

JIRGA: TRADITIONAL CONFLICT RESOLUTION MECHANISM – CHALLENGES AND PROSPECTS FOR REFORM

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ABSTRACT

The Jirga, which is a traditional system familiar in the conflict solving among the Pashtun tribal community, has, in the past been a effective tool in conflict transformation, and installation of order among the clans/tribes. This paper aims at describing the structure, functions, and importance of the Jirga and at the same time analyze the modern problems that it encounters. These are issues such as; absence of accountability, awareness and transparency, systemic corruption, constitutional indecision and gender discrimination where women are barred from decision making posts. However, these aforementioned deficits compromises the fairness and legitimacy of Jirga in a retrospective cultural and contemporary legal and human rights framework. This paper concludes that despite the importance of the Jirga, there is a need for major reforms to bring the institution to conform to the constitution, enhance its openness, and address gender issues. If the mentioned challenges are met, the Jirga potentially promises to become more fair and efficient mediation forum that would fill the gap between the traditional and the contemporary legal systems.

Keywords: Jirga, Traditional Conflict Resolution, Pashtun Society, Transparency, Human Rights, Gender Discrimination.

INTRODUCTION

Disputes are as old as the society itself since the beginning of time. In the past people and societies have fought and struggled with each other over material and non-material objects and power – territory, cash, authority, and belief. They have killed each other and have also fiercely competed to annihilate or enslave competitors, in order to gain access to these resources and products. However, at the same time, human societies and groups have discovered their ways and means of preventing and/or solving conflicts (Advocate, 2013). The literature available on the subject corroborates the fact that the very character and genesis of the conflict and the ways and means of their resolution

are as much a part of the culture and history of every society as they are different from every other society. Panchayat in India, Mediation Committees in China and jirga in pakhtun society particularly in tribal region of former FATA that are informal methods of dispute resolution are quite different from each other. More importantly, all of these conventional approaches to conflict resolution are markedly different from how conflicts are resolved in most of the western world (Ahmed, 2024). The comparative social realities appear to vindicate the philosophical position of cultural relativists who have for a long time argued that all social phenomena including conflicts and their management are relative

and culturally specific. While it has a sound philosophical and social theoretical foundation, the twenty first century has witnessed a drastic change in the pattern of human relations due to the increasing integration of international political, social, and economic relations. Cultural relativists may have to take a second look at their position given the nature of social relations in the twenty-first century, at least in some respects. Disputes and their settlements will increase globally because they are a form of social relationship, albeit an undesirable one (Ali, 2023). This is in fact true with the complex international nature of the September 11 terrorism in United States, the roots and sources of terrorism globally and the global fight against terrorism (and its roots). It is beyond doubt that these changes mean that people of different civilizations and cultures should meet as equals in order to solve domestic and international problems and understand their nature; it is time for cultures to learn from each other and contribute to the formation of a “world culture” which will include its many components which are universal and moral. Jirga, a traditional way of solving conflicts in Pakhtun community, has a lot of potential for this culture (Ali, 2021). After defining the term jirga and assessing the role of the institution as an informal institution, this study will discuss private, quomi, and loya jirga as the three main traditional conflict-solving institutions in Pakhtun tribal societies. However, before delving into the main problems that the Jirga encounters, it is necessary to place the topic of the study in the context of the current state of the present socioeconomic and political situation in the Tribal region of the former FATA which has been shaped by nearly 25 years of war (Fazli, 2024).

Origin of Jirga

The institution of jirga is basic in the majority of the primitive societies. When two people fight, the one who is stronger physically defeats the other. It is a judicial, legislative and an administrative body that regulates the social, cultural, economic and political activities of the tribe in the natural state. People developed a conflict solving technique in a bid to avoid a situation where one person dominated over the other

and also to address all the conflicts. Each community set it as a sort of mutual body. This committee was composed of the best men in that town and their function was to decide cases judicially and to settle disputes fairly. In communities, it is called Panchayat, Jirga, and Mediation Committees (Hakimi, 2024). Therefore, this basic type of the judicial system was developed to meet the needs of the society and was previously existed in most of the towns all over the world. The institute of Jirga was existed in most of the parts of the ancient world. It was called “Majlis” in Persia, “Shura” in Arabia, “comitia Curiata” in Rome, “agora” in Greece and “panchayat” in India and colonies. The aim of all these institutions from different countries was to engage in dialogue in order to solve their problems. Even to this date, some of the people in Iraq build large houses where they sit down and agree on the solution to a problem as a large group. Aryans also have two councils: the Sabha and the Simite (Hasan, 2023). While the sabha is a local council the simite is composed of the notables and elders. Sher Shah Suri the Indian king of the Afghan descendants and Sultan Behlol Lodhi had also formed their own consulting boards and were part of them. As in other regions, the tribal belt has also applied the process of mutual consultation to solve social conflicts. The British officials who wanted to interfere with the tribal people’s legal system called the process of mutual consultation ‘Jirga’ and this is how it is today. It evolved and acquired a superior and more powerful form in other areas such as India, Arabia, Persia and Greece. It remained the same after the merger in 2018 and was the most flexible and functional institution of the former FATA Tribal culture till recently (Hashimi, 2017).

Origin and Definition of Jirga

Especially, the Jirga institution exists in Afghanistan and the Pakhtun areas of the Pakistan. Jirga is a Pashto term that means a gathering of people, no matter how many, and discussion. Surprisingly, few social scientists have offered their own definitions of Jirga even though it is difficult to propose a definition that encompasses all of these. As criminologist Ali Wardak has

described these interpretations of jirga are very similar to the Pashtun tribal Jirga where members come together and sit in a big circle to resolve disputes and make decisions on important social issues (Islam, 2020). According to Ludwig W. Adamec, it is a tribal council that makes laws and makes decisions for the entire tribal society. As pointed out by James W. Spain, it is a meeting of Pathans from a particular subgroup who are interested in a particular subject. As Qayum Afridi described it, it is a court where the two parties to the case select an equal number of judges from among the most respected elders (Khalid, 2014).

Selection of Jirga members

The selection of the Jirga is one of the most important and sensitive features of the Pukhtun Jirga. The first thing that must be done each time there is a dispute between two groups of people or two tribes is to select a Jirga member. The formation of the Jirga varies in terms of the circumstances, significance, nature, and kind of Jirga. Dear sir/madam, sometimes the permanent members of the Jirga are obligatory for solving the case, and sometimes the parties of the dispute are allowed to appoint them (Luccaro, 2014).

The following paragraphs describe the process of selection of the Jirga members. Besides, in most cases, the members of the Jirga are selected from the most experienced elders of the area, the Malaks and Khans of the area who are known to be loyal. More often than not, the Jirga members do not take sides; however, the parties can also nominate some of the members to act as their representatives during the Jirga. In most of the cases, the parties agreed on members of the local Jirga who would not favour any side. The disputing parties will usually choose a Jirga member who is not bias in any way (Mahmood, 2018).

In fact, it seems that the Jirga members are usually chosen from the older and most respected members of the community, who are referred to as the white-bearded (Speen Giri). In order to ensure that the decision is implemented, the Jirga members should be prominent people within the region. Furthermore, if a Jirga is formed to resolve

a conflict between the two parties, they are allowed to replace or remove one or more members of the Jirga (Mushtaq, 2016). For example, if a Jirga member is seen to be partial in a particular case, the aggrieved party can demand substitution or replacement of that member.

This mechanism ensures that the Jirga's decisions are impartial and that the parties involved have confidence in the process if a member of the Jirga is partial to one party over the other, the first appointed party has the right to substitute or reject that member of the Jirga. But the choice of the Jirga members should be equal. They should be chosen by the consent of both parties. In addition, the Jirga members have a duty to ensure justice and make proper decisions that are in line with the tribal laws and norms (Nouman, 2022). People who want to become members of the Jirga should be trustworthy, punctual, and have good character; participate in social life; be kind, empathetic, and polite. They should also engage positively with issues and remain engaged with the community.

Decision making process

When a dispute arises between two individuals, the matter could be brought before the Jirga in one of the following ways: In the first type of event, the disputant invites the Jirga to intervene and to settle the matter. The members of the Jirga are usually contacted by one of the parties to the dispute in an attempt to have the matter addressed, and when the other side is informed that the Jirga is coming, they are happy. In the second case, the Jirga is approached by both the conflicting parties when the matter is concerning financial and real estate issues (Röder, 2015). In the third situation of the two parties are violent or one of the parties is emotionally charged up, then the community elders in collaboration with other influential personalities can arrange for a Jirga to go a head and resolve the dispute between the two and avert total anarchy. It becomes necessary to declare the Jirga.

After that, the Jirga's procedure should be approved by the elders and the key stakeholders in the community. After the approval, both parties are expected to stop

fighting. After that the Jirga members decide on the issue at hand in accordance with the Pukhtunwali code of conduct. Pukhtunwali is the code of honour that 99% of the Pukhtun tribes use to resolve their conflicts. It laid emphasis on conflict-resolution by talking out, by following the tribal laws and by sustaining one's individual and community honours (Sheenwary, 2017). For the Pukhtun, Pukhtunwali is the focus of social and legal order and as such has an impact on how conflict is managed and justice perceived in this society.

When the Jirga receives a case, the members of the Jirga move to a particular or separate room, a guest house or hujra, a mosque or masjid or under the large tree. The intention of the Jirga members going to the mentioned isolated areas is to address cases without the influence of noise and people and among other things the meeting is supposed to be discreet. This setting is normally part of the Jirga process but not the preliminary stage of it. All the disputing parties are equal when the matter is being discussed regardless of their status (Wardak, 217). Historically, the Jirga begins with each member telling a brief story or a proverb or an example of the case in question. After that both the parties are allowed to put forth their case and the whole case has to be patiently listened by the Jirga. If needed, the Jirga question the witnesses to get to the bottom of the case.

Furthermore, each member of the Jirga can express his or her opinion on a specific issue and also can make recommendations concerning the possible neutral decision. In the past, Jirga proceedings do not allow for abusive and useless talk. Furthermore, it is expected of members of the Jirga that they will not take sides (Yousaf, 2020). The parties have the right to demand the change of any Jirga member who has been bribed or threatened into making a decision in favor of one party against the other. The affected party can question that member and demand for him/her to be fired.

Such jirga sessions might take several hours, days, or sometimes even weeks depending in the severity of the issues under consideration. Jirga sessions can take more than a day for petty offenses such as misdemeanours, but it can take up to a

week for serious offenses. At the beginning of the Jirga session, the two parties involved in the conflict bring in a Machilgha which is a customary security (Iqbal, 2023). Machilgha is valuable in some situations and not valuable in others. Machilgha is important where there is doubt about the willingness of the parties to accept the statements of Jirga and their implementation. This form of Machilgha is accepted and recognised by all of the tribes. Machilgha is returned to the disputing parties when they accept the decision of the Jirga; otherwise, none of the parties might be allowed to get their Machilgha back if their behaviour violates the ruling of the Jirga (Aslam, 2023).

The Jirga Council subdivide Machilgha among themselves or in some Jirgas such as in the Jirga of Pashai tribe, the Jirga members expend it on benevolent activities or relinquish it to the government. The Jirga decision is generally made in compliance with the existing traditional norms. In more serious cases the Jirga will ask a party to swear on the Holy Quran that he is not guilty of the imputed crime. Jirgas possess an established structure, custom, and even etiquette, which is down in a traditional unsaid manner and has been maintained over the certain generations (Brohi, 2016). The members of the Jirga feel that it will be proper to consult both the parties before coming up with a public statement of the decision. This kind of practice is known as authority (Waak). The Waak has the effect of rendering a Jirga decision as legally enforceable. Also, the violators of the decision made by the Jirga are punished severely.

A very good question arises here: whether or not women are empowered enough to set up Jirgas and make decisions? The Jirga system itself has no representation from women and is purely a system solely controlled by men. As it was mentioned before, even if a woman is a criminal or a victim of a crime, she does not get a chance to express herself. Women do not approach the Jirga on their own to present their grievances, and a male relative would present a woman's complaint to the Jirga. If she has no man person to represent her or the woman is a widow, the white bearded men permit her to come forward and

continue with her issue (Advocate & Sajid, 2013).

1. REVIEW AND APPEAL PROCESS

In general, the Pukhtun tribes regard the decisions of Jirgas as final in compliance with the Pukhtunwali. Pukhtunwali is the code of honour that 99% of Pukhtun tribes use to resolve their conflicts. Jirga is highly valued among Pukhtuns; in fact, they believe that it is the main foundation of Pukhtunwali. Pukhtuns have a great respect for the words of Khoshal Khan Khatak. In a community where the Jirga's decisions are highly valued, people know that no major move or a decision is going to be made without the consent or the ruling of a Jirga. The Pukhtuns argue that the Jirga system is efficient and effective and has been functional and functional in the management of local and national conflict (Shah, 2012).

Therefore the community as a whole has evolved and benefitted. On this basis, a review or an appeal against the decision of the Jirga is rare. Any party who is dissatisfied with the decision arrived at by a Jirga can request the decision to be reconsidered by another Jirga. However, the reasons for the review must be reasonable and warranted. Any side is legally allowed to appeal and refuse the decision of the Jirga council (Zaman & Naz, 2018). It should not be an appeal to prejudice or lack of prejudice. Furthermore, it is noteworthy that members of the Jirga may consider the objection, if the reason given is both reasonable and specific. A review cannot be more than three times as the third review is considered to be the last and most definitive one.

Jirga decision enforcement procedure

The enforcement of decisions is positive and the process is initiated by the disclosure of the decision by the members of the Jirga. However, before taking the final decision the Jirga may consult the two parties in conflict. The decision is final when it has been arrived at and the contenders involved in the case are supposed to abide by the decision of the Jirga council. If one of the disputing parties objects, the decision may be suspended or postponed; until the objection is resolved

(Mushtaq, 2016). The enforcement of the Jirga decision is easy comfortable and does not involve many procedures or time consuming processes. On the nature of the decision, the Jirga council has powers to punish the parties in a bid to make them to implement and execute decisions made by the Jirga. The sanctions may include monetary fines, a fine, an apology, retaliation, or custody. The mentioned punishments are examples to other and enhance a low likelihood of extra crimes in the future.

The Jirga council is supposed to implement the decision made by the Jirga and make sure that the decision is implemented. Although there is no enforcement agency to implement the Jirga, the respectable and reputable persons in the community implement it (Nouman, 2022). Thus, the Jirga partially fulfils judicial and executive functions within the indigenous community, yet it does not resemble a state structure in terms of the separation of powers into branches. If the party in disagreement with the ruling of the Jirga continues to fail to comply he Jirga council is fully at liberty to enforce the decision using any means necessary while the offending party may be expelled and loses his protection by the Jirga (Olowolafe, 2020).

Jirga's decisions are efforts to balance justice towards both parties' and achieve a favourable result for each warring party. Thus, elders try to maintain social order and not to determine who is a winner and who is a loser. This is one of the basic mechanisms by which the Jirgas' decisions differ from the conventional legal system. Further, Jirga is an Afghan approach towards resolving a dispute which was a principle based on restitution and forgiveness. For example, instead of imprisonment, a wrongdoer could be ordered to pay blood money to the victim's family and the victim could be asked to forgive the offender (Röder, 2015). Presumably it is necessary to mention that the purpose of restorative justice compensation serves as a therapeutic process for victims and the revival of a notorious offender. In general, it is more important to work out problems in the future than to dwell on the past.

Types of Jirga

The nature of the problems that the Jirga takes on determines its type, authority, and role. Jirgas come in various varieties. The most important ones are explained here:

- **Jirga Private/Shakhsi:** Shakhsi signifies private or personal. One type of Jirga that is arranged on a personal level is the Shakhsi Jirga. Leading Pashtun academics in Peshawar, Hassan M. Yousufzai and Ali Gohar, clarified, "This jirga is formulated in the case of a dispute that arises between individuals and families." This Jirga's members are typically selected by both parties working together. The scope and function of this type of jirga are constrained.

- **Olasi/Qami Jirga:**

This group was established to address disagreements or matters of shared significance within a region or tribe. The Jirga is presented with a wide range of communal issues, including resolving disputes with different tribes, sharing land in forests and other natural resources, allocating irrigation water, starting development projects, and dealing with local outlaws.

- **Sarkari (controlled by a political agent)**

Jirga: The political agent chooses the appointments from among the Maliks in the formal (sarkari) version of Jirga. A committee consisting of three or more people, whether official or not, that is called by a magistrate under the direction of the Deputy Commissioner and authority granted by a section of the 1898 Code of Criminal Procedure. (I. Ali, 2003). The Local Government Ordinance of 2001 established a second official Jirga form. There are five articles in LGO 2001's Chapter XI (Articles 102-106). Musalihat Anjuman (Council of Conciliation) is covered in this chapter. The three conciliators that make up Musalihat Anjuman are led through a convener.

- **Loya (grand) Jirga:** The Pashto word "loi" or "loya" means "big" or "grand." Of all its categories, Loya Jirga is the largest. It is a public assembly typically organized for significant occasions like selecting a

new ruler, ratifying a constitution, or debating important national political or emergency matters as well as disputes in the Pashtun areas. In Afghanistan, the loya jirga was originally attended by the Pashtuns, but later included other ethnic groups. In Afghanistan, Jirga is quite institutionalized. The House of the People or Wolesi Jirga is the lower house of the bicameral National Assembly of Afghanistan, alongside the House of Elders (Mesherano). The House of Elders Jirga is the upper house of the bicameral National Assembly of Afghanistan, alongside the House of the People (Wolesi Jirga).

Significance of Jirga in Tribal Society

The Jirga is an essential part of the Pakhtun culture. It is a way of solving disputes and disputes. Today, there are about 40 million Pakhtun in Pakistan's north and west and in Afghanistan's east and south. Pakhtuns are largely a farming community in Afghanistan and Pakistan. In these areas the role of the government is almost insignificant. Most of the Pakhtuns are still living a rural and nomadic life and are not exposed to other forms of life (Shah, 2012). For instance, they maintain their customs, ceremonies, manners, eating habits, and, especially, the Jirga in solving conflicts. The writ of government does not run in the Pashtun tribal areas. They therefore have to rely on their own law, the Pashtunwali, instead of the constitution and state justice that is required of the state.

Pashtunwali: The Tribal Code of Conduct:

Pashtunwali is an ethic system which does not have a written form and is the code of conduct of the Pashtun people. It is based on a number of principles that are nang (honor), badal (revenge), melmastia (hospitality), purdah (modesty) and nanawati (forgiveness). Nang, or honor, is the most important aspect of Pashtunwali and governs the conduct of the people and tribes, and requires loyalty, courage, and the protection of family and individual honor. For what it is worth, this concept puts pressure onto the members of a certain community to protect their image and integrity at any cost (Sheenwary, 2017). Pashtuns consider Badal, or revenge, as a

way of restoring the balance of justice in their society. It requires an individual or a tribe to retaliate against wrongs done to them, so that the wrongs are punished, and balance is restored. This principle supports which holds that it is shameful or blasphemous to permit the family or the tribe to suffer without retaliating. Melmastia describes the principle of ethic of hospitality by which Pashtuns have to be obligated to take care of, to protect and to be generous to the guest and this irrespective of the fact that the guest may be an enemy or a poor or even a stranger (Wardak, 2017). This obligation is held in high esteem and has become in the Helmand culture an innate value where hujra, or guest house, is a reflection of the Afghan social order where strangers are welcomed warmly and relations are maintained.

Purdah and namus in Pashtunwali shows the importance of the chastity and family honor especially to women. Purdah acts as barrier as well as symbol that keeps the women and families of the women away from the public eye and at the same time provides dignified coverage to them. But this is true at the expense of women liberty, and their social engagement reduces their status to mere housewives perpetuating the culture of male dominance (Yousaf & FurrkhZad, 2020). Namus takes this further to the general protection of family honor as being associated with the conduct and character of the family members. Namus is expected to be upheld all the time and any form of violation leads to conflict or disagreement hence taken to the tribal court known as Jirga. Another important principle is Tarboorwali which concerns competition between patrilineal relatives especially the male cousins. Often this creates conflict over a resource which can be territory, money or any scarce product and increases the conflict within the families. Though it enhances the spirit of watchfulness and responsibility, it also leads to intra organisational strife, which violates social order (Zaman & Naz, 2018). Thus, unlike many other aspects of Pashtunwali, Nanawati is aimed at the restoration of harmony and forgiving the offender. By making some prostrations or offering some items, a person can ask for

forgiveness and ruling in a conflict based on tribal champions, which are considered to be fair by the parties involved (Advocate & Sajid, 2013). This last mechanism shows that Pashtunwali possesses the adaptive and restorative capabilities at the end of route, which is parallel to another main objective of Pashtunwali, namely social homeland maintenance. However, the strict Stick and Move implementation of the badal can perpetuate conflicts and cycle them to ensure that know stability returns to the society. Such practices raise the conflict between the culture of the society and the new age conflict solving techniques (Ahmad & Muhammad, 2019). Mention of the rule which excluded women from important decisions like the Jirga was one of the reasons proving the inaptitude of Pashtunwali in discussing the modern problems. Due to social injustice, women even though involved in the disputes cannot speak on behalf of themselves or defend their interest but must be represented by male relations.

The application of Jirga as an integral part of Pashtunwali acts as the chief way of dispensing justice and enforcing the tribes' laws and orders. Jirgas are a panel of senior individuals who discuss a case and give out a decision on the basis of norms and traditions of the tribe decisions (Ahmed & Khan, 2024). These are decisions based on process of consensus, negotiation and the sense of order is maintained. However, the Jirga opens and makes decisions in secret, which defeats the whole essence of fairness as there is no record of the cases presented in court. This brings about bias and favoritism since the end user cannot trust that they are being fairly treated by a machine. Moreover, the lack of constitutional legitimation for Jirgas raises their legal ambiguity, and, thus, results in clashes with formal legal systems. Some of the flaws of the Jirga system include the falls in corruption due to bribery and influence from the wealth or the powertriangle. These challenges underscore the emic proposals for change in the Jirga so that practices modernized reflect transparency, accountability, and fairness (Alam, 2021).

Melma means to be a guest or to invite guest while stia means protection,

hospitality is satisfying the guest's needs so one of the most cherished part of Pashtunwali culture are melmastia. According to cultural norms and traditions hospitality play an important role in the society through offering shelter, food, and protection to the guests helps to strengthened bonding, and enhance communities' generous image (Ali, 2023). However, this practice can also bring problems within the conditions of present-day life, where material constraints and the vagaries of the market impede the key ideas of traditional culture. Likewise, while purdah is a way of preserving the women's decency as well as keeping them almost cloistered from outside influence it is another way of women domination through the Patriarchal method. This duality is an indication of the general problems that Pashtunwali has in the process of the modernization of values and recognition of human rights (Ali, 2021). Forces of continuity and change are shown in the changing nature of Pashtun culture, the young practicing both, challenging previously informed norms of behavior while desiring to honor tradition.

Nanawati as a restorative principle shows that Pashtunwali has the potential of forgiveness and the restoring of relationships. Because it enables people to owned up to their wrong-doings and seek to make amends it is a more forgiving system than punitive justice (Aslam, 2023). This practice can be viewed in the same vein with other restorative justice concepts because of the impacts that accord relationships. However, it must be noted that, where applicable, nanawati is usually effective depending on the willingness of the elders of the tribe to interfere in a bias free manner (Azim, 2018). The exclusion of women from such processes makes the participation levels even more low, which means that there is a need to carry out changes that will seek to eliminate forms of discrimination against women within the tribal justice systems. Although, the structure of tarboorwali ensures effectiveness through reporting and accountability, it provokes competitions and conflicts in access to resources, which require key frameworks that encourage cohesion (Brohi, 2016).

Nonetheless, Pashtunwali is a strong cultural ethos that has survived and persists to this day as a determinant of the Pashtun people's beliefs and behavior. Its advocacy of honour, host sale and justice shows respect and responsibility towards cultured balance and ethics. However, inability to meet modern needs and challenges, for example, in the sphere of gender equality and human rights, proves that traditional practices need to be further elaborated (Faqr & Atta, 2013). Efforts to pin down Pashtunwali in other, official legal and institutional terms which can effectively translate Pashtunwali into non-Pashtun contexts would be the challenge of the managerial and gender equality in the Pashtunwali of the future. These reforms, can make Pashtunwali a vibrant moral compass in the forthcoming epoch of the world.

Education and awareness play the most crucial part in changing the existing culture of tradition to modernity which is very important in the development of Pashtunwali. Educating the community members on their legal rights can enable the people especially women to participate fully in decision making (Fazli, 2024). Opportunity to facilitate debate between the elders of the tribe and legal professionals also promotes continued incorporation of the indigenous systems of justice into modern society and so that it is less of a clash of the titans between the conventional and native systems but a more reconciled approach to the problem of justice. The general culture of Pashtunwali as a way of life cannot then be sustained without a call for change in that culture to reflect success in equality, transparency, and accountability indicators (Hakimi, 2024).

The versatility of Pashtunwali for contextual cultural dynamics reveals that it has possibilities for making it a tool for building up community health and cultural identity. In other words, the reformation and doing away with the weaknesses that are in the current Pashtunwali legal system will enable it to remain the binding force among the Pashtun folks. Thus, its relevance to the present is in the fact that it remains adaptable yet maintains the spirit of the traditional culture that shapes Pashtun people today providing a view on

what tradition and modernity means for them (Hasan, 2023).

Challenges to effective Jirga System

This paper concludes that the Jirga system has some modern challenges like an unfair decision-making process. The author has put the unjust decision making under the contemporary challenges because it has never been a vice that greatly affects the fairness and credibility of justice system and exists in the Afghan Jirga system. Lack of education or semi education of the Jirga members and lack of modern technology, non compliance of human rights, no consideration of gender sensitivity, gender main streaming and no interaction with formal structures. Each of them will be discussed as Follows:

1. No Transparency

The Jirga system is based on the traditional conflict solving mechanisms but they are not very transparent most of the time. They are arrived at in secret or in secluded areas like hujras or mosques, and this results to the shrouding of the processes. Uncertainty and lack of any guiding or written rules thus hinders proper appraisal of the decision making process. Therefore, the parties and a broader society cannot determine whether outcome is fair or not, which creates a lack of legitimacy for the Jirga. This lack of openness reduces confidence in the system especially in the current world where openness is the pillar of justice (Hashimi, 2017).

2. lack of Accountability

The Jirga system exists beyond the justice system hence there is a huge accountability deficit. Jirga members are not answerable to anyone for any unfair or partial decision they may make. This creates an avenue for bias, biased and probably influential unfair treatment by members or elders within that cultural group. More so, since the Jirga decisions are hardly challengeable or reviewed in a formal way, the affected parties' legal grounds to fight unfair decisions are extremely limited. The lack of these hall marks holds down the Jirga as an impartial system of dispensing justice (Iqbal & ul Arfeen, 2023).

3. lack of awareness

The Jirga falls out of the formal legal system, meaning there is a strong accountability void. Jirga members are not answerable to anyone for any unfair or partial decision they may make. This creates room for bias and prejudice, as well as chances of someone with power or a special someone you hold dearly making and influencing decisions for the entire group (Islam, 2020). Besides, since the Jirga decisions are seldom reviewed based on clear channels, the affected persons have little ability to fight biased decisions. This failure of holding anyone liable undermines the Jirga as a fair justice system.

4. corruption, kickbacks and bribes

The Jirga system like most traditional conflict solving forums is prone to corruption. There may be a tendency for the powerful or the wealthy persons to influence the Jirga through some inducements or a reimbursement (Khalid, 2014). This has a negative impact on neutrality and fairness of system because decisions will be made mainly according to one party's financial influence rather than merit, justice. A lack of supervision in such a system means that such unethical practices will continue, which undermines the credibility of the Jirga among its citizens.

5. No constitutional status

The Jirga system has no constitutional status which makes it operate outside the legal framework of the country's justice system. Even though the Jirga is still an authoritative and popular form of a traditional court in tribal areas, its verdicts are contrary to the laws of the country. This makes that the ANMC's role is ambiguous as to it is obligatory and if its mandates can be compulsory enforced. This is because its decision cannot be anchored on the constitution making its decision sinful or rather the decisions it makes are seen as informal or somewhat less formal hence cannot effectively deliver justice (Khan, 2019).

6. Discriminatory as women are not members

The other important shortcoming that people have pointed at the Jirga system is

lack of representation of women. Women cannot be members, and their representation in proceedings is not equal to that of men. In cases where women are directly involved – whether as the complainant or the accused – they have to be represented by male relatives (Luccaro & Gaston, 2014). This discriminatory practice removes women’s right to speak out, defend herself and be part of the process that leads to the making of decisions. I think it disappoints the principles of office diversity and equality because it embodies archaic gender prejudices.

CONCLUSION

The Jirga system being an integral part of the traditional system of conflict-solving among the Pashtun people, is of dramatic importance when it comes to conflict solving on the level of communities. Its relevance is in its capacity to offer timely, inexpensive and culturally appropriate interventions that promote unity and social integration. However, the system experiences many barriers that affect its efficiency in the modern world. Some of the problems include; opacity, lack of accountability and awareness, corruption, constitutional uncertainty, and gender bias all of which erode the legitimacy and impartiality of the Jirga. These challenges clearly demonstrate that without reform traditional systems cannot be relied upon to meet the needs of justice systems in the contemporary world where justice systems must operate in line with human rights and other modern legal standards.

However, for the Jirga to continue being effective and fair institution it needs a lot of overhauls. This entails enhancing transparency, mainstreaming of accountability mechanisms, combating corruption, and enhancing the status of women. Also, the integration of Jirga practices with the provisions of the constitution and legal norms can improve its position as well as activity. Therefore, the remodeling of the Jirga maintaining a cultural integrity within its setting may merge the ancient form of conflict solving highly integrated with the contemporary judicial systems complementing justice within the tribal community’s.

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