

THE MECHANISM OF TRIBAL JIRGA SYSTEM: CHALLENGES AND PROSPECTS

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Abstract

In Pukhtoon culture, the Jirga system is the oldest and well-established institution for conflict resolution. However, to date, its history, constitution and actions mostly remain verbal. It is one of the institutions that act as a strong power behind the entire lives of the tribal people individually and publically. Jirga system is practiced as the best tool for conflict resolution and satisfies the aspirations of the people. The mechanism of Jirga is very simple and straightforward, it proceeded in the local language according to custom and tradition of the locality. It provides swift justice and accessible as well as affordable to everyone. However, despite some good results, the Jirga system is not without problems and serious challenges. The fingers pointed out on it, such as favoritism in making and implementing the decision. The procedure of Jirga is simple; it is traditional and cost-effective. It follows local language, customs, and traditions, thus creates ownership in the local population.

Keywords: Jirga Members, Proceeding, Decision, Appeal, Implementation, Challenges

Introduction

Conflict resolution in the present time is a burning issue; customarily individuals, social groups and societies have disputed and competed against one another over property, wealth, land, money, political superiority, and ideology. Local practitioners do the most important and growing contributions to conflict resolution and peacebuilding.¹ The *Jirga* system of semi-formal, local, traditional courts is universal throughout Pakistan. *Jirga*

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¹Ali Wardak, *Jirga—A traditional mechanism of conflict resolution in Afghanistan*. (Pontypridd, UK: University of Glamorgan, Centre for Criminology, 2003)

is a board of gentleman elders of the collaborative group. They generally appointed with the consent of the parties concerned. Parties may also recommend the selection of a *Jirga* member who is expert and knowledgeable in this regard. The literal meaning of the word *Jirga* is an assembly, which addresses questions between parties. However, it is the crucial and vital component of *Pukhtoon* culture and civilization having its functions, structure and history.² *Jirga* means a position where individuals may express their sentiments and feelings without any threat. In *Pukhtoo* “Jar” means bright tone and “gah” means place or position. In Arabic, the word *jahar* means loud.³

At present, the government of Pakistan has merged the Federally Administered Tribal Areas with Khyber Pakhtunkhwa as the result of the 25th amendment in the constitution of Pakistan on 31 May 2018.⁴ However, in the tribal areas, informal justice is incomplete and contradictory. Furthermore, the *Jirga* supports the people for access to justice. The procedural technicalities are almost inapplicable to the *Jirga* proceedings, and that is why *Jirga* is often better and faster than ordinary litigation. The proceedings of the *Jirga* provide confidentiality. The result or decision may be kept confidential. It is a cheaper option for people and less expensive. The most exciting and best thing in *Jirga* is that parties have the option to choose their adjudicators without any pressure or threats. They have the liberty to opt for adjudicator mutually.⁵ The process and procedure of *Jirga* are not complicated but easier. The decisions are purely based on evidence. Evidence and testimony also required for completing the procedure of the *Jirga*. *Jirga* serves humanity and particularly the tribal people of Pakistan. The functioning of the *Jirga* system is informal because *Jirga* is a mode of alternative dispute resolution.⁶ It also performs the functions of mediation. The role of the mediator is different because he hears both sides and tries to make a consensus of the people and to bring them to the point of agreement. Mediator prefers to bring parties to the point of compromise. However, the *Jirga* conclusion is binding.

The code of conduct also followed in a *Jirga*. However, this code of conduct differs from area to area. Usually, it made according to past practices and experiences. In Pakistan and Afghanistan, this practice followed. *Jirga* is

²M. Baig Badakhshan, *Feroz-ul-lughat, Dictionary of Persian and Urdu Jamia*, (Lahore: Ferozsons Publication, 2004), 9

³M. Ibrahim Atayee, “A Dictionary of the Terminology of the Pukhtoon Tribal Customary Law” (1978, 1272), 119,

⁴ Wasim Amir, President signs KP-Fata merger bill into law,” *Dawn News*, (2018, May 31)

⁵ Sherzaman Taizi, “*Jirga system in tribal life*.” (Peshawar: Area Study Center (Russia, China and Central Asia), University of Peshawar 2007). 4

⁶ Amna Mahmood, Shaukat Ullah, and Shughla Ashfaq. “The evolution of *Jirga* system: A conflict resolution mechanism in FATA.” *Liberal Arts and Social Sciences International Journal (LASSIJ)* 2(1) (2018), 21-28

entirely different from the ordinary Court. The actual authority and power rest with the *Jirga* members who are nominated and selected by parties. In this context, the role of the government representative is also essential. The purpose of his appointment is to maintain a law in order situation. Keeping in view, distinguishing feature and social applicability of the *Jirga* system it realized to explore the working of tribes based judicial system. It works entirely on the principle of equality and impartiality.⁷ The implementation mechanism of the *Jirga* system proved to shelter helpless and needy people. In this research, the tribal *Jirga* system is discussed in its real shape. This informal justice system has a growing contribution to conflict resolution in the absence of the formal justice system. In the present days, the *Jirga* system has some severe challenges to link this institution with international Human rights, national laws and state department.

Data and Method

This research work explains the mechanism of the tribal *Jirga* system and the challenges it faced by a *Jirga* in the present era. The ex-tribal area is consisting of seven Districts (Ex-Tribal Agencies) therefore this study only focuses on Bajaur District. The word mechanism is used in this research for method and procedure of *Jirga* system, that how a *Jirga* is proceeded, such as bringing of issues, selection of *Jirga* members, decisions implementation and appeal. Its working procedure is straightforward and indigenous. This research work followed a historical approach and use qualitative methods to evaluate the procedure of tribal *Jirga*. It examines the relevant literature on the *Jirga* system. The data collected from different sources, such as books, articles, newspapers, reports and different websites related to the *Jirga* system.

An Issue brings in a *Jirga*

There are three ways in which an issue brought before *Jirga* members. These are as follows. In this case, any party to the dispute requests the *Jirga* members to intervene for the resolution of the dispute. Usually, one party approaches *Jirga* members for the solution of the dispute or conflict. The second party comes to know about such a request from other members, and usually, the second party welcomes the news.⁸ It is the method through which issues settled, and the people follow it as a resolution mechanism. Both parties have the right to approach *Jirga* members. If one party denies the decision or proceedings of *Jirga* after the consent, then the whole blame rests on the party who denied it. Parties must answer all queries and

⁷ Maryamghani, Sustainability and the commons narratives and resources, "Jirga" The World's oldest Common (2013), Retrieved from: <https://sustainabilityandthecommons.wordpress.c/2013/10/20/jirga-the-worlds-oldest-common>

⁸ M. Hassan Yousafzai, and Ali Gohar. *Pukhtoon Jirga*, (Peshawar: Just peace International, 2005), 12.

questions. This denial gives an excellent win to the other party who accepts it.⁹ Sometimes both the parties may also approach the *Jirga* when the dispute relates to land, money or small quarrels. For example, in money and land matters, people usually prefer to bring their dispute before *Jirga* members to resolve their issues. It is so because the verdict of *Jirga* members is obligatory on parties and speedy as well. Both the parties would request the *Jirga* for a solution.¹⁰

Sometimes disputes arise between individual, families or tribes in such a way it affects other people. For example, if the parties start a crossfire on one another. The life and prosperity of other people will be in danger. In this condition, the seniors of the community call a *Jirga* and listen to the viewpoint of both parties to arrive at an acceptable solution.¹¹ After approval gained, parties advised stopping their fire. A momentary settlement established, first, which level the argument for auxiliary and additional discussion. The *Jirga* try to take *waak* (authority) from both the parties and solve the dispute.¹²

Selection of *Jirga* Members

The selection of the *Jirga* members varies according to the type of *Jirga*. For *Sarkari Jirgas*, usually, the members are selected from the notable elders or the *Maliks* of the area. In the case of the *Ulushi* or *Qawmi Jirga*, the members usually comprised of elders of the notable families whose social standing and experience with the *Pukhtoon wali*¹³ (the inherited moral and social code of *Pukhtoon* society) entitle them to a place on the council. The size of a *Jirga* varies from one situation to another, based on the nature, significance and sensitivity of the dispute. It might consist of although two members are more and often there are four or six experienced members, fully conversant with the laws of the *Pukhtoon wali*. *Jirga* resolves the disputes efficiently, and the members chose from influential tribes and *khel* (sub-tribe).¹⁴

⁹ Ibid

¹⁰ Naveed Ahmad Shinwari, "Understanding FATA: attitudes towards governance, religion & society in Pakistan's Federally Administered Tribal Areas. Volume IV." (2010).

¹¹ Maryamghani, Sustainability and the commons narratives and resources, "*Jirga*" *The World's oldest Common* (2013), retrieved from: <https://sustainabilityandthecommons.wordpress.c/2013/10/20/jirga-the-worlds-oldest-common>,

¹² Yousafzai and Ali Gohar. *Pukhtoon Jirga*, 20.

¹³ A Pashtun possesses honor (*izzat*); without honor she/he is no longer considered a Pashtun, and is not given the rights, protection, and support of the Pashtun community, Pashtunwali's honor-based society is governed by the concepts of chivalry (or bravery, courage) (*ghayrat* or *nang*), hospitality (*melmastia*), gender boundaries (*pardah* or *namus*) and council (*jirga*).

¹⁴ Ali Shan Shah, and Shahnaz Tariq. "Implications of parallel justice system (Panchayat and *Jirga*) on Society." *People 2* (2013), 200-209

When a conflict arises between two individuals are tribes, the first step is the selection of a *Jirga*. The variety of the *Jirga* members varies from case to case and according to the kind of *Jirga*. According to FCR 1901, the Political Agent or his assistant empowered to nominate *Jirga* members. These members of Sarkari *Jirga* are usually selected from the notable elders or the Malaks and Khans of the area who have a reputation of loyalty to the government.¹⁵

Neutrality is the foremost and significant requirement for *Jirga* members. Usually, parties agreed upon neutral and impartial members in a local *Jirga*. If one party has any serious problem, then the party has the right to nominate a representative who acts on his behalf. Typically, parties choose odd numbers of *Jirga* members who are neutral to facilitate voting. Mutual consent of the parties is necessary. Sometimes parties select different members in the *Jirga* system but usually both the parties mutually consented to the names of the members of the *Jirga*. Those members should be impartial and knowledgeable because they must know relevant laws about the issue. Disputes usually arise when there is an assertion of right from one party and denial from the other party. The parties have the free choice to select *Jirga* members. The code of *Pukhtoon wali* is considered as direction and guideline while taking decisions by *Jirga* members.¹⁶

Members are generally chosen from elders and respectable members of the society called *Speen Girey* (Whitebeard men) in the case of *Ulushi Jirga*. They have known repute for their honesty, intelligence and a solid understanding and knowledge of *Pukhtoon wali* and Shariah. The *Jirga* members are also required to implement their decision. For this purpose, the *Jirga* members must be influential people of the area.¹⁷ If a *Jirga* is called for resolution of a dispute between two individual and parties, they have the right to change or reject a member or members from the *Jirga*. For example, if one of the *Jirga* members is favoring unnecessarily another party, then the first party has the right to change or reject *Jirga* members due to his bias and favoritism. However, there should be a balance in the selection of *Jirga* members. They should be chosen by mutual consent of both parties. It is the duties of *Jirga* members that they should do justice and give a decision according to the custom and tradition of tribal locality.¹⁸ Essential qualification of *Jirga* members includes proven leadership, hospitality, family background, human resources, political influence, practical verbal expression and recognized source of judgment. *Jirga* member should be non-biased and kind-hearted. He should also possess a sound knowledge of the

¹⁵Naveed Ahmad Shinwari, "Understanding FATA: attitudes towards governance, religion & society in Pakistan's Federally Administered Tribal Areas. Volume IV." (2010).

¹⁶Yousafzai and Ali Gohar. *Pukhtoon Jirga*,25.

¹⁷Wardak. *Jirga—A traditional mechanism of conflict resolution*, (2003)

¹⁸Amna, Shaukat, and Shughla. "The evolution of *Jirga* system: 21-28.

law. His moral character and honorable behavioral attributes such as integrity, truthfulness and straightforwardness should be correct.¹⁹

Proceeding of *Jirga*

Jirga proceedings are different as compared to ordinary judicial proceedings. There is a specific procedure for its implementation. People prefer such proceedings because of less technical and easily accessible. It is necessary to explain here that *Jirga* proceedings are completely different from a trial. *Jirga* proceedings are simple and without many formalities. Proceeding of a *Jirga* is as follow:



The proceedings of *Jirga* are carried out in a Masjid, Hujra (Guest House) Daba²⁰ (elevated open place of the village) or under the shade of a huge tree. There is no leading officer and hierarchal position in a *Jirga*. The most experienced and skillful persons carried out the proceeding of *Jirga* after the recitation of the Holy Quran and jointly dua (prayer) for the excellent settlement of the issues.²¹ When an issue is between two individual and two tribes, the *Jirga* held in a Hujra or a Masjid, if the dispute affects the whole society, the *Jirga* carried out under a huge tree or a village Daba. All the people have the right to listen to open discussion and proceedings of the *Jirga*. The *Jirga* system is conducted in two ways.²²

Firstly, In the case of family or individual disputes, the concerned parties themselves appeal to *Jirga*. The second category can be compared

¹⁹Brian R Kerr., "A progressive understanding of Pashtun social structures amidst current conflict in FATA." *Conflict and Peace Studies* 3(4) (2010), 1-12

²⁰ Hujra, Jumat, Daba, Akhter, Ghobal, essential component for a Village, Daba is a Common place of a Village where organized the entire cultural social and also some religious activities.

²¹ Yousafzai and Ali. *Pukhtoon Jirga*, 21.

²² Wardak. *Jirga—A traditional mechanism of conflict resolution*, (2003)

with the *Suo Motu* action of a court, particularly of the Supreme Court of Pakistan. The *Jirga* is organized by volunteers who perform the role of messengers announcing the date, timings and venue in all the villages of the tribe and also provide necessary arrangements for conducting *Jirga*. The *Jirga* participants usually gather around a vast circle resembling a round table conference giving the message that no one is better and superior to the other in the eyes of *Pukhtoon wail*. First, of everything, each party is given time to explain its viewpoint. The expected duration of ordinary *Jirga* is a day or two. For a unique and essential issue, the proceeding of *Jirga* may take weeks and so.²³

The concerned children and vulnerable people participate in their guardians. Because of *Pukhtoon* culture, women cannot sit in a *Jirga* and hence involved through their representatives. The operation of *Jirga* is carried out according to tribal tradition and custom. During the operation of the *Jirga*, maximum participation from both parties is ensured. The crowd is not allowed to participate or interfere in the proceedings of the *Jirga*. Because the crowd is not the *Jirga* members, and they are not allowed to sit in the first circle, politeness, smoothness of the proceeding, and respectability of the *Jirga* is highly ensured during the whole process.²⁴

The traditional process of *Jirga* is very straightforward and simple in its manner. The *Jirga* is comprised of the *Speen Girey* or white-bearded elderly men, and other male members. The '*Speen Girey*' acts as judges and other participants are like jury members. All the parties involved are required to respect the *Jirga* members. If the parties have any reservation, those need to be shared in the pre-mediation process and stage. During the *Jirga* proceedings, all the parties will address the members of the *Jirga* and not the rival parties directly.²⁵

The *Jirga* members have a very well-built authority to prevent parties from talking when it is essential. The *Jirga* members hear and examine the facts and witnesses to find out and elaborate the truth. Following a systematic debate with the parties, *Jirga* members inquire about the matter in controversy in the light of customary, tribal, spiritual and traditional rules and regulations. When inquiries are conducted, then *Jirga* members reach a fair and agreed resolution of the dispute.²⁶ It is a well-established principle that no one should be condemned unheard. Therefore, in the tribal *Jirga*, every party has the right to hear and speak irrespective of his/her status. Usually, if women are involved in a case, then her representative speaks on her behalf. Women are considered respectable and honorable in tribal societies. Their rights are protected and promoted to solve their household problems, as they are a vulnerable class of society.

²³ Taizi. *Jirga system in Tribal Life*, 4

²⁴ Amna, Shaukat, and Shughla. "The evolution of *Jirga* system: 21-28.

²⁵ Yousafzai and Ali. *Pukhtoon Jirga*, 21.

²⁶ *Ibid*

In this process, both parties agree to nominate neutral members with their mutual consent. Sometimes mutual consent is a pre-requisite for the selection of *Jirga* members (if parties agree). Often the neutrality is visible after the decision made by them. Infact, they are always learned and experienced persons of the community. They are the most honorable and knowledgeable persons of the locality.²⁷ People usually choose them because they have confidence in their character, experience and knowledge. The decision of the *Jirga* members is final, and parties accept without any reservation. It is the responsibility of the *Jirga* members that they should be neutral while taking decisions. They should not be a beast against one party. As parties choose them and have confidence in them, they should also prove that they are impartial and authoritative in their decisions, there must not be any doubt regarding their neutrality.²⁸

The weightage of evidence is vital in *Jirga* proceedings. It is different as compared to the ordinary judicial system. The *Jirga* decision and result is based on the general way of life and habitual tribal way followed by people. In fundamental cases, such as murder kidnapping and serious crimes, the *Jirga* takes oath on Holy book. People practice it as it is linked with them in moral terms, and usually, they cannot take false testimony on Holy Book. After such an oath, the difference stands resolved.²⁹ This practice is followed ordinarily in *Pukhtoon* culture and its application is different in areas. The objective is to dispense justice; therefore, *Jirga* members strive hard to achieve this objective. The *Jirga* strives to find a peaceful and good enough clarification to the clash as soon as possible and a device mechanism for its enforcement.³⁰ Sometimes witnesses are examined personally by *Jirga* members, but it is different from cross-examination and examination-in-chief. It is usually asked with a question i-e YES, or NO, it does not involve long stories. The questions asked are short, and witnesses usually answer to the point.

The principle of equality is another unique feature of the tribal *Jirga*. All the members and both the parties are equal in the eyes of *pukhtoon* traditional and customary law. Everyone is equal before the law, and no one is above the law.³¹ *Jirga* members usually consider both parties equal. They never neglect any party. Discrimination based on sex, caste, religion, and language is prohibited under human rights law, (as envisaged in human rights instruments i-e UDHR, ICESCR, ICCPR, CRC); therefore *Jirga* members

²⁷ Abdul Qadir Mushtaq, Umer Yaqoob, and Muhammad Usman Javaid. "Role of jirga in Pakhtoon society an analysis with special reference to justice dispensation." *Journal of Punjab University Historical Society (JPUHS)* 29(2) (2016), 11-19

²⁸Shinwari, Naveed Ahmad. "*Understanding FATA*, (2010)

²⁹Amna, Shaukat, and Shughla. "*The evolution of Jirga system*: 21-28.

³⁰Wardak. *Jirga—A traditional mechanism of conflict resolution*, (2003)

³¹Bernt Glatzer, "The Pashtun Tribal System, in G. Pfeffer & DK Behera (eds.): *Concept of Tribal Society, Contemporary Society: Tribal Studies, Vol 5*." (2002): 5.

are not allowed to discriminate parties. They are supposed to treat parties equally. No one is superior to others. All the members sit in a circle without a keeper. There is no superior position for any *Jirga* member all are treated equally.³²

The disputant is also treated; equally, no one is superior. The principle of equality is accepted universally. If we look into the international human rights instruments, we found that the human rights instrument speaks about this issue. For example, The Universal Declaration of Human Rights (UDHR) is an international document adopted by the UN General Assembly on 10 December 1948 in Paris. The Declaration arose directly from the experience of World War II. It represents the first global expression of rights to which all human beings are inherently equally entitled. Article 10 of UDHR states that³³. “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and any criminal charge against.”³³

The Decision of the *Jirga*

The decision is the most crucial part of *Jirga* proceedings. After hearing both the parties and in the light of the evidence, the *Jirga* officially announces its decision. *Jirga* members give their verdict in the light of available evidence and which is clear. The decision is based on *Pukhtoon wali*, local traditions and fair play.³⁴ Wealth, Social status and political power of any party cannot influence the decision of *Jirga* in any case. In case of sensitive matters like murder, kidnap etc. a Quranic oath is taken which is necessary to prove one virtue, as religion is the highest authority in *Pukhtoon* society. The role of Malaks and Khans of the locality does not influence *Jirga* decision.

Jirga decision is binding on parties because parties have mutually agreed upon *Jirga* members. If there is any clerical mistake in the decision, then *Jirga* members have the right to modify it.³⁵ It is necessary to mention here that the scope of appeal is highly limited in the *Jirga* system. It is different from the judgment as in an ordinary Court of law. Usually, *Jirga* members call people to group together and then announce their decision publically.³⁶ The decision is based on the consensus of the majority members of the *Jirga*. The *Jirga* members ask the related parties before it announces

³²Taizi. *Jirga system in Tribal Life*, 5

³³Universal Declaration of Human Rights (UDHR), Article (10).

³⁴Brian R. Kerr, "A progressive understanding of Pashtun social structures amidst current conflict in FATA.1-12

³⁵Wardak. *Jirga—A traditional mechanism of conflict resolution*, (2003).

³⁶Taizi. *Jirga system in Tribal Life*, 6

its decision to the public. The decision of *Jirga* becomes an obligation, and both parties have to respect the *Jirga* decision.³⁷

As mentioned above that the decision of the *Jirga* is the most critical part. However, it is classified into two types which are as follows. The decisions are based on the right (*Haq*) and authority (*Waak*).

In the case of *Haq*, parties are called to assert their arguments before concluding *Jirga* proceedings. *Jirga* gives the right to the parties to challenge the decision of the *Jirga* even. If one of the parties has any objection, then the party has the right to show past judgments and rules laid down in previous decisions? *Jirga* members may decide the matter in the light of established rules and precedents. Parties may give application to challenge the neutrality and impartiality of the *Jirga* member. In the case of *Haq*, the trailing party may apply for another *Jirga* to review the decision. After reviewing the decision on given is final and cannot be challenged in any context.³⁸

Parties usually have confidence and trust in *Jirga* members; they never expect partiality from them. *Jirga* members decide a matter of the parties under the prevailing customs and traditions. The decision is binding on parties, and the scope of appeal is highlighting limited in *Jirga*.³⁹ The Members of the *Jirga* take *waak* in a written form with some massive guarantee of cash a vast piece of land and also some weapons. This practice is mostly the same in the case of *waak* in Bajaur, Muhamand, Khayber, Kurram, Orakzai, and North and South Waziristan Agencies. All these have the same tribal customs and tradition.

Right of Appeal in a *Jirga* System

The *Jirga* system does not give the right to either party of appealing against the decision of *Jirga*. The unsatisfied party can appeal based on precedents and rules called *Narkh* (precedents and rules) and have the right to reject the decision of the *Jirga* Council. The *Jirga* council may face difficulty in revising its decision in case when different tribes have different *Narkhs* (precedents and rules) on the same issue. In that case, the appealing party can call for another *Jirga*.⁴⁰ The scope of appeal is highly limited, but it is allowed in a few cases. *Jirga* never completely prohibits

³⁷Maryamghani, Sustainability and the commons narratives and resources, “*Jirga*” *The World’s oldest Common* (2013). Retrieved from: <https://sustainabilityandthecommons.wordpress.c/2013/10/20/jirga-the-world’s-oldest-common>,

³⁸ Christian and Marjana Dennys, *The Jirga: justice and conflict transformation, A Report of Community Appraisal and Motivation Programme (CAMP)*, (CAMP House 217, Street 39, F-11/3, Islamabad and Safer world in Pakistan, 2011),

³⁹Taizi. *Jirga system in Tribal Life*, 5

⁴⁰ Ali Gohar, *Indigenous Institutions for Decision-Making in Pakistan, Source: (-0001)*. Heinrich Boll Foundation, 2008). Retrieved from: [https:// www. Justicereparatrice.org/www.Restorativejustice.org/articlesdb/.../7660](https://www.Justicereparatrice.org/www.Restorativejustice.org/articlesdb/.../7660), 25/12/2015

appeal. *Jirga* gives the right to appeal to both the parties in Haq cases. If any party is not satisfied, they have the right to appeal for review, to carry an additional *Jirga* to reconsider the conflict. If one member of the *Jirga* is not satisfied with the decision, then he may object to it, but argumentation should be strong. There should be a sound reason behind it. It should not only be based on bias or impartiality. If the reason given is genuine and original, *Jirga* members may at the request of the party consider such objection. If a decision is given thrice, it becomes the last and final.⁴¹

The implementation process of *Jirga* is not technical, but it is speedy and comfortable as compared to the ordinary judicial system. Once the *Jirga* has implemented the decision, both the parties, have no right to appeal. Both the parties give *waak* (authority) to *Jirga* members. The *Jirga* decides for the betterment of both parties. The satisfaction and betterment of the public at large are taken into account to do justice. Authority rests with the *Jirga* members. There is an instrument of authority on which *Jirga* members give their decision. It is different from the award as in arbitration. The authority has a binding force, and it becomes a precedent for other persons of the *Jirga*.⁴² *Jirga* approaches the parties concerned. Both the parties have to abide by the decision and appeal is limited. The decision made by the *Jirga* is so vital that it is implemented by force within the tribal areas. The elders and respectable persons of the locality also help *Jirga* members to implement *Jirga* decision. In this type of cases, *Jirga* follows Shariah or local custom or tradition of the *khel* (sub-tribe) or families and decide on a fair trial acceptable to both parties. Usually, the decisions of the *Jirga* are according to Islamic law.

Implementation of the Decision

Mostly, *Jirga* members announce the decision publically, but before the announcement, they may take approval from the parties. As compared to ordinary proceedings and execution, the *Jirga* implementation is comfortable and not too much longer. Implementation of *Jirga* is easy because parties have asserted on *Jirga* members. After the pronouncement, the decision becomes final, and parties are supposed to respect the decision and each other. If any party objects to it, then the implementation may be delayed, but after his satisfaction, the decision becomes binding on parties. The implementation does not involve lengthy procedures and technicalities. It may be implemented on the same day on which a decision is given.⁴³

In terms of execution and implementation of *Jirga* judgment, *Jirga* members have the right to compel parties to implement and enforce *Jirga* through sanctions. Sanctions may include the involvement of any other

⁴¹Yousafzai and Ali. *Pukhtoon Jirga*, 21

⁴²Taizi. *Jirga system in Tribal Life*, 7

⁴³ Mushtaq, Qadir, Yaqoob, and Usman Javaid. "Role of Jirga in Pukhtoon Society (2016), 11-19

person. However, *Jirga* members have authority over sanctions. *Jirga* may select one person or group of people. The punishments are in the shape of compensation and damages. It includes money payments, fine, custody, apology or retaliation. These punishments become precedent and symbol for others, and in this way, the ratio of crimes is controlled in tribal areas.⁴⁴ The group of the elders of tribal people implements and enforce the decision of the *Jirga* members. Though *Jirga* has not any enforcement agency, but as a custom, respectable and honored persons enforce it. These are *Qawmi Lashkar* in Bajaur and Muhamand, *Salwaikhtee (40)* in Waziristan, the *Lashkar* in Afridi areas, and the *Rapakian* in Kurram Agency. Typically, this body is comprised of about forty members in Waziristan, and a different size in different Agencies. It depends on the existing situation and the nature of the case.

The *Pukhtoon Jirga* wholly enjoys the role of Judiciary, Executive and Legislature. In case if any party fails to respect the decision of *Jirga* called "*Makh Arawal*" meaning (turning of the face) then the *Jirga* council has the right to impose its judgment by any means. The disobeying of the decision of *Jirga*, the protestor party may lose the protection right ensured by the *Jirga* and may be killed by his opponents.⁴⁵

Challenges

The *Jirga* consists of only influential people such as Malik's, khans, sardars and there is a strong likelihood that such influential may provide cover to their friends and relatives and decide against the poor".⁴⁶ The *Jirga* members are selected from the entire community. Every member of the *Jirga* has friends and relatives. If there is a conflict between two individuals or families the *Jirga* members have some relations or friendship in one of them, they try to give benefits to relatives and friends. It is a challenge to the neutrality of the *Jirga* system, but if someone favors one party during the process of the *Jirga*, he is directly expelled from the *Jirga*.⁴⁷

The tribal *Jirga* despite being a useful tool for dispute resolution, *Jirga* faces a host of challenges. It includes this regard for human rights issues, lack of proper implementation mechanism lack of education, disregard to the concept of a fair trial to name a few. This research highlights challenges facing by a *Jirga* in the present era. The history of the *Jirga* system shows a robust implementation of its decisions, but gradually, the *Jirga* system loses this unique feature. A powerful implementation is the guarantee of a successful *Jirga*. If the *Jirga* members do not implement the

⁴⁴ Amna, Shaukat, and Shughla. "The evolution of *Jirga* system: 21-28.

⁴⁵ Wardak. *Jirga—A traditional mechanism of conflict resolution*, 2003.

⁴⁶ Zaheer Abbas, Islamabad, *Dawn News*, (2013, March 29)

⁴⁷ Ali Shan, Shah, and Shahnaz Tariq, "Implications of parallel justice system (Panchyat and *Jirga*) on society." *People 2* (2013), 200-209.

decision, it means that the *Jirga* is failed. In the present days, the *Jirga* members very rarely implement the decision of *Jirga* for both parties. Due to this, the conflict is laying unresolved between both parties. The *Jirga* members are mostly elders and influential people of the area, and they practiced the formula of divide and rule. The *Jirga* members make a reliable decision but do not give full attention to implementation for their future aims. They think if they implement the decision, the families will be out from their influence for this the prominent members keep and engage both the parties. The implementations of the *Jirga* decisions in the present days are not implemented by the *Jirga* members like the previous elders of the tribal community. The proper implementation of the *Jirga* decision is the guaranty of a happy and prosperous community, and peace can also restore through this practice.

At present, women are not allowed to participate directly in *Jirga*; however, they can be represented by entrusting a male member to advocate for them. Women's engagement has traditionally been constrained by the predominance of male *Jirga* members and their reluctance to encourage female participation. The *Jirga*, a purely male institution, neither sanctions women as member, nor witness or a complainant. Women may access *Jirga* only through a male relative. In case of grievances against her male relatives, no recourse whatsoever is available.

Conclusion

This article analyzed the working and implementation of a *Jirga* in tribal areas of Pakistan. The *Jirga* system is used and preferred by most of the residents of tribal districts. Furthermore, the objective is to explore the present-day challenges to the *Jirga* system. The purpose of the article is to analyze the *Jirga* system, particularly in tribal areas of Pakistan. In *Jirga*, a group of experts of the locality take decisions. It is followed in Afghanistan and the tribal areas of Pakistan. *Jirga* is followed as a speedy tool of the dispensation of Justice in *Pukhtoon* societies. The group of experts is similar in the United States, and England, such as important national and international issues are considered. It is common in all tribal districts. Most of the issues and disputes are resolved through the *Jirga* mechanism. The *Jirga* system has a long history. *Jirga* is used mainly in tribal areas as it is the best method to resolve disputes between people. It plays a vital role in solving issues and disputes of people in a speedy and efficacious way. The procedure followed in *Jirga* is straightforward and clear. *Jirga* system is cheap as compared to the ordinary judicial system. The *Jirga* provides equal opportunity to parties. In terms of implementation, the decision is binding on parties.

Its working procedure is straightforward and indigenous. Due to a simple procedure, it is traditional and cost-effective. It follows local language, customs, and traditions, thus creates ownership in the local

populace. The disputants have the right to select *Jirga* members on their mutual consent. The *Jirga* provides a reasonable opportunity of hearing to both the parties. It implements its decision, thus, is a useful tool of dispute resolution, but it has some severe challenges. The *Jirga* system has challenges. The major challenge is that the *Jirga* system faced criticism from government and NGO'S. People criticize that *Jirga* is against human rights standards. The other challenges include; is an un-written procedure, irregularities, ignoring women, favoritism and limited scope of appeal in the mechanism of *Jirga* system.

Recommendations

1. The government should support the *Jirga* system as a majority of people in tribal areas follows it. *Jirga* must be given complete governmental support in order to provide affordable, cheap and effective access to justice for all the tribal People of Pakistan.
2. The training of *Jirga* members is of the highest importance in order to update their knowledge according to the tribal custom usages and tradition and to get guidance from past decisions.

Bibliography

- Atayee, I. "A Dictionary of the Terminology of the Pukhtoon Tribal Customary Law" , 1978, (1272)
- Badakhshan, M. Baig, *Feroz-ul-lughat, Dictionary of Persian and Urdu Jamia*. Lahore: Ferozsons Publication, 2004
- Dennys, C. and Marjana. *The Jirga: justice and conflict transformation, A Report of Community Appraisal and Motivation Programme (CAMP)*, CAMP House 217, Street 39, F- 11/3, Islamabad and Safer world in Pakistan, 2011
- Glatzer, B. "The Pashtun Tribal System, in G. Pfeffer & DK Behera (eds.): *Concept of Tribal Society, Contemporary Society: Tribal Studies, Vol 5*, 2002
- Gohar, A. *Indigenous Institutions for Decision-Making in Pakistan, Source: (-0001)*. Heinrich Boll Foundation, 2008. [https:// www. Justicereparatrice. org/www. Restorativejustice.org/articlesdb/.../7660](https://www.Justicereparatrice.org/www.Restorativejustice.org/articlesdb/.../7660), 25/12/2015
- Kerr, B.R. "A progressive understanding of Pashtun social structures amidst current conflict in FATA." *Conflict and Peace Studies* 3(4), 2010
- Muhammad, H. Y. and Ali Gohar. *Pukhtoon Jirga*. Peshawar: Just peace International, 2005
- Mahmood, A, Shaukat Ullah, and Ashfaq, Shughla. "The evolution of *Jirga* system: A conflict resolution mechanism in FATA." *Liberal Arts and Social Sciences International Journal (LASSIJ)* 2(1), 2018

- Maryamghani, *Sustainability and the commons narratives and resources, "Jirga" The World's oldest Common*, 2013 , retrieved from:<https://sustainabilityandthecommons.wordpress.c/2013/10/20/Jirga-the-worlds-oldest-common>
- Mushtaq, A. Q.; Yaqoob, U. and Muhammad Usman Javaid. "Role of Jirga in Pakhtoon society an analysis with special reference to justice dispensation." *Journal of Punjab University Historical Society (JPUHS)* 29(2), 2016
- Shah, A.S. and Shahnaz Tariq. "Implications of parallel justice system (Panchyat and Jirga) on society." *People* 2, 2013
- Shinwari, N.A. "*Understanding FATA: attitudes towards governance, religion & society in Pakistan's Federally Administered Tribal Areas*, Vol. IV. 2010
- Taizi, S. "*Jirga system in tribal life*. Peshawar: *Area Study Center (Russia, China and Central Asia)*. University of Peshawar, 2007
- Wardak, A. *Jirga—A traditional mechanism of conflict resolution in Afghanistan*. Pontypridd, UK: University of Glamorgan, Centre for Criminology, 2003.
- Wasim, A. President signs KP-Fata merger bill into law," *Dawn News*, May 31, 2018,
- Zaheer, A. *Dawn News*. Islamabad, 29 March 2013.