by the Govt.

21. The Govt. appears to be not organized in tackling the issues in given timeline and should on war footing, addressed the issues faced by judiciary and other justice sector departments.

22. 8: Immediate Steps

23. The Govt. should allocate maximum resources in order to bring to other parts of NMD's.

24. Detailed publicity should be given on print and electronic media. Interschool and intercollege debate should be organized, special TV and programs should be aired.

25. 10: The special courts like anti-terrorism, consumers courts, customs, labor, Nab courts , special secretariat for NMD's , circuit bench for NMD's, additional registrar for NMD's should be immediately setup, keeping in view the sensitive nature in Erstwhile FATA.

5.4.3 Group C

1. Prior to promulgation of 25th constitutional amendments, the cases registered under FCR, are being adjudicated by the learned Judicial Officer in the light of judgment passed in suo-moto case number 1 of 2019, by HCJ PHC, whereas, the decided cases in which conviction of more than 4 years was awarded have been sent to High Court for adjudication. That's where the problem is to conferment of jurisdiction has been resolved by the judgment referred supra. However, the major problems being faced as to residence of JOs, Court buildings, its relates to primarily with the Government as the funds are not been released. In order to overcome the difficulty for provisions of the funds the matter is required to be taken on judicial side on the reference which is to be made by registrar PHC. Or, the registrar may appoint a focal person who will hold meetings with the Govt. functionaries time to time for provisions of the requisite funds and submit reports periodically which may be laid before the HCJ for information and further proper actions.

2. (Question 2 and 4), Rule of law means that all laws and rules are applicable equally to everybody and no one is above the law. Considering this principle and to treat the residents of NMDs at par with other citizens of the country, they are also entitled to

inexpensive justice at their doorsteps. The Presiding officer and the paralegal staff are required to remain polite with the litigants who made recourse to the newly courts.

3. in addition to establish infrastructure of judicial complex in the division and sub divisions of the area, the PHC is required to frame rules as to jurisdiction of the judicial officers as to jurisdiction, levy of court fee limitation etc. in the cases related to civil rights as well as for the cases criminal in nature.
4. The answer of question 4 and 6 with regard to media persons, it is proposed that a focal person may be deputed to liaison with the media personnel. He may also be permitted to obtain judgments from the judicial officers posted in NMDs delivered on the issues of public importance enabling him to get it highlighted in the print as well as electronic media for awareness of public at large.

6.0 Participants

6.1 Table below, describes in detail, the names of participants.

S.No	Name	Designation	Department
1.	Mr. Asad Hameed Khan	District & Sessions Judge	Judiciary
2.	Mr. Mamriz KhanKhalil	District & Sessions Judge	Judiciary
3.	Mr. Kalim Arshad Khan	District & Sessions Judge	Judiciary
4.	Mr. Asif Rashid	Additional District & Sessions Judge	Judiciary
5.	Mr. Ihtesham ul Haq Danishmand Khan	Additional District & Sessions Judge	Judiciary
6.	Mr. Rashid Ullah Kundi	Additional District & Sessions Judge	Judiciary
7.	Mr. Ubaidullah	Senior Civil Judge	Judiciary
8.	Mr. Iftekhar Ahmad	Senior Civil Judge	Judiciary
9.	Mr. Muhammad Ayaz	Senior Civil Judge	Judiciary

10.	Mr. Muhammad Asghar	Civil JudgeJ	Judiciary
11.	Mr. Jawad Khan	Joint Secretary	LJCP
12.	Mr. Muhammad Arif Khan	Deputy Director	Prison
13.	Mr. Najam Abbasi	SP NSR Prison	Prison
14.	Mr. Riaz Muhammad Khan	superintendent Sub Jail	Prison
15.	Syed Mohy-ud-Din shah	Senior Assistant superintendent Jail	Prison
16.	Mr. Aurang Zeb Khan	superintendent Jail	Prison
17.	Mr. Fayyaz Ahmad	Deputy Superintendent Jail	
18.	Mian Aziz Ahmad	DPP	Prosecution
19.	Mr. Zafar Ali	DPP	Prosecution
20.	Mr. Zia ul Haq	DPP	Prosecution
21.	Mr. Sharif Khan	Probation Officer	Probation
22.	Mr. Nasir Ahmad	Advocate	Bajour
23.	Mr. Sherpao	Advocate	S.W
24.	Mr. Mansoor Ahmad	Advocate	S.W
25.	Mr. Muhammad Sadiq	Advocate	Bar Council
26.	Mr. Sanaullah Orakzai	Advocate	District Bar Orakzai
27.	Mr. Gul Rehman Mohmand	Advocate	Mohmand
28.	Mr. Ghulam Rasool Samoon	Registrar	Sindh High Court
29.	Mr. Sarfaraz Akhter	District & Sessions Judge	Lahore High Court
30.	Mr. Ijaz Ahmad	Additional Registrar	Islamabad

			High Court
31.	Mr. Mansoor Qaiser	Additional Secretary Home	Home KP
32.	Mr. Khalid Mehmood	Assistant Registrar	AJK
33.	Mr. Abdul Qayyum Lehri	District & Sessions Judge (Inspection)	Balochistan High Court
34.	S. Rafique	Advisor	UNDP
35.	Mr. Tauheed Khan	Addl: SP	

7.0 Seminar in Pictorial



