

Conflict Resolution in Erstwhile FATA: A case Study of Jirga

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DOI: <https://doi.org/10.70670/sra.v3i2.693>

Abstract

The aim of this paper is to expand on the conflict resolution process of the Jirga system in Pakistan's Erstwhile (FATA). In any culture, disputes are very normal, but there are also resolving mechanism that function according to their traditions. In the absence of a structured legal and justice system, the Jirga system is a dispute resolution authority in Pakistan's tribal districts. This research examines the history of the Jirga system and various kinds of Jirga system, as well as its historical context and definition. The research further elaborates the Jirga system's procedures as to how a Jirga continues and settles a dispute between the parties to the conflict. In accordance with the essence of a dispute, the Jirga continues. In Erstwhile FATA, a structured justice system on the model of settled areas is not in effect.

Keywords : Erstwhile FATA, Conflict Resolution, Pakhtunwali, Kinds of Jirga system

Introduction

While known by different names, the informal justice system, Jirga, has remained prevalent in all regions of Pakistan. It has its own relevance in the contemporary legal climate. It seems, however, that it has recently remained heatedly discussed in the legal and social corridors. This type of conflict resolution system is an integral component of the communal life of the people of Pakistan's Erstwhile FATA. The Jirga system is not fresh in Pakistan's tribal belt. It is common for conflicts to occur in a society ravaged by cultural, social, political, and economic stratification. The justice system must be quick, sensitive, timely, and cost efficient in this socio-economic climate. The Jirga system is the oldest and most well-established institution in the Pakhtun community. Its history, constitution, and acts remain largely verbal to date. This is, in reality, one of the institutions that serve as an energetic force behind the individual's entire existence. The Jirga method is the strongest instrument for dispute resolution and fulfils people's expectations. The use of the Jirga has been restricted not only to trials of major / minor crimes and civil disputes since its establishment, but also helps settle conflicts between groups and tribes. For the selection of Jirga members, there is a systemized process and specific criteria. Mostly, the area's noble elders are chosen to be recognised for their integrity, wisdom, and a clear knowledge and understanding of Pakhtunwali, and even Islamic law. The religious scholars (Ulema) participate in the Jirga when a matter of Islamic law is involved. (Yousafzai & Gohar, 2012).

Literature Review

At present, conflict and conflict management is a burning problem at the community, regional and international levels, addressed either by formal or informal conflict resolution institutions. (Idrees, 2017). Typically, individuals, social groups and communities have tussles over property, wealth, land, money, political dominance, and ideology and battle against each other. Local practitioners are making the most substantial and rising contributions to dispute resolution and peace building. Such approaches are also relevant to the situations under which they exist as they meet the desires of the people concerned. Sometimes, these indigenous structures are more useful than modern systems. One such institution is Jirga. This chapter is grouped into two parts and provides this study's overall literature review. The first section consists of a study of the assessment of the Jirga system and, in the second part, a brief definition of the Jirga is given by the researchers.

Analysis of the Jirga System

The word Jirga is an original Pakhtu word that refers to a small or large number of people gathering together. The root word Jirga is derived from Jirga, which means "loop" or "round" (Ghyathul-Lughat, 1871). In Persian, it applies to a group or crowd of individuals. Scholars claim that the word Jirga has the same meaning as Pakhtu in the Turkish language. (Sherzaman, 2007). Jirga means a place where people, without any threat, may express their feelings and feelings. "Jar" in Pakhtu means open tone, and "gah" means location or position. The word jahar means loud in Arabic, (Iqbal, 2014).

The Jirga system's origin is traced back to the Aryan tribes. They migrated to Afghanistan from Central Asia and then to India. (Sherzaman, 2007). For settling conflicts and disputes, the Aryan tribe used Jirga. Often the king even attended meetings and presided over the Jirga. The Jirga was like a council in rural areas, (Wardak, 2004 The decision shall be made in accordance with the existing customs. In India, between 1451-1489, Sultan Bahlol Lodhi was the king. To overcome people's problems, he founded the Jirga of elderly people. The Sultan often used to sit among individuals, and typically all of them sat in a circle. He also set up an administrative structure which was adopted by the later rulers as a model (Glatzer, 2002).

Much of his state areas were allocated to Afghan supporters by Sikander, another ruler in India. He strongly advocated the independence of the Afghan tribals and organised the local Jirga. Similarly, in India, Sher Shah Suri adopted the tradition. For the same reason, he used the Jirga of the Elders. In a circle, he will sit among them. When their descendants tried to destroy the tribes, the later Mughals also got support from their laws. (Sherzaman, 2007). In 1747, a Loya Jirga (Grand Jirga) was organised in Qandahar by the Abdali tribe of Afghanistan. The question was to pick a chief. After a long nine-day debate, Sabir Shah declared the Jirga's decision that no one was better for this position than Ahmad Shah Abdali. (Sherzaman, 2007). The Great Assembly of Afghan Tribal Leaders and Elders, sitting together in a coordinated way, debated important national issues and took joint decisions. (Badakhshani, 2004). In 1916, during Amir Habibullah Khan's dictatorship, the Loya Jirga proposed a resolution that was against Amir's wish. In support of the Turkish caliphate, allied with Germany, they gave a declaration of jihad against the British. Nevertheless, the Amir overruled the ruling in favour of British India. Such a Jirga challenged Amanullah Khan in 1924 for his Nizamnama. (Faizzad, 1989 For the inevitable cause of the prevailing security situation, which held its first session in Peshawar, Pakistan on 11-12 May 1980, A Jirga was organised outside Afghanistan. (Badakhshani, 2004).

The Concept of the Jirga System

The Jirga exercises both administrative and judicial roles and resolves all conflicts based on tribal agreements, customs, and principles of justice regarding the allocation of land, property,

blood feuds, blood assets, and other significant inter-tribal relations. The judicial and executive roles are also carried out in Jirga trials, taking into account the practices and customs observed by the people in Pakistan's tribal region. (Yousafzai & Gohar, 2012). In the provinces of Khyber Pakhtunkhwa and Baluchistan, Jirga is used as a method and strategy to address people's issues, conflicts, issues and disputes. Via Jirga, business questions are also resolved. It also fixes the people's land, civil and criminal issues. In fact, Jirga plays an important role in democracy because every person has the right to sit in a Jirga 's proceedings in this case. In front of the public at large, the parties are investigated and questioned.

Currently, the Jirga members sit in a circle. It denotes the culture and equality of the Pakhtun among individuals. It is like a round table conference in which the chairperson is one member. Awareness of Pakhtunwali, wisdom, and problem-solving skills are the key requirements for participating in a Jirga. The tribal(districts) Jirga operates to preserve peace in accordance with the tribal(districts) custom and practice of dispute resolution. (Iqbal, 2014). A Jirga has a horizontal position as well as a vertical one. Horizontally, its primary feature is conflict resolution, whereby it sits as a jury in judgement on crimes and abuses. Vertically, Jirgas is committed to creating upward and downward ties to and from the government, interface with other tribes, functions of diplomacy, legislative, peace building, creation and arbitration. Jirga is the worldwide representative of Pakhtun community. In resolving the problems and disputes of people, it has a distinctive character (Wardak, 2004).

Jirga 's aim is also to resolve disputes, conflicts, and problems of individuals and society at large. It discusses the tribal people's main agreements and represents and results in the form of decisions that are binding on the parties concerned. It, therefore, has both a strategic and a tactical role. Because of its inherent simplicity, compared to the country's judicial system, which is complicated, time consuming, expensive, and elusive by contrast, it ensures simple, inexpensive, and assured justice. The Jirga is versatile and works with the parties in close interpersonal communication. (Atayee, 1272). Jirga encourages agreement and safeguards people's rights. At the end, Jirga members are issued a unanimous decision. Via Jirga, the ordinary courts' day-to-day dependency can also be monitored. The determination of liability in the Jirga proceedings is an integral aspect. The elders of the group obey and conduct the past traditions in their choices. Due to its speedy and easier process, Jirga has attracted the attention of people all over the world while tracing back, the past. Jirga functions in the absence of government authority, and the primary important component when choosing parties is the agreement of the parties. Historically, Jirga members have been named by the supreme head or official of the government to settle people's disputes. Their thoughts and advice are taken into account in order to solve people's problems. Via consultation and community debate, the members decide national issues. The Jirga members freely discuss, listen to, and consult most of the issues as they are local experts. Public servants are also invited to attend and observe the proceedings of the Jirga.

The members of the Jirga thoroughly research the topic under consideration and examine it. They can take assistance from any other individual who is an expert to understand the problem. A committee and council are included in Jirga to implement the decision which is binding on the parties. It is easy to follow since the decision is taken by the members of the Jirga, who are the respectable members of society. It is therefore an institution and a conflict resolution mechanism that meets the need to solve and decide popular, communal, tribal and inter-tribal problems, issues and disputes, etc., as well as personal, domestic, hostile family affairs, etc.

Methodology

The aim of this research is to highlight and explore the Jirga system in Erstwhile FATA. This thesis focuses on the Jirga system's process of how a Jirga settles a dispute between the entire

population of Pakistan's tribal areas. This thesis adopted a qualitative method of research and a historical approach to the review of the conflict resolution process procedure in Pakistan's tribal areas. The data is collected through interviews of elders of tribal Districts and Jirga experts from secondary library sources such as books, journals, records, newspapers, and primary data.

Analysis and Discussion

Erstwhile FATA is part of Pakistan and is governed and controlled by officials of the Pakistani federal government. Jirga is pursued and practised as a framework for resolving individual and group disputes. The Joint Jirga is also formed in Erstwhile FATA to solve problems. As part of the traditions of the Pakhtun community, the Jirga in the Pakhtun Erstwhile FATA community has been an established traditional institution for dispute resolution from the very beginning. In Erstwhile FATA, there are different types of Jirga system that are performed and run. Therefore, since this analysis focuses on the Bajaur agency (now District Bajaur in Erstwhile, FATA, the forms relevant to the Bajaur agency are taken into account. Few significant styles are discussed below, showing similarities to the formal system of justice. These forms of Jirga address the problems that occur in its jurisdiction, such as the mainstream judicial systems of the lower and upper courts. The following are the most relevant kinds of Jirga:

Local Jirga

Local Jirga addresses and resolves conflicts at the level of the village, (Sherzaman, 2007). Typically, most tribal people belong to an agricultural estate. The basic items used for the generation of their income are timber, forest, kindling, channel, road, inland water way, waterspring. They are organised and well-established economically and socially. The elderly families who have an influence on society belong to the local Jirga members. They belong to various tribes and khels. The conflicts are effectively settled by Jirga and representatives are selected from prominent tribes and khel (Glatzer, 1998). Usually, the local Jirga begins by reciting verses from the Holy Qur'an and concludes with du'a. Depending on the physical location of the place where a Jirga is held, the elders of the meeting within the circle of the Jirga are in the local Jirga. Of other villages, ordinary members belong. While outsiders have the option of participating in Jirga proceedings, they are not permitted to interfere with the decisions and findings of Jirga members. (Smith Institute, 2007).

Standard participants are not authorized to deal with procedures of inquiry and inquiries. They listen, however, to the entire proceedings of the Jirga. Their presence is a reminder to the Jirgamaran (Jirga members) that the system's watchdogs are the citizens of the village. Local Jirga is, therefore, a multi-dimensional coordination mechanism between the different parties involved. It is not only a means of communication between the disputants, but also communication between all of these and the silent village itself. (Wardak, 2004). There is an essential function in this composite course of clear and direct communication. This also signifies the unity of the village people. It demonstrates that the village has numerous cultural and social traditions and values, the infringement of which at any stage is not acceptable. There are limits on the violators, i.e., as a penalty, they are required to pay compensation. Punishment relies on the severity of the case and the form of infringement.

If a prikra (judgement) is seen by the disputants and khel as unjust, they will reject it. When a wrong narkh (precedents and rules) is introduced, this also happens. This is referred to as kog-narkh (false rules), meaning the use of a false narkh or the misapplication of the prevailing narkh. In this case, to be able to appeal to another Jirga, the unhappy group must have the support of the Khel. If the second Jirga proves that a kog-narkh (wrong law) has been enforced, the Marakachian (members of the Jirga) forfeit their credibility and the right to participate in any Jirga in the future. (Sherzaman, 2007). Depending on the significance of the event, the

proceedings and the composition of the Local Jirga. It is according to traditional law and morality standards. For instance, in civil litigation and conflicts, the condition of the criminal case varies in nature. Local Jirga primarily has to do with civil matters in toting up (Wardak, 2004).

Petty criminal matters and family issues, however, are also resolved. Local Jirga focuses on property rights, agricultural rights at its edges, and minor bodily harm. Local Jirga, however, is usually held in a specially designated open and public location or in the Masjid village. It is seen from the previous discussion that the local Jirga process and the result are beneficial and helpful to individuals. It is the only way to settle people's conflicts. Because of its organised and valid proceedings, people obey it. Community conflicts by Local Jirga are also resolved (Khan, 2013).

Qawmi Jirga

Qawm means society and a culture of individuals. Qawmi Jirga is a community of experts and experienced individuals. They belong to various families and villages. The Jirga, means Jirga, consisting of respectable elders and members of the tribes, was recognised by Section-5 of the Frontier Crimes (Amendment) Regulation 2011. The authority of this Jirga type is much broader than any other Jirga type. Any topic of national or societal importance may be taken up by the Qawmi Jirga (Shahzada, 2013). The most significant and sensitive issues are discussed in the case of Qawmi Jirga, such as: the crime of murder, injury to another, injury to another person, serious attack on goodwill and credibility of immovable property conflict, theft, robbery. With profound attention and consideration, Jirga members consider certain issues and then punish them according to the cultural norms practised by the tribal people. Strong sentences are given to criminals who commit certain offences and they are rules for the rest of the general population.

Jirga 's practise varies from case to case, but the customs and rituals of different areas of the Pakhtun tribes are typically similar in nature. For example, in their mother tongue, i.e., the Pakhtu language, the parties are examined. For tribal citizens, there is no language barrier. (Miakhel, 2005). Jirga members carefully analyse the favours and disadvantages of punishments, such as bad (direct punishment), and khoonbaha (blood money), in a murder case, for example. The aim of giving extreme penalties is to avoid the needless and unfair cruel murder of individuals. Revenge is also forbidden following the decision provided (Bangash, 2004). In murder cases, therefore, revenge is taken to foster equilibrium among individuals. It is the most suitable method to deter more needless killings and murders. The members or descendants of the victims are also present at the time when vengeance is taken. Based on razinama (contract) or apology, they have the option of reconciliation or they can leave the perpetrator. Subject to the rules and regulations set out in Islamic law, they can pardon the offender (Sindh Judicial Academy, 2008). This element of dispute resolution is focused directly on Islamic law by Jirga. Compatibility between Jirga and Islamic law also comes with it. The issue of this aspect is that the female legal heirs of a deceased person are usually not included in the Jirga to resolve a murder case.

In the case of murder or serious assault, Nanawate is an element used. It is the most relevant aspect of the case that qawmi Jirga, members of nanawate, took permission from members of Jirga to enter the victim's home. And, in the home, or in public, they forgive. If victims are of the opinion that pardon should be made publicly, the nanawate members are obligated to enforce it before the general public. (Jahan, 2013). An example of the Nanawate Bajaur Agency (now District Bajaur), which emerged thirty years ago, is listed here. In Bajaur Agency (District), Tehsil Mamond, two families quarrelled with each other. One individual was killed during a quarrel. According to tradition, the elders of the region determined that the murderer's home had to be burned and that members of his family had to be expelled from the village. The family of the murderers approached Malak from another village for asylum, and he welcomed their offer.

The Jirga had engaged the murdered family in talks and asked them for forgiveness. All the members of the murderer's family were pardoned except the murderer and the murderer was proclaimed kashunda (the murdered family will kill him wherever he is found). Another person from the murdered family died about fifteen years later. To forgive the murderer, the other family again formed a Jirga of respectable elders for nanawate. The Jirga (nanawate) members and the village elders demanded that the murdered family forgive the murderer. They acknowledged nanawate, and all the members of the Jirga agreed to pay the murderer's family the blood money they owed. As a consequence, both families are reconciled and rogha (reconciliation) is named (Jahan, 2013).

Subject to certain restrictions, all participating individuals are permitted to speak. Most of the participants usually only watch and listen to the representatives of the Jirga. Jirga members listen to the parties one by one and the decision is taken afterwards. Without any delay or limitation, the parties have the opportunity to explain the details of the case or conflict. They present the case's key facts and argue in front of members of the Jirga. The Jirga members sit together in a circle after the proof process and discuss the facts of the case that are provided from both sides. In light of applicable laws and customs, they address it. Finally, they draw a consensus and pronounce their final and binding decision on the part of the parties.

Conclusion

Taking the above topic into account, it can be inferred that there are four primary forms of Jirga. Local and village-based disputes between citizens and families are resolved by the local Jirga. Some more serious matters are dealt with by the Qawmi Jirga. Qawami Jirga settles serious disagreements between families and tribes. Its members do not belong to one tribe. Different tribes belong to them. The FCR Jirga is created for the settlement of conflicts by the Political Agent or the Political Administration. Normally, the Political Agent chooses the members. The Loya Jirga deals with foreign and national problems. Joint Jirgas for resolving problems are also arranged in FATA. The Jirga in FATA's Pukhtoon community is an established traditional dispute resolution institution. Therefore, as it operates successfully, both at the group and official levels, it should continue. However, the laws, procedures and execution of its decisions can be changed to make them consistent with the Constitution and the formal justice system.

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