

## THE ROLE OF JIRGA IN CONFLICT RESOLUTION OF PASHTUN SOCIETY

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### Abstract

The present study was conducted on the role of Jirga in conflict resolution for conducting the study a total number of 60 respondents was selected. The data was collected from educated and no educated respondents respectively. The study revealed that most of the respondents have low level of educational status, living in joint family system and experienced or aged with special reference to Jirga. It had been revealed that Jirga is working in the study area for the settlements of major and minor disputes. All the people know about the process of Jirga. The decisions of Jirga's are acceptable in the area and are infringed by the parties concerned due to the authoritative position of Jirga. The study further revealed that Jirga is easily accessible and more economical than courts. The people were satisfied from the decision of Jirga in the study area. It is one of the informal ways of making decision in pakhtoon regions. The role of Jirga as well as its procedure is enhanced through the process of socialization from generation to generation.

**Key words:** Jirga, Education, Socialization.

### 1.1 INTRODUCTION

Jirga is designed by Pashtun society and this organization mostly works with the rules of Pashtunwali, which is an inclusive. Code of conduct (Rules) for guiding all the dimension of our society behaviour and these forces some time supersedes the Islamic and government dictates rules. In tribal areas of Pashtun society, Jirga mostly solve most of the local issues and sometimes the high level issues (Wardak, 2002).

The concept of equality amongst Pashtuns has important political ramifications. Group consensus is the most important source of power, and the jirga, or the assembly of a tribe's adult male members, is where important matters were discussed and decided upon. A jirga is often called to deal with arbitrate in matters such as murder, and its judgment is usually accepted by both parties. This process is often a long and deliberative one. If one party does not accept the judgment it can go into exile. If it chooses to remain in the village, their

home(s) are burned down. For the Pashtun, “fairness and collective justice are the ultimate good,” and punishing the individual wrongdoer as in the West is not done (Amato, 2010).

The systems generally attempted to make a strong balance between Islamic virtues Afghan tradition (customary law) and modern legal norms. The administration of this formal justice system which is set by government has many long delays bribery and corruption. The *Malak* now called Judges at courts have a high reputation of corruption, illegal use of powers. Afghan people don't like to bring their disputes to avoid the long delays and corruption and they still bring their cases to these Jirga (ibid).

Pashto Descriptive Dictionary (1978: 1272) has defined Jirga as Jirga is a Pashto word, which in its common usage refers to the gathering of a number of people. Jirga means consultation. The word Jirga is also used in Persian/Dari. According to Ghyathul Laughat (1871:119), it is commonly used for the gathering of the people. Some of the scholars said that Jirga is originated from Turkish where it has a very similar meaning to those in Pashto and Persian/Dari (Faiz Zad 1989: 5). Jirga is in its meaning reflects to a strong ritual and process of Pashtun tradition tribal Jirga, where some people come together and get around for the solution of a specific problem.

Jirga is a paramount institution. The institution includes all elders and it makes its rules by themselves according to their own mind set (Rubin, 1995). Jirga can normally solve the problems at small level nevertheless, it is also helpful and can be conducted on large level and very large level of problems can be solved through Jirga. This description depicts almost all the important aspects of this traditional Afghan Pashtun social institution. Rafi (2002) a famous Afghan scholar has defined concept and said that Jirga an old historical and traditional gathering of Pashtun people over centuries and this organization helped in the solution of problems in many of over national tribal, political, social economical cultural and even religious conflicts by making some authoritative decision.

## 1.2 OPERATIONAL DEFINITION

### 1.2.1 JIRGA

An assembly or council, which is more familiar in tribal areas of Pakistan. It is the gathering of people in the tribes of Baloch and Pathan where the leader and the head of the tribe decides the problem of the people. On hearing the word “Jirga”, the first question comes to mind what is Jirga? There are many different views on the nature and scope of the term Jirga. Most

would describe it is an indigenous institution for dispute resolution in the Pukhtoon communities. Yes it is, but it is more than this as well?

Jirga is an old custom with unmatched potential for conflict resolution in the Pukhtoon belt of Pakistan and Afghanistan. It is a name given to the model, in which a Pukhtoon society operates, to undertake issue between individuals and between communities, to address concerns, and look for solutions acceptable to all stakeholders.

Being blueprint of Pukhtoon life, Jirga is best summarized as a strategic exchange to resolve the conflicts and solve the problems between two or more people to address an issue through verbal communication. To exchange may or may not result in an agreement on the issue, but the process itself leads the parties including the interveners, to maintain a certain level of formal communication, thus ensuring peace (Wardak,2002)

### **1.2.3 LEGAL SYSTEM**

Legal system refers to the procedure or process for interpreting and enforcing the law. It elaborates the rights and responsibilities in variety of ways. Three major legal systems of the world consist of civil law, common law and religious law (Wardak, 2002).

### **1.2.4 FORMAL JUSTICE SYSTEM**

A formal justice system is one in which laws are set and enforced and punishments are administered by state institutions such as courts, police, judges and prisons. There are very few places that don't have a formal justice system, though in some areas, one coexists with an informal system. The details and make-up of formal justice systems vary from place to place but they do have some things in common. Formal justice system is always based on a written code of laws and a list of punishment that can be assigned for violating each one. Therefore, punishment for a crime cannot be based on the whim of the judge or court (Carr, 1981).

### **1.2.5 CONFLICT**

Conflict is a struggle or contest between people with opposing needs, ideas, beliefs, values, or goals (Dietz, 2006)

### **1.2.6 CONFLICT RESOLUTION**

Conflict resolution is a way for two or more parties to find a peaceful solution to a disagreement among them. The disagreement may be personal, financial, political or

emotional. When a dispute arises, often the best course of action is negotiation to resolve the disagreement. Jirga system in Pashtuns represents an informal traditional institution of Justice, which is practiced in the Pashtuns society from time immemorial. According to the Pashto Descriptive Dictionary Jirga is an original Pashto word, which in its common usage refers to the gathering of a few, or a large number of people. (Attaye 56) It also means consultation according to this source. The roots of Jirga systems have been traced back to the Athenian democracy while some scholars argue that the Pashtuns are practicing Jirga even before the Athenian times (Woodhouse, 2011).

## 2.1 GOVERNMENT JIRGA'S.

Government Jirga refers to the Jirga which is made by the government. During the British Raj (1957-1947) the tribal areas of KPK were allowed to make their disputes among themselves in collaboration with local governments through local Jirga. This contract was pronounced through a local Jirga. This contract was pronounced through the "Frontier Crimes Regulation of 1901 Act" allowing a representative of the government to regulation the formation and reformation of Jirga (Das, 1987).

Under frontier Crimes Regulation (FCR) 1901, the magistrate the political agent or his assistant can designate a group of elders to try a criminal or civil case. The FCR authorizes settlement of crisis, fights and Quarrel of individuals and group of individuals. The government arbitrarily nominates two or even more Jirga members to settle down the disputes arising in the area. If the dispute /case is of much importance the Jirga members may be more otherwise may be less in number. The number of the Jirga call both the parties, hear their point of view, analyze the evidences, then on the bells of such evidence they recommend a verdict to be considered for approval by the government authority. The government tribunal then examines the Jirga decisions, and examines whether it contradicts with Islamic virtues or Article of Pakistan or even basic human rights. The Jirga can recommend some hard punishment i.e. can be imprisonment of 15 years or more other hard punishment. The commandant of the area which is a political agent can the decision which gives powers to the decision are hence is enforceable by law (Schwartz, 2015).

### 2.1.1 Local Representation of Jirga( *Ulas Or Qaumi*)

*Ulas* and *Qaumi* mean the people and community. Thus, *Ulas Jirga* is a kind of community of the elders of the area or village. *Ulas Jirga* set together and makes decisions for the benefit and the right of the people of the area as, the selection of a site school, tube wall, etc.

in this kind of Jirga there is the Khan, Malik and dignities of the area and it is announced through *naqqarura* or band beat. The venue timing and schedule is announced to the people of the area. This is an informal meeting in which the people of the area can share their views and opinions freely. The decision can take one session as well as two. It depends upon the situation.

A *Quami* Jirga can hold many meeting session when needed.

This Jirga can take on any issue, which is on interest i.e. concern to the area and its people.

- It can announce any interim decision.
- The Jirga has the right and power to make new laws for a tribe and whole area, like grazing right and water rights etc.
- The member can ask for new ideas from community.
- The members can ask people for a *Quami lashkar* (Volunteer force).
- The members can raise taxes for community work.
- They can go to any area as a delegation.
- The members can send delegation/member to any party who are having an issue.
- Send delegations to the neighbouring tribes (in case of intertribal issue).
- Declare war and peace with a neighbour tribe.

Attended by all males and in some cases witnessed by women, this kind of Jirga is led by different cards of representatives.

These may include a combination of the following.

The elderly wise people of the village, *Jirgamar* (S) or professional intermediaries popular for their lifelong roles and experiences as peace builders. *Masharan*/leaders is usually a person of independent natures known in the area to be honourable. *Khan / Malak* Landlord mean who are generally rich and have quality of hospitality. Religious leaders or clergy much used as a consultant on family raw. In this kind of an assembly, the participants can speak, but most of time they only observe. The participants are given chance to speak and start the Jirga. In at end, someone begins with a phenomenon in a narrative way. This phenomena / action start the table of discussion. Each and every aspect of the matter is being diseased which is of the interest to individuals and whole the story and helps in facilitation. Finally such a decision is made on which all the parties are agreed and somewhat happy (ibid).

### 2.1.2 Shakhsi or Third Party Jirga

This Jirga is formulated in the case of a dispute the arises between two individuals of two or more families. In this type of Jirga most of the members are said to be neutral, so the case is

solved early without any blessedness. This neutrality and balance of member and their work for good spirit makes it easy to arrive at a settlement, which is most of time acceptable to the disputed parties. If the decision / verdict of the Jirga is not members at stake, which creates a serious problem and new members are being selected, and second Jirga is being carried out. If the case is decided, it's very good, if not the process goes on until the case is decided and accepted by both the parties in some good spirit. Then the members announce the verdict of the decision to whole the community, their keeping the process of Jirga alive in the area. Because the process of Shaks, Jirga involves adjudication of the dispute through a similar to arbitration, credibility is crucial.

The following steps are involved in shaks Jirga;

- This Jirga starts when one or both parties of the dispute approach a jirgamar, tells him about the issue and asks for his intervention.
- Both the parties are willing to solve the issue through Jirga.
- Then the *jirgamar* (S) approaches the parties and hear them initially and advises them to select a place of hearing the case.
- The member / *Jirgamar* select a channel/way of communication between the parties.
- When the issue is just a minor one, it is solved in first hearing in face of general public.
- But if the Jirga/dispute as of serious nature and it needs due time, energy and knowledge then the members ask the parties to delegate powers to some member (Known as Waak).
- Parties give power (Waak) to someone else to decide the issue for them.
- Both the parties are asked to give which may be land, money something else to rise them and does not withdraw from the verdict later.
- The Jirga has the right to hear the parties of each other or sometimes one after the other depending upon the nature of dispute.
- The Jirga is open to any type of talk and idea before the parties.
- The parties to the dispute are told about the good aspect while the Jirga is being conducted, so that a common ground is found out.
- When the matter is clarified it must be accepted by all.
- If one or both the parties does not accept the verdict on the ground of some injustice, the party who thinks that there is injustice must convince and appeal to make another Jirga to can make justice.

- When Jirga knows that one party is guilty and powerful so the members request them and tell them that don't commit sin and don't for force and respect us we are your elder.
- But if the person refuses to do so, and then they ask for tribal force to force the issue and bind the party to accept the decision (Wardak, 2003).

### 2.1.3 Grand Jirga

Loya or Grand Jirga the representatives of different areas discuss national problems. The representatives are well known and popular people of the area and the issues are very much important for the people.

In Afghanistan it has made a place in constitution body because of its trust and the decision which are accepted happily by the people. The number of its members is not fixed. The framework for representation is defined by the convening authority where each administration unit is allowed to bring forward a representative. The major tribes of the area, minorities and women are also given right to send representatives. This is one of assembly convened to address a specific issues or situation of the highest national interest(Goodson, 2003).

### 2.1.4 Important Features of Jirga

Case may be registered by one or both the parties, or government may recognize the situation and register a case by itself. All the parties of the Jirga must record their statement. Jirga members must visit the site of disputed area/people. There should be some government representatives. Jirga member must ask for evidences and record their words. Government agents must be remunerated by local people /members. The government agent considers the case for approval or disapproval on the basis of member's recommendation. The political agent/government agent can sent back the case to members for some further reference, which may be pointed out. Announcement of the decision. Each party has the right to appeal. Implementation of the decision by government and both parties.

The leader of this gathering should be a person who is respected, truthful, and honest. While process Jirga members are selected from a huge panel of Malaks, Khans or Honest people who are trusty of the government. There should not be any misunderstanding between the parties and among the people.(Shinwari & Gauhar, 2013).

Spiro (1986) highlighted that these scholars a solid foundation in philosophy and social theory, the nature of human relationship in the 21<sup>st</sup> century has been radically changing with the increasing globalization of economic, social and political relationship among nations

(Robertson 1992). It is very important for the writers of history to re-think their position vis-à-vis the realities of social relationship in the 21<sup>st</sup> century. There are some social conflicts in a social relationship the world is globalizing so the resolution of this problem is really a hard task. To solve this problem i.e. to address these issues both formal and informal ways are used to tackle these issues/problems. This work is an attempt to thoroughly discuss the informal Justice system (Jirga) prevailing among Pukhtuns of Afghanistan and Pakistan and then give recommendation for the resolution of these conflicts.

Jirga has been conducted over many centuries and Jirga are operated and it is a very important way of conflict resolution among the Pashtun people, this organization has greatly worked in maintaining peace and social order in whole Afghanistan and other Pukhtun societies both directly or even indirectly. The centrality of Jirga has greatly solved many of the tribal conflicts according to the generally customs of our tribes, but sometimes these customs are in contradiction to the state or even our religious laws, which creates a conflict of .....interest and power between Jirga custom and state laws. Certain attempts have been by Afghan government to make rules for Jirga which works under govt regulation for achieving this goal a village Malik (a liaison person between the government and the local people) system, the introduction of district and rural development councils the imposition of Marxism and theocracy the Pashtun social institution including the Jirga have remained relatively intact. This attempt has been made with these tribes who were having strong Jirga structures and were located very far from the urban centres. In large urban centres where Pashtuns and non-Pashtuns were mixed and where non-Pashtuns were having dominant population the government easily appointed a *Malak* in those areas. In these non-Pashtun populated areas the government was able to pressurize the people and to some extent were able to compel the people to accept the decision made by *Malak* i.e. *sardar* appointed by government (Kamali, 1985)

Wardak (2002), generally reflect a balance between Islamic teachings, Afghan tribal traditions (customary law) and modern legal norms. The administration of this legal system, however, involved long delays, bribery and corruption. Judges and magistrates particularly had a reputation of corruption. Many Afghans in rural areas tried to avoid contact with state legal institutions and preferred their conflicts to be resolved by Jirga outside the courtroom.

In Khyber Agency in particular and other tribal areas in general a specific methodology is adopted for resolving disputes arising out of murder. In case of murder, both the aggrieved

and assassin parties confine to their houses. The Jirga, first of all, tries to make both the parties agree on *tiega*. Tiega is a Pashtu word which means stone. Symbolically, a stone is fixed which means that the disputing parties have agreed to decide their case through Jirga and cease fire will exist till verdict (Afridi, 2003).

(Jang, 21 April 2009) Unlike the *koranay/Shakhsi* Jirga, the *olasi/qami* Jirga is constituted for taking up issues or cases of collective importance of a community or tribe. The basic unit of this Jirga is every house hold which may send one member to it. Numerous cases of collective nature such as settling disputes with other tribes, community share in forests and other natural resources, distribution of irrigation water, launching of developmental projects, and dealing with outlaws in the area etcetera are put before the Jirga. After selection of members, the holding of Jirga congregation or assembly is announced. During deliberations, every participant is Frontier Crimes Regulations 1901, where community was involved in disposal of cases. That was the beginning of Sarkari Jirga. In the Frontier Crimes Regulations, hi the same regulations, the Council of Elders {Jirga) has been defined as: "...a Council of three or more persons whether official or otherwise convened by the Deputy Commissioner and presided over by a magistrate invested with powers under section 30 of the Code of Criminal Procedure 1898" (Ali, 2003).

Nevill (1912) the evolution of Pukhtoon society from state-less stage to emergence of state has affected the institution of Jirga as well. In 1849, after replacing Sikhs in the present day Khyber Pakhtoonkhwa and subsequently pursuing their Forward Policy.(Spain, 1985) towards Afghanistan, the British Indian government faced the wrath Pukhtoos. The latters were averse to British occupations of Afghanistan. From 1849 to 1908, the British Indian government conducted almost 49 expeditions against the Pukhtoon tribes.

Olesen(1989) In the process of the consolidation of the Afghan state institutions, particularly in the early 20th century, the Hanafi school (alongside traditional customary laws) provided the basis of the Afghan justice system. This version of the shari'a existed in symbiotic relationships with Afghan customary laws and with Sunni 'folk Islam' that generally reflected the cultural, social and economic realities of everyday life of the overwhelming majority of the people of Afghanistan. Ulama (Islamic scholars) interpreted this version of Islam and the shari'a and also worked as Qadi (judge) in state courts.

Carter and Connor (1989) operationally define *shura* in this way: ‘A *shura* is a group of individuals which meets only in response to a specific need in order to decide how to meet the need. In most cases, this need is to resolve a conflict between individuals, families, groups of families, or whole tribes.’ This description would seem to indicate that *shura* and *jirga* are fundamentally very similar Afghan informal (nonstate) mechanisms of conflict resolution that operate in varying social and tribal contexts.

Braithwaite (1989) one important form of tribal *jirga* is *nanawate*, which means seeking forgiveness/pardon and the obligatory acceptance of a truce offer. This happens when the tribal *jirga* makes a *pikra* (decision) that relatives of the *par* (guilty party) send a ‘delegation’ to the victim’s house. This consists of a group of people that include elders, a female relative of the offender holding a copy of the holy *Quran*, and a *mullah* (Muslim priest), alongside the offender's other close relatives (and sometimes the offender himself) who bring a sheep and flour to the victim’s house. The sheep is often slaughtered at the door of the victim's house. Once inside the house, the delegation seeks pardon on behalf of the offender. As it is against the tribal code of behavior to reject a *nanawate*, the victim’s relatives pardon the offender and the two parties are reconcile. This reconciliation is called *Rogha*. Thus unlike formal state justice, which often labels offenders as different evil and excludes them form the community, *nanawate* re integrates them into the community. Existing criminological knowledge suggests that re integrative social control is, by and large, more effective in reducing crime than disintegrative social control, normally exercised by formal state institutions.

## Conclusion

It has been concluded that *Jirga* exist in the area. Most of the people of the area know about *Jirga* and they also prefer *Jirga* as compare to formal justice system. *Jirga* is working in the study area for the settlements of major and minor disputes. The concept of *Jirga* is transmitted from generation to generation. Most of the people have personally gone through this experience. The members of *Jirga* can be taken from any family of the area. Furthermore, it was concluded that *Jirga* plays a positive role in dispute resolution that is why it is beneficial for the community and the people of community. *Jirga* can solve any kind of problem whether that is big or minor kind of problem. The decisions of *Jirga* are acceptable in the area and are not violated by the parties concerned. *Jirga* members have full authority to make

decisions and the people are bound to accept them. This is a quicker source to resolve a problem or a dispute that is why people like to go for Jirga. Court decisions are costly as compare to Jirga.

The study reveals that Jirga is easily accessible and less costly than courts. For enhancing the essence of Jirga local people and government should work for legalizing the role of Jirga. the people of the area are more satisfied from Jirga as compare to formal justice system.

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