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## **The Evolution of Jirga System: A Conflict Resolution Mechanism in FATA**

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### **Abstract**

This study aims to evaluate the mechanism of conflict resolution through the Jirga system in Federally Administered Tribal Areas (FATA) of Pakistan. Conflict is a common issue in every society, but the resolving bodies exist in every society which are working according to their socio-cultural set-up. The Jirga system is a conflict resolution body in semi-governed tribal areas of Pakistan in the absence of formal legal and justice system. This study highlights the evolution or historical background and concept of the Jirga system as well as the kinds of Jirga system. The study further evaluates the procedures of the Jirga system that how a Jirga proceeds and resolves a conflict between the two parties. The Jirga proceeds according to the nature of a conflict. A formal justice system on the pattern of settled districts are not in practice in FATA. Therefore, there is a strong urge that the institution of *Jirga* must be an effective substitute.

**Keywords:** FATA, Conflict Resolution, Conflict Management, Reconciliation, *Jirga* System

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### **1. Introduction**

The informal justice system, *Jirga*, remained prevalent, though known with different names, in all the regions of Pakistan.<sup>1</sup> In the contemporary legal environment, it has its own significance and therefore it is still in practice. However, it seems that recently it remained under heated debate in the legal and social corridors. This form of dispute settlement mechanism is an essential ingredient of the communal life of the citizens of FATA. *Jirga* system is not new in the tribal belt of Pakistan. In a society raven by cultural, social, political, and economic stratification, disputes are natural to arise. In this socio-economic milieu, the justice system must be quick, responsive, timely, and cost effective. In *Pakhtun* culture, the *Jirga* system is the oldest and well-established institution. Till date, its history, constitution, and actions mostly remain verbal. In fact, this is one of the institutions that work as an energetic force behind the entire lives of the individual. *Jirga* system is practiced as the best tool for conflict resolution and satisfies the aspirations of the people. Since its inception, its use is limited not only to trials of major/minor crimes and civil disputes, but also assists in resolving conflicts between groups and tribes. There is a systemised method and basic criteria for the selection of *Jirga* members. Mostly, noble elders of the area are chosen who are known for their honesty, intelligence and a sound understanding and knowledge of *Pakhtunwali*, and even Islamic law. When a question of Islamic law is involved, the religious scholars (*Ulema*) take part in the *Jirga* (Yousafzai & Gohar, 2012).

## 2. Literature Review

Conflict resolution and management is a major issue at community and regional levels which is addressed either by formal or informal institutions of conflict resolution. Customarily, the individuals, social groups and societies have tussles and fought against one another over property, wealth, land, money, political superiority, and ideology. The most important and growing contributions to conflict resolution and peace building are done by local practitioners. These practices are often appropriate to the conditions in which they operate as they satisfy the aspirations of the people concerned. These indigenous institutions are sometimes more useful than modern systems. Jirga is one such institution. This part is organised in two sections and presents the overall literature review of this study. The first part is contained of a review of the evaluation of the Jirga system and in the second part, the researchers present a brief concept of the Jirga system.

### 2.1. Evaluation of the Jirga System

The word *Jirga* is an original *Pakhtu* word which is referred to the gathering of a small or a large number of people. *Jirga* is derived from the root word *Jirga* which means a “loop” or “round” (Ghyathul-Lughat, 1871). In Persian, it refers to a group or crowd of people. Scholars argue that the word *Jirga* is originated from the Turkish language with the same meaning as in *Pakhtu* (Sherzaman, 2007). *Jirga* means a position where individuals may express their sentiments and feelings without any threat. In *Pakhtu* “Jar” means open tone and “gah” means place or position. In Arabic, the word *jahar* means loud (Iqbal, 2014). The history of the *Jirga* system is traced back to the Aryan tribes. They migrated from Central Asia to Afghanistan and then to India (Sherzaman, 2007). The Aryans tribe used *Jirga* for resolving conflicts and disputes. Sometimes the king also joined sessions and chaired *Jirga*. *The Jirga* was like a rural council (Wardak, 2004). The decision was taken according to the prevailing customs. Sultan Bahlol Lodhi was the ruler in India during 1451-1489. He formed the *Jirga* of elder people to resolve people’s issues. The Sultan also used to sit among jirga members, and all usually in a circle. He also set up an administrative system which was followed by the later rulers as a model (Glatzer, 2002).

Sikander, another ruler in India, distributed most of his state areas to Afghan supporters. He deeply supported Afghan tribal independence and organized local *Jirga*. Similarly, Sher Shah Suri followed such practice in India. He used a *Jirga* of elders for the same purpose. He would sit among them in the circle. When their descendants tried to suppress the tribes, the later often got help from their rules to Mughals (Sherzaman, 2007). In 1747, the Abdali tribe of Afghanistan organised a *Loya Jirga* (Grand *Jirga*) in Qandahar. The issue was to choose a leader. After a long discussion of nine days, Sabir Shah announced the decision of the *Jirga*, that no one is better than Ahmad Shah Abdali for this position (Sherzaman, 2007). Grand assembly of Afghan tribal leaders and elders, who sit together in an organised manner, discussed important national issues, and make joint decisions (Badakhshani, 2004). During the regime of Amir Habibullah Khan, the *Loya Jirga* held in 1916 proposed a decision which was against the wish of Amir. They gave a declaration of jihad against the British in defence of the Turkish Caliphate, allied to Germany. However, the Amir overruled the decision in the favour of the British India. Amanullah Khan was challenged by such a *Jirga* in 1924 for his Nizam-Nama [a constitution] (Faiz-zad, 1989). A *Jirga* was organized outside of Afghanistan for unavoidable reason of the prevailing security situation which held its first session in Peshawar, Pakistan from 11-12 May 1980 (Badakhshani, 2004).

## 2.2. The Concept of the Jirga System

The *Jirga* exercises both executive and judicial roles and settles all disputes about the distribution of land, property, blood feuds, blood money, and other important inter-tribal affairs based on tribal conventions, traditions, and principles of justice. In *Jirga* proceedings, the judicial and executive functions are also exercised keeping in view the traditions and customs practiced by the people in the tribal area of Pakistan (Yousafzai & Gohar, 2012). In Khyber Pakhtunkhwa and Baluchistan provinces, *Jirga* is used as a mechanism and method for solving problems, conflicts, issues, and disputes of the people. Business issues are also settled through *Jirga*. It also resolves the land, civil and criminal issues of the people. In fact, *Jirga* plays a significant role in democracy because in this case, every individual has the right to sit in the proceedings of a *Jirga*. Parties are examined and inquired in front of the public at large. It is a safe and secure method to make people aware of the rules of that locality.

The *Jirga* members usually sit in a circle. It denotes the *Pakhtun* culture and equality among people. It is like a round table conference in which one person is the chairperson. The main criteria to attend a *Jirga* are, knowledge of *Pakhtunwali*, wisdom, and problem-solving skill. The tribal *Jirga* works according to the tribal custom and tradition for conflict resolution to maintain peace (Iqbal, 2014). A *Jirga* has both a horizontal and a vertical role. Horizontally, its key role is dispute resolution whereby it sits in judgment over crimes and violation as a jury. Vertically, *Jirgas* are engaged in setting up upward and downward linkages to and from the government, interface with other tribes, diplomatic, legislative, peace building, developmental and arbitration roles.” *Jirga* represents the *Pakhtun* culture worldwide. It has a distinctive character in addressing people’s issues and conflicts (Wardak, 2004).

The purpose of *Jirga* is to resolve disputes, conflicts, and issues of the individuals and society at large as well. It addresses the key concerns of the tribal people and reflects and results in the shape of decision which is binding on the parties concerned. Therefore, ‘it has both a tactical and a strategic role. Due to its inherent simplicity, it ensures quick, cheap, and certain justice compared with the country’s judicial system, which is complex, time consuming, costly, and elusive by comparison. The *Jirga* is flexible and operates in close inter-personal contact with parties’ (Atayee, 1272). *Jirga* promotes consensus and protects the rights of the individuals. A unanimous decision is given by *Jirga* members at the end. Through *Jirga*, the day-to-day pendency of the ordinary courts can also be controlled. In *Jirga* proceedings, the determination of the liability is an essential element. The elders of the locality follow the past practices and implement in their decisions. On tracing back, the history, *Jirga* has attracted the attention of people all around the world because of its speedy and easier method. *Jirga* works in the absence of governmental authority and consent of parties is the foremost essential ingredient while selecting parties. Historically, the supreme head or official of the government appoints *Jirga* members for resolving disputes of the people. Their opinions and recommendations are taken into consideration for settling issues of the people. Majority of the issues are openly discussed, listened, and consulted by the *Jirga* members as they are experts of the locality.

The public servants are also called to attend the *Jirga* and observe its proceedings. The *Jirga* members deeply study and analyse the issue under consideration. To understand the issue, they may take help from any other person who is an expert. *Jirga* includes a committee and council to enforce the decision which is binding on the parties. Implementation is easy because the decision is given by the *Jirga* members who are the honourable members of the society. Thus, it is an institution and a system of conflict resolution which meets the need of solving and

deciding common, communal, tribal and inter-tribal problems, issues and disputes, etc., as well as personal, domestic, inimical affairs between families, and so forth.

### 3. Methods and Material

This study aims to highlights and explores the Jirga system in the tribal areas of Pakistan. This study focuses on the procedure of the *Jirga* system that how a Jirga resolves a conflict among the entire people of tribal areas of Pakistan. This study followed a qualitative research method and historical approach to analyse the procedure of conflict resolution mechanism in tribal areas of Pakistan. The data is collected from secondary sources of the libraries like, books, journals, reports, newspapers, and primary data through interviews from the elders of tribal areas and Jirga experts.

### 4. Analysis and Discussion

FATA is a part of Pakistan and administered and regulated by the appointed officials of federal government of Pakistan. It is governed under the Frontier Crimes (Amendment) Regulations (FCR), 2011. *Jirga* is followed and practiced as a mechanism to resolve quarrels of the individuals and community. In FATA, joint *Jirga* is also organised for settling the local issues. The *Jirga* in the *Pakhtun* community of FATA is an established traditional institution for conflict resolution from the very beginning as part of the traditions of Pakhtun community. There are various kinds of *Jirga* system which are practiced and working in FATA. As this study focuses on the Bajaur agency in FATA, therefore the applicable types in Bajaur agency are taken into consideration. Few important types are discussed below, which shows its relationship with and similarity to the formal justice system. Such kinds of *Jirga* settle the issues which comes in its Jurisdiction like the lower and upper courts of mainstream judicial processes. The most important kinds of *Jirga* are the following:

#### 4.1. Local Jirga

Local *Jirga* investigates and resolves conflicts which arise at the village level (Sherzaman, 2007). The majority of the tribal people usually belong to an agricultural farm. The timber, forests, kindling, channel, passage, inland water way, water-spring, and copse are the basic things used for the generation of their income. They are economically and socially organized and well-established. Local *Jirga* members belong to the elder families who have an influence on society. They are from different tribes and *khels*.<sup>2</sup> *Jirga* resolves the disputes efficiently and the members are chosen from influential tribes and *khel* (sub-tribe) (Glatzer, 1998). The local *Jirga* usually starts by the recitation of verses from the Holy Qur'an and ends with du'a. Depending on the physical location of the place, where a *Jirga* is held, elders, in *local Jirga* from the meeting inside the circle of the *Jirga*. Ordinary members belong to other villages. Although outsiders have the choice to attend *Jirga* proceedings, they are not allowed to interfere with decisions and findings of *Jirga* members (Smith Institute, 2007).

The normal participants are not allowed to deal with investigation and inquiries processes. However, they listen to the whole proceedings of the *Jirga*. Their presence is a reminder to the *Jirgamaran* (*Jirga* members) that the people of the village are watchdogs of the system. Thus, local *Jirga* is a multi-dimensional process of communication between the various parties involved. It is not only a form of communication between the disputants but also communication among all of these and actually silent village (Wardak, 2004). This composite

course of express and direct communication plays a significant role. This also signifies the unity of the people of the village. It shows that the village has diverse cultural and social practices and values, the violation of which is not satisfactory at any level. There are restrictions on the violators' i.e., they are supposed to pay compensation as a punishment. Punishment depends on the nature of the case and type of the violation. Harm can be inflicted by putting up such punishments (FCR, 2011).

If the disputants and *khel* see a *prikra* (judgment) as unfair, they can reject it. This often happens when a wrong *narkh* (precedents and rules) is applied. This is called *kog-narkh* (wrong rules) which means the application of a wrong *narkh* or the misapplication of the prevalent *narkh*. In this situation, the dissatisfied party must have the support of the *khel*, to be able to appeal to another *Jirga*. If the second *Jirga* proves that a *kog-narkh* (wrong rules) has been applied, the *marakachian* (*Jirga* members) lose their reputation and the right, to take part in future at any *Jirga* (Sherzaman, 2007). The proceedings and nature of the Local *Jirga* depend on the importance of the case. It is according to the principles of customary law and morality. For instance, the situation of the criminal case differs in nature with civil case and disputes. In totting up, Local *Jirga* mostly concerns with civil matters (Wardak, 2004).

However, petty criminal matters and family disputes are also resolved. The focus of local *Jirga* is on rights attached to the property, agricultural rights on its margins, and minor bodily harm. However, local *Jirga* is normally held in a specially designated open and public place or in the village Masjid. From the preceding discussion, it is proven that the local *Jirga* process and the outcome are useful and helpful to people. It is the best way to resolve disputes of the people. People follow it because of its organized and legitimate proceedings. Group disputes are also resolved through Local *Jirga* (Khan, 2013).

#### 4.2. Qawmi Jirga

*Qawm* means society and group of people. *Qawmi Jirga* is an assemblage of the expert and experienced people. They belong to different villages and households. Section-5 of the Frontier Crimes (Amendment) Regulation 2011 recognized the *Jirga*, means, *Jirga* consisting of respectable elders and representatives of the tribes. The jurisdiction of this type of *Jirga* is much wider than any other type of *Jirga*. The *qawmi Jirga* can take up any issue of national or community interest (Shahzada, 2013). In the case of *Qawmi Jirga*, the most important and sensitive issues are addressed, like; the crime of murder, hurting someone, injury to another person, severe attack on goodwill and reputation of person dispute of immovable property, theft, robbery. *Jirga* members consider such issues with deep attention and care and then punish according to the cultural traditions followed by the tribal people. Severe punishments are given to the offenders who commit such kind of crimes, and these become guidelines for the rest of the public at large (FCR, 2011).

The procedure of *Jirga* varies from case to case but usually, customs and traditions of different areas of *Pakhtun* tribes are similar in nature. For example, the parties are examined in their mother tongue i.e., *Pakhtu* language. There is no language barrier to tribal people (Miakhel, 2005). In a murder case, for example, *Jirga* members carefully evaluate the favours and disfavours of punishments, such as *badal* (direct punishment), and *khoonbaha* (blood money). The aim of giving severe punishments is to stop unnecessary and unreasonable cruel murder of the people. Revenge is also prohibited after the decision given (Bangash, 2004). Therefore, in murder cases, retaliation is taken to promote balance among people. It is the most preferable

tool to avoid extra unnecessary killings and murder. At that time when retaliation is taken, the representatives or heirs of the victims are also present. They have the option of compromise, or they may leave the offender based on *razi-nama* (contract) or apology. They may pardon the offender subject to the rules and regulations have given in Islamic law (Sindh Judicial Academy, 2008). This aspect of conflict resolution through *Jirga* is based directly on Islamic law. It also brings compatibility between principles and procedures of *Jirga* and Islamic law. The issue of this aspect is that normally, the female legal heirs of a dead person are not involved in the *Jirga* for settling a murder case.

*Nanawate*<sup>3</sup> (forgiveness) is an aspect used in the case of murder or severe attack. It is the most significant aspect which addressed the case in qawmi *Jirga*, members of *nanawate*, take permission from *Jirga* members to enter in the house of the victims. Then, they pardon in the house or publicly. If victims are of the opinion that pardon should be made publicly then the members of *nanawate* are bound to implement it in front of the public at large (Jahan, 2013). An example of *nanawate* Bajaur Agency is mentioned here which arose thirty years ago. Two families quarrelled with each other in Bajaur Agency Tehsil Mamond. During quarrel one person was killed. The elders of the area decided according to the custom that the home of the murderer must be burnt, and member of his family be expelled from the village. The murderer family approached to the Malak of another village for asylum, and he accepted their request. After some years, an elder of murdered family died. The murderer family organized a *Jirga* of respectable elders for *nanawate*. The *Jirga* engaged in negotiations with the murdered family and requested them for pardon. They pardoned all the members of the murderer family except the killer and declared the killer as *kashunda* (the murdered family will kill him everywhere he is found). About fifteen years later, another person of the murdered family died. The other family again organised a *Jirga* of respectable elders for *nanawate* to pardon the killer. The members of *Jirga* (*nanawate*) and the elders of the village requested the murdered family to pardon the murderer. They accepted *nanawate* and all the *Jirga* members decided that the murderer family be paid blood money which they obliged. As a result, both the families are reconciled, and it is called *rogha* (reconciliation) (Jahan, 2013).

All participating persons are allowed to speak subject to certain conditions. Usually, majority of the participants observe only and listen to the *Jirga* members. *Jirga* members listen to the parties one by one and afterwards, the decision is taken. Parties have the opportunity to describe facts of the event or dispute without any hesitation and restriction. They present major facts of the case and argue in front of *Jirga* members. After the evidence stage, the *Jirga* members sit together in a circle and discuss the facts of the case which are given from both sides. They discuss it in the light of relevant laws and traditions. At last, they reach a conclusion and announce their verdict which is final and binding on part of parties.

### 4.3. Sarkari or FCR Jirga

It is also known as Sarkari *Jirga*. The FCR, 2011 has its origins in laws that were enacted by the British rulers. Its origin was in the northwest part of India. Such rulers organized and prepared people for countering opposition of *Pakhtuns*. In fact, they wanted to defeat the rebellion of *Pakhtuns*. Their aim was to protect rights as given by British rulers. Since its introduction in 1901, the law stays intact for the FATA residents and is applied by the Government of Pakistan. The Sarkari *Jirga* is constituted under Section-48 of FCR and the Political Agent nominates it for dispute resolution (FCR, 2011). In FATA, the British rule made an agreement with the *Pakhtun* tribes. They made a compromise with people and allowed them

for settling issues between people in tribes. They settled the disputes of a group of people and government by constituting local *Jirga*. This compromise was enforced through “Frontier Crimes Regulation, of 1901.” In such regulation, one representative was appointed to govern the working and managing the *Jirga* (Chaudhry, 2011).

Under FCR 1901 amended in 2011 section 5(2)(b) council of elders, three or more respectable elders appointed by the Political Agent or District Coordination Officer forms the *Jirga* in the headship of an Assistant political Agent. *Jirga* members are usually appointed by the government in minor cases while in major cases the parties to the dispute usually develop mutual consensus on the names of the *Jirga* members (Yousafzai & Gohar, 2012). The *Jirga* members decide time, place, and date for the proceedings of the *Jirga*. A tribunal has been also set up for examining and dealing decision of the *Jirga* at the appellate level (Wardak, 2004). Section 55-A(1) says, that a revision shall lie to the FATA tribunal within ninety days against any decision, if challenged.

Here the nomination of the *Jirga* members is important because the *Jirga* members should be well versed and experts. If one party chooses a member who is not eligible or competent to be a *Jirga* member, then definitely the decision or result of the issue can become unacceptable and hence invalid. There are no formal requirements for the selection of *Jirga* members. However, they should know about the locality, traditions, customs, and rules of *Jirga*. The influential Malaks and Khans of the locality cannot vitiate the *Jirga* proceedings. They are also obliged to consider the decision given by *Jirga* members and are supposed not to create disturbance. If the disagreement arises in the selection of *Jirga* members, then parties can mutually decide and nominate the number of *Jirga* members. If one party is unable to join *Jirga* proceedings, it is supposed and required to nominate its representative(s). In case of disagreement, the Jury or number of experts may be re-constituted for conducting the proceedings of *Jirga* further.

## 5. Conclusion

Keeping in view the above discussion, it can be concluded that there are four main types of *Jirga*. The local *Jirga* settles local and village-based conflicts between individuals and families. The *qawmi Jirga* deals with some more serious matters. *Qawmi Jirga* resolves major conflicts between families and tribes. Its members are not from one tribe. They belong to different tribes. The *FCR Jirga* is constituted by the Political Agent or the political administration for dispute resolution. It is known as the council of elders. The Political Agent usually selects its members. The *Loya Jirga* deals with issues of international or national level. In FATA, joint *Jirgas* are also organized for settling issues. The *Jirga* in the *Pukhtoon* community of FATA is an established traditional institution for conflict resolution. As it is effectively working, therefore, it should continue both at community and official levels. However, changes may be introduced in the rules, proceedings, and implementation of its decisions to make it in line with the Constitution and the formal justice system.

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<sup>1</sup> In some parts it is known as *Panchayt*. In others it is named as *Maraka*, and *Ulasi Jirga etc.*

<sup>2</sup> *Khel* is a sub section of a tribe.

<sup>3</sup> *Nanawatay* means repentance over past hostility or inimical attitudes and the granting of asylum.