

**Parallel Justice and Fundamental Rights: A Critical Analysis of Jirga and Panchayat Systems in Pakistan**

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**Abstract**

The continued existence of informal adjudicatory institutions like Jirgas and Panchayats in Pakistan depicts a most compound nexus between the inculcated cultural mores and the theoretically servient constitutional ordeal. They are customary based and grounded in community agreement and they continue to mediate in conflicts and maintain social order, particularly in the rural and tribal hinterland of the country where formal state structures are still immature or viewed as remote. As advocates affirm that such forums are indigenous systems through which community harmony may be promoted and a cost-effective method of resolving disputes is developed, they also create a basis of serious human-rights issues. The rules used by these organs systematically violate clauses under the Constitution of Pakistan that guarantee equality, due process and entitlement to fair trial in Article 10(A) of the Constitution of Pakistan. Further, the results of such fora - specifically the ones that of women and marginalised communities have often been outcome of violation to the international human rights of Pakistan in the light of the international instruments like the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against women (CEDAW). The paper is a critical inquiry into the constitutional and human-rights consequences of Jirga and Panchayat systems on the basis that even though the systems are embedded in the social structure, they are extralegal systems that operate against the very fabric of the state which constitutes the pillars of fundamental rights. It concludes that community-based justice, though perhaps one of a relative supplement, needs to be turned into law and rights-independent check-balances to halt the continuation of existing systemic injustices in the guise of tradition.

**Keywords:** Jirga, Panchayat, Human Rights, Fundamental Rights, Informal Justice, Constitutional Law, Pakistan, Article 10-A, ICCPR, CEDAW

**1. Introduction**

The fine balancing act long existed in statutory law and customary practice in Pakistan: the legal apparatus was duly codified by the state indeed, against already existing systems of adjudication in communities. The best-known forms of this dilemma have been the Jirga and the Panchayat, the sort of informal, community-based court which continues to pass judgment on disputes in thousands of rural and tribal contexts. Even as the institutions claim to be legitimate based on

continuity of culture and social acceptance, their activities often attract issues of legitimacy and adherence to the constitutional and international provisions of human- rights into Pakistan. The continuation of such informal justice structures has highlighted a structural crisis of accessing justice, institutional capacity and eventually state legitimacy of administering fair justice to different communities (Sajjad, 2013).

Jirga system (mainly practiced in Khyber Pakhtunkhwa and Balochistan) and the Panchayat (mainly practiced in Punjab and Sindh) were systems of conflict resolution indigenous to existing ones in historical times. They are based on conventional jurisprudence and common sense and tend to appeal to the concept of honour, reconciliation and harmony in the community. Nonetheless, these very characteristics in the form of coercive social control have often taken away the basic rights, especially in cases involving women, minorities and poor communities (Ali, 2021). The survival of these mechanisms also demonstrates the constrained coverage of formal institutions as well as the powerlessness of the state to deliver justice that was timely, affordable and culturally appealable. However, their survival raises a key constitutional question namely, can such parallel forums exist alongside the supremacy over the constitution which holds out the right to equality before the law, due process, fair trial under Article 10(A)? (Iqbal, 2007).

Constitutionally, the legal framework of Pakistan gives the judiciary the sole rights to adjudicate and enact rights. The informal justice processes are largely out of this framework though and they usually go against the constitutional provisions and the law. The conflict between these two systems, the formal and informal therefore show a more profound struggle between the state sovereignty and the local autonomy. It is said that Jirga and Panchayat are the best methods to provide an immediate, acceptable, culturally, solution and reduce the burden on a court and preserve the peace of the community. In response, critics argue that their procedures are arbitrary, discriminatory and usually violative of fundamental rights, especially when women are being subjected to customary practices that include *vani*, *swara* and other inhuman or degrading practices (Sultan & Fatima, 2024a). Lack of procedural safeguards and accountability systems is further adding to the legitimacy crisis of such forums.

The process is made complex by the adoption of major international human-right instruments by Pakistan. The state, according to ICCPR, is required to create equality in the courts and tribunals and offer fair and just hearing. Similarly, CEDAW holds the state responsible to rid the state of customary practices that perpetuate gender-based discrimination. Nevertheless, the way Jirga and Panchayat are still carried on speaks to their disconnection between their stated official commitments and real-world implementation (Balcerowicz & Kuszewska, 2022a). This conflict poses the constitutional promise of primary rights and the observance of the international roles by Pakistan.

The paper attempts to analyze how the intersection of the rights of the constitution, the norms of the international human-rights and the operation of the Jirga and Panchayat systems in Pakistan interact. It poses the question of whether these informal procedures despite their social nature of embedding can be made compatible with the constitutional guarantees and the rule of law. The paper presents arguments that the presence of unregulated parallel systems of justice challenges the constitutional order of Pakistan through a critical review of the legal provisions, judicial precedents and international standards. The argument progresses that although community-based justice can be used as an adjunct tool to solving disputes, a rights-based reform policy is necessary so that it will not end in violation of constitutional and international human-right standards.

## **2. Historical and Cultural Origins of Jirga and Panchayat Systems**

South Asia: Jirga, Panchayat are unofficial adjudicative bodies which are well entrenched within the socio-cultural and historical setting of South Asia. They were formed before the establishment of the modern state, with tribal, feudal and communal culture and instead of law formed collectivity of decision and social cohesion. Traditionally, both systems grew in society as the

systems of dispute settlement in societies without centralized authority, which were ruled by the kinship, honour, local custom (Tamanaha, 2021). The Jirga, which was conventionally linked to the Pashtun tribalism, served as a tribal elder's council (maliks) that was mandated to uphold law and order, settle disputes, as well as ensured the upkeep of various Pashtunwali, the oral code of honour that guides tribal life. The Panchayat, in their turn, is the descendant of ancient Hindu and subsequently Mughal village system of governance, a council of five (panch) elders that resolved disputes of the community as a whole (Nagla & Choudhary, 2024).

Under the British colonial rule, these systems of traditional did not replace the colonial legal system, but also were never formally incorporated into the colonial judicial hierarchy. Rather, the British followed a strategy of selective accommodation as they knew they would be useful in keeping local order and at the same time guarantee indirect control. The Frontier Crimes Regulation (FCR) of 1901 that granted tribal elders in most of the country including the North-West Frontier Province (now Khyber Pakhtunkhwa) and Balochistan with quasi-judicial power institutionalized Jirgas under the supervision of political agents (Zahid, 2024). This codification established a two level system of law, that consisted of formal colonial law in the settled and customary law in the tribal areas. The boom of this bifurcated organization remained post-independent whereby informal systems were left to survive as devices of local authority and traditional legitimacy.

The state took this legal pluralism with it after the establishment of Pakistan in 1947 and was then unable to balance it with the constitutional ideal of equality in justice system. The Panchayats in Punjab and Sindh remained an informal community assembly in the newly independent state and was usually approved by the local elites or feudal landlords. In the same fashion, Jirgas continued to rule in the tribal and rural areas, where formal courts were either impossible to access or distrusted (IQBAL, 2020a). These systems, in spite of the repeated reforms of the constitution and the expansion of the judiciary, survived mainly because of the weak institutions of the state, high levels of poverty and opposition of the culture to the formal litigation. The individual strength is also associated with the social principles of the rural people, where well-being and solidarity are given much prominence instead of procedural equity.

Direct Jirga and Panchayat are only other tools which show the persistence of the sociopolitical nature of the governance in the rural part of Pakistan. They are also, in most instances, a source of dispute resolution, as well as tools of social control that widen patriarchal and feudal lines (Sultan & Fatima, 2024b). There is a balance of power that favours tribal elders and landlords in these forums to the disadvantage of women, minority groups and the poor. Though the adherents believe that such institutions reflect the knowledge of the indigenous people and justice that is localized, critics believe that such institutions tend to reproduce structural differentials and prevent the realization of basic rights. Their cultural legitimacy therefore does not necessarily turn out to be constitutional validity.

The fact that these forums have some kind of historical continuity emphasizes the dual nature of the state with regards to legal pluralism. On the one hand, the repeated governments have publicly condemned Jirgas and Panchayats on the grounds of breach of human-rights: on the other, they have silently condoned their practice as a convenient way of sustaining order in the countryside. This ambivalence demonstrates a permanent dilemma and that is whether to subdue, control or reform these systems in a right based constitutional system. This dilemma is at the core of the quest that Pakistan has been facing to balance cultural authenticity with the need to be lawful and respectful of human rights, as the following sections reveal.

### **3. Legal Status and Constitutional Framework**

The social legitimacy and legal illegality of Jirga and Panchayat systems in Pakistan lie somewhere between the two. Although their origins are deeply rooted in the cultural context and they are considered effective in their way of solving local conflicts in the country, these forums are not directly mentioned in the formal legal system of Pakistan. The 1973 Constitution provides a single

judicial system with the judges being endowed with exclusive powers to settle civil and criminal cases (Imran, 2024). According to this model, the state is the source of all judicial authority and there exists no possibility of adjudicatory structures that are independent of the constitution and procedural protection. The working of Jirgas and Panchayats thus falls out of the domain of legal powers, constituting actually, an extrajudicial use of power making the Constitution vulnerable.

Article 4 of the Constitution grants inalienability of the right to be treated in relation to the law to every citizen and Art. 10-A clearly stipulates a right to fair trial and due process (Munir, 2023). When the two are read side by side, they support the role of the state in the administration of justice by the constitutionally stipulated courts. These constitutional guarantees are directly violated by the presence of informal forms of justice that provide a binding or coercive decision without a due process. Additionally, Jirgas and Panchayats frequently administer punishments, which are based on fundamental rights, which is the violation of Articles 8 to 25 like the right to equality, dignity and the protection of life and liberty (Raisani & Hamid, 2024a).

Pakistan judiciary has reiterated severing such forums as being unconstitutional. Although these determinations have not entailed a simple criminalization of informal dispute resolution, they have made it clear that no person or group can take upon himself/herself the capacities of the judiciary nor under the guise of establishing the law. The high courts in a number of verdicts have described Jirga and Panchayat resolutions as infringement of constitutional rights and the states duties towards her citizens (S. Khan & Khan, 2024). The two cases have highlighted the rule that adjudicatory role is unlawful even though it may be socially approved of. The fact that these mechanisms still exist, particularly in far flung regions, means that there is a disconnect between judicial making and administrative acting. Jirgas have been able to operate with impunity due to the poor institutional capability of the state and the unwillingness to prosecute individuals who are affiliated with Jirga.

Concurrently, the constitutional necessity to ban extrajudicial justice systems is bolstered by the international necessities on human-rights by Pakistan. Pakistan as a state party to the International Covenant on Civil and Political Rights (ICCPR) has a duty under Article 14 to provide equality before the court and the right to ensuring the fair and public hearing with a competent, independent and impartial tribunal set by legislation (Shaikh, 2022). Likewise, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) compels Pakistan to act to forego any discriminatory practices and customs that hinder access to justice by women (M. I. Khan, 2022). The still existing existence of the Jirgas and Panchayats especially situations where women and minority are involved would be a clear breach of these international commitments.

This notwithstanding, the legal structure has at times been ambivalent. The alternative dispute resolution (ADR) programs brought into Pakistan with amendments in the Code of Civil Procedure and other local government legislations are intended to accommodate the out-of-court settlements that are under the watch of the judiciary. These formal ADR mechanisms, however, are not equal to Jirgas or Panchayats, which are not based on statutes and do not pay much attention to procedural fairness (Saeed, 2020). It would be a mistake to attempt to equate these informal systems to legitimate ADR processes since it would lend some legitimacy to structures that lack the rule of law. This therefore means that any policy framework that seeks to include the traditional dispute resolution methods will have to distinctly separate community mediation that complements judicial system and extrajudicial tribunal that will override the role of the judiciary.

The constitutional paradigm of Pakistan with the backing of the global law offers very little space to informal adjudication systems, which conflict with the baseline rights. However, the fact that those mechanisms have yet to disappear is an indicator of something more profound socio politically, which remains the inability of the formal legal order to provide accessible, timely and culturally aware justice. It is this paradox which renders Pakistan in limbo: on the one hand, the constitutional principles set forth the necessity of the abolition of the parallel systems of justice yet, on the other hand, the social reality dictates a more practical reform agenda according to which

the cultural legitimacy must be aligned with the protection of human-rights. In the next section, the human-rights implications of such systems are analyzed in more detail, but in relation to the extent to which such systems can influence gender justice, equality and the mere provision of fair-trial guarantees.

#### **4. Human Rights Implications of Informal Justice Systems**

The practice of Jirga and Panchayat systems in Pakistan attracts deep human-right issues especially on the dependent issues of equality before the law, due process and respect to life and dignity. Through these informal mechanisms, whose justification is, at most, influenced by culture and the community, such outcomes continue to manifest outcomes that are counter to the constitutional protection and the international human-rights commitment of Pakistan (S. Khan & Zubair, 2024). Their ruling often includes deeply rooted social hierarchies, gender discrimination and group conceptions of honor thus compromising the rights of individuals as well as the rule of law. Without provisions of a procedural protection, such systems are more coercive measures than systems of justice.

One of the key issues is the systematization of the breach of female rights. Authority to sign popular practices like vani and swara (trading women and girls to resolve conflicts or repay debts) has been implicated in Jirgas and Panchayats (Sultan & Fatima, 2024c). These practices are absolutely contrary to Article 25 of the Constitution that provides the equality before the law and Article 14 that safeguard human dignity. They also go against the duty of Pakistan under the Convention on the elimination of all forms of discrimination against women (CEDAW), specifically Articles 2 and 5 whose contents are to guarantee an end of discrimination practices as well as the protection of equality of rights of women (Paes & Gerald, 2021). Besides, these platforms have approved acts of karo-kari (honor killing) and other gender-based violence in the name of restoring communal peace. The lack of accountability systems enables the offenders to get off the hook leaving victims to subdue the stigma with threats or social stigmatizing.

The informal justice systems that commit procedural weaknesses also contribute to the human-rights violation. Most of the decisions made by Jirga and Panchayat are usually made without written documents, attorneys or appeal (Ahmad & Von Wangenheim, 2021a). Male elders tend to rule the proceedings and have a subjective interpretation of custom and tradition in a non-referral to the statutory law and the established evidential standards. This fails not only to uphold the principle of a fair trial under Article 10 -A of the Constitution but also violates Article 14(1) of the International Covenant on Civil and Political rights (ICCPR), that ensures every person the right to a fair and public hearing by an independent and impartial tribunal established by law.

Besides gender discrimination, such forums tend to enhance societal inequalities in terms of classes and caste. The ratings of poor and illiterate people on informal justice mechanisms are not only low because of a lack of finances and social accessibility to formal courts (Shaukat, 2021a). This biased use of justice results in a duality of justice where the strong are able to use custom to maintain the hierarchies within a region and victims take the burden of informal justice measures. Lack of transparency in procedures makes it almost impossible that the victims can seek redress hence depleting the trust the victims have towards the state in the capacity to administer unbiased justice.

Jirga and Panchayat are here to stay even after a legal outcry and it demonstrates the inability of the state to ensure the basic rights of the citizens. Although the Supreme Court and other high courts have raised such forums unlawful, there has been a weak enforcement to such acts due to political favor and the reach of the state in the rural areas (Muhammad et al., 2024). This failure has not only been encouraging human-right violations, but also threatened the ability of Pakistan to fulfill its international obligations. The United Nations Human Rights Committee has raised the issue of persistence of informal justice systems that justify extra legality punishments severally on several occasions urging Pakistan to fulfill all condemnatory roles to legally established courts (Balcerowicz & Kuszewska, 2022b).

Such connotations do not only deal with individual infractions but also with bigger issues of governance and the rule of law. The informal justice mechanisms undermine the monopoly of judicial powers of the state and reduce the trust of the state in the court system. The fact that they coexist with formal structures encourages the culture of parallel legality, where rights are constitutionally based on geography, class and gender. This justice break down compromises the universality of human rights and it goes against the constitutional promise of equality and non-discrimination in Pakistan. Respecting the fact that they need to be reformed or abolished these systems will reproduce social injustices in the name of cultural authenticity.

Thus, a discussion of the issue of human rights in Pakistan should include structural and normative dilemmas of informal justice systems. True reform cannot be found in judicial pronouncements; institutional action to broaden access to justice, enhance the legal literacy of the rural folks and the creation of state-supported systems of community mediation that would meet human-rights criteria need to be implemented. It is only due to such integration that Pakistan will be able to balance its plural legal tradition of the country with its constitutional and global duty to respect the dignity and equality of all the citizens.

### **5. Judicial Responses and State Accountability**

The high-quality judiciary of Pakistan has been instrumental in ruling the constitutional and human-rights issues in the informal system of justice like Jirgas and Panchayats. The courts have attempted to restrain the power of these extra-legal courts by a number of decisions and through the unitary actions of *sui motu* interventions, to establish the primacy of constitutional justice. Nevertheless, the fact that such structures continue to exist even after multiple judicial condemnations indicates the implementation limits of state power and social-political intricacies of the rural state (IQBAL, 2020b).

The attitude of the judicial system towards informal justice mechanisms has changed towards the tolerance to even rejection. Prior judicial culture usually disregarded the activities of the Jirgas and Panchayats, frequently considering them significant communities-based practices of convenience in isolated areas, where the strength of the state institutions was low (Ishfaq et al., 2024). But early in the 2000s, the awakening of interest in human-rights abuses, especially gender-based violence and uninhibited punishments, influenced the courts towards being more aggressive. Decision taken according to Jirga started to be defined by the Supreme Court of Pakistan and different High Courts as unconstitutional and setting against the Constitution provisions of the right to life, dignity and fair trial under Articles 9, 14 and 10-A (Dawar & Mehmood, 2024). These decisions noted the principle of a parallel adjudicatory body that could not exercise its judicial functions in an unlawful manner by a authority granted by the state.

Cases of violence women have meddled with have also been faced particularly by the media judicature interventions which have been authorized by Jirgas. Such practices as *vani*, *swara* and *karo-kari* have been declared illegal by the courts, claiming that such traditions are in contradiction with the domestic law as well as the international human-rights regulations (Ahmad & Von Wangenheim, 2021b). The judiciary has also emphasized that state has a non-delegable responsibility of ensuring citizens are not relegated by the hands of non-judicial systems or customary systems that take over the jurisdiction of courts. This perception copes with the international law context including the International Covenant on civil and political rights (ICCPR) which states are obliged to make sure that all adjudicatory bodies act within the framework of the law (Butt, 2024). In spite of such pronouncements, these have been not fully implemented because of the absence of effective mechanisms of enforcing them and the local surrounding sociopolitical pressures.

The recommendation regarding state responsibility has also been considered by the judiciary, as it is stated that tolerating Jirgas is an infringement of the constitutional responsibilities of the state (Raisani & Hamid, 2024b). The courts have believed local administrators and law-enforcement personnel who do not prevent or prosecute the Jirga-related infractions are a part of the injustice

denial. The courts have in various cases guided provincial governments to toil out preventive measures and provide monitoring mechanisms and the provision of formal courts in rural locales. However, there is still a discrepancy between what the judiciary orders the administration to do and what the administration actually does. The lack of a unifying policy response is an indication that there is none with the political determination to challenge the institutionalized structures of power that promotes informal justice systems.

In addition, there is a contradiction of cultural relativism and universal human-rights as judicial rulings depict a feeling of tension. Although the courts have criticized the illegal Jirgas, in some cases, it has also recognized that community-based mediation would be useful provided that it is carried out within the legal framework (Javier, 2020a). This subtle treatment displays sensitivity to the social reality of Pakistan countryside whereby there is no official access to courts and the legal system. However, through resolutions, the judiciary has always reiterated that informal reconciliation mechanisms need to work within the confines of the law and cannot make coercive or punitive choices.

Judicial role relates to more general issues of legal pluralism and governance, too. Although judicial activism in Pakistan has played a role in protective constitutional rights, it cannot replace good state policy or legislation. The seat of informal justice systems cannot be broken solely through the pronouncement of the law by judges unless these are backed by institutional means, like having courts, legal assistance programmes and the publicization of the law (Shaukat, 2021b). Their elimination or reform will be an uphill task as long as Jirgas and Panchayats have social legitimacy as well as political patronage. The inability of the state to enforce the decisions of the courts is indicative of not just the administrative staleness, but the even more profound disengagement between the formal legality and the locality.

Simply put, the Pakistani judiciary has strongly fought the intrusion of parallel justice systems into the fundamental rights. Its enduring stand supports the inviolability of the rule of law and human dignity. Yet, unless it is accompanied by legislative and administrative actions, judicial actions tend to remain a statement and not a change. The juridical bases over the abolition of unconstitutional justice forums have been established by the courts now lies the executive and legislature in ensuring that effective enforcement is done, an institutional outreach is made as well as a process of legal mediation which would be in line with the constitutional principles and human rights standards.

### **6. Reform and Integration—Towards Rights-Based Informal Justice**

The adverse situation of persistence of Jirga and Panchayat systems in Pakistan, despite the constitutional and judicial opposition, is a signal of the dire need to establish the pragmatic reform agenda to create the mechanisms of transition between cultural legitimacy and human-rights compliance. The fact that these informal mechanisms have been simply abolished on a legal basis has been hard to practice as it has been deeply socially rooted and the formal judicial institutions reach only a limited amount (Smekal, 2023). In turn, a moderate stance, which lays stress on reform and regulation and is not based on prohibition, seems to be the most plausible way of moving towards the goal of creating a rights-based informal system of justice.

The rights-based approach begins by recognizing that these systems succeed based on a sociological foundation. Jirgas and Panchayats continue to be the initial dispute resolution institution in many rural societies, with most people thinking that the formal courts are not available, unaffordable and corrupt (Shaukat, 2021c). Instead of discarding these systems as illegitimate in totality, the policymakers ought to try to get them to work into constitutional provisions so that they can act as mediation forums of the community and be subject to the law. It is a matter of how to change these traditional institutions as instruments of coercion into being permanent practitioners of restorative justice in accordance with human dignity and procedural fairness.

The main part of this process is the legislative and institutional reforms. A statutory framework spelling out the acceptable extent of community-based dispute resolution could be put in place by the state with a difference between mediation and adjudication (Naidoo, 2023). The available legal tools, including the Code of Civil Procedure (Amendment) Act 2017 and the establishment of Alternative Dispute Resolution (ADR) centers offer handy precedents. But, the ADR mechanisms under judicial oversight are in basic contrast to Jirgas and Panchayats, which nowadays are functioning without any stipulated statutory requirement. Incorporating the conventional method into the official ADR system would involve tough procedural rules, namely ensuring voluntariness, the inclusion of gender, record-keeping and the possibility of appealing to the regular courts (IQBAL, 2020c)

The other key reform is the community legal education and awareness. Rights-based reform can only succeed when both legislation is present and the populations have power to demand justice that is in line with constitutional norms. There can be an important role played by civil society organizations and human-rights commissions in terms of sensitizing the rural populations to the principles of equality, due process and non-discrimination (Javier, 2020b). These will gradually reduce the blind belief in the informal systems of justice and will establish a culture of legal responsibility. Vitrally, women should be institutionalized to play the activities at the community level of dispute resolution in order to challenge the patriarchal set ups that have prevailed cross these arenas.

On the same note, institutional coordination will be essential. Together with judicial bodies, the provincial and local authorities can establish community justice liaison offices whose roles would include overseeing informal practice of dispute resolution and referring cases of serious or rights-defensive concerns to formal courts (Samaddar, 2020). It should be conferred upon the National Commission of Human Rights (NCHR) and the Law and Justice Commission of Pakistan (LJCP) to collect data, make investigations and publish compliance report touching on the operations of informal systems. Pakistan can also instill accountability and oversight in existing administrative structures, which will support a situation where all the modalities of community-based justice take the subordinate position to constitutional and human-right assessment.

At the international level, Pakistan can refer to the success stories of other countries that have successfully integrated the customary justice systems in their laws. As an example, the Gacaca courts in Rwanda and the Shuras in Afghanistan have undergone reform that has reiterated transparency, careful documentation and correspondence with international human-rights law (Bosio & Caro, 2024). Such comparative understandings indicate that cultural authenticity and legal modernity do not have to be mutually opposed, provided that there is a re-organization of community mechanisms that would be in line with constitutional guarantee. Pakistan can follow a similar pattern and tailor the reform to its own social-political religious context.

However, all reform agenda should also focus on the structural issues that perpetuate dependency on informal systems, i.e., judicial backlogs, economic inequalities and lack of legal infrastructures in the rural areas (Sultan & Fatima, 2024d). Without redressing these structural shortcomings, the regulatory reforms would go through the motions. The state will need to increase the coverage of formal courts, increase access to legal assistance and ensure that the rural population will be able to obtain justice without involving unconstitutional means.

Finally, Jirgas and Panchayats reformation should be part of a bigger agenda to democratize justice whereby the laws of fairness, accountability and equality are cut across socio-cultural boundaries. The predicted rights-based informal justice system is, thus, not a romanticization of tradition, but instead its humanization. It aims at capitalizing on social capital embedded in community-based mediation and ridding discriminatory and coercive aspects of the method, which poses a violation of fundamental rights. Pakistan has the potential to transform its pluralistic tradition of law to one that respects cultural values and constitutional norms through regulations in the form of legislation, through courts in the form of decisions and through citizens in the form of active citizenship. Such

reform is consistent not only with the spirit of Article 10-A, but also with the Pakistani international right to justice using the ICCPR and CEDAW and thus establishes that justice should be accessible and human.

## **7. Conclusion**

The persistence of Jirga and Panchayat systems in being practiced in Pakistan highlights the complex interaction of culture, tradition and the rule of law. Even though these informal forums are socially ingrained and widely tolerated within the rural society, their activities frequently trample constitutional guarantees and basic human rights and especially affect women, minority groups and the isolated negatively. Critique As these parallel justice systems continue to operate unregulated, they maintain the status of inequality and continue to undermine formal access to judicial remedies as well as challenge the monopoly of the state on legal power.

The rulings of the courts have echoed the illegality of extralegal adjudication, thus reaffirming the reasoning of the state to ensure protection of the citizens to human-rights infringement that have been approved by customary practices. Still, enforcement itself is limited and it is a reflection of higher structural and institutional weaknesses. This division between judicial pronouncements and its application highlight the importance of bringing in healthy change that would incorporate cultural legitimacy with constitutional and international needs.

The balance between balancing the systems of informal justice and a rights based approach can determine the solution to the problem. Pakistan can transform these traditional forums into tools complementing formal justice and not damaging it by regulating Jirgas and Panchayats to be mediatory and not adjudicatory bodies, establishing procedural safety, promoting gender inclusiveness and increasing legal literacy. This should include concerted efforts in legislation, the courts and the government, as well as, empowering rural society to enforce justice within the framework of fairness, equality and human dignity.

After all, the reconciliation of the plural legal tradition of Pakistan with modern constitutionalism will have to be approached with subtleness that will barely become mono-dimensional either. The dilemma and the opportunity lie in ensuring the social capital community-based dispute resolution are utilized as guideline and entrenched in the constitutional and human-rights system, thus ensuring that the desired justice is not only available but also just, transparent and accountable.

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