

## Jirga after Militancy: Traditional Social Justice System in Dara Adam Khel FR Kohat, Pakistan

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p- ISSN: 2521-2982  
e- ISSN: 2707-4587  
p- ISSN: 2521-2982

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**Abstract** *The current research was conducted in Dara Adam Khel, Pakistan to explore the structure and procedure of the informal social justice system- commonly known as Jirga. The war on terror made it imperious for tribal Pakhtuns to bring back their chaotic lives on the right track to achieve economic prosperity and peace in the region. Pakhtuns residing in Pakistan have been suffering from this tempestuous situation since decades. Terrorism has brought the social structure to standstill. Due to the war on terror, the Jirga system has experienced a serious setback. The Jirga system has served the Pakhtun society as a complete code of conduct in maintaining peace and harmony. The data was collected through Focus Group Discussions, Key Informant Interviews and In-Depth Interviews. Majority of the respondents were aged between 45 to 70 years and they were selected through purposive sampling technique.*

**Key Words:** Traditional System, Tribal Area, Jirga, Dispute Resolution Mechanisms

### Introduction

The Government of Pakistan passed a historic bill for the merger of FATA into the province of Khyber Pakhtunkhwa (KP) through parliament during May 2018 ([Hashim, 2019](#)) to facilitate this deprived region. This move left many issues unattended as the region has faced some serious challenges in term of their access the justice system. Previously, this region was considered as semi-independent area of Pakistan ([Zeb, 2012](#)) and was run by the “political agents” which system was in practice since the British rule (Hashim, 2019). The governance system and laws in the FATA were truly based on the reality of the lives of the local people and their customs ([Gul, 2010](#)). [Schultz and Lavenda \(2009\)](#) mentioned that the humankind has the better tendency of alignment with the environment in which they live in for their specific life goals. Jirga system is one of the key social institutions which strongly exposes the customs and practices of the society in making it possible for people to access the informal justice within a limited time frame. According to the historian, [Beattie \(2002\)](#) Pakhtun tend to inhabit his own moral world which is defined by Pakhtoonwali. The composition of Pakhtoonwali is consisted of “*Tarborwali*” (agnatic rivalry), “*Badal*” (Revenge), “*Milmasitya*” (hospitality), “*Panah*” (asylum), “*Jirga*” (traditional social justice system), “*Marakah*” (negotiations), “*Tegah or Konray*” (ceasing the conflict), “*Nanwathy*” (regret and seek apology), “*Hujra*” (common gathering place for men), “*Badragah*” (escort), “*Payghor*” (taunt/provoking), “*Ghayrath*” (courage), “*Nang*” (passionate for honor), “*Namus*” (grace), “*Turah*” (bravery), and “*Worowali*” (brotherhood).

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The Jirga institution is one of the oldest but prominent and persistent formation of the Pakhtun culture (Ahmed & Yousaf, 2018: 60). There are only few documents that could verify this claim ([Yousufzai & Gohar, 2005](#)). But to be sure, this institution would be enriched as it has the capacity of dealing with political, social and judicial issues of the public within the specific time frame ([Hopkins & Marsden, 2011: 69](#)). It remained as one of the key components of the Pakhtoon society with its clear objectives ([Ahmed & Yousaf, 2018: 60](#)). Ali (2002) mentioned that this institution mostly includes the grownup men with quality of dealing disputes with a commonsense but under the guidelines provided by the Pakhtoonwali code of conduct. The council of elders takes decision while the disputants firmly believe in them ([Ahmed, 1980](#)). The main purpose of the Jirga is to resolve conflicts between local people and to create harmony and fraternity in the community where people live with peace, honor and respect. Contrarily, [Elphinstone \(1839\)](#) described it as a “rude system” that would have prevailed “before the institution of a civil government”. But for Pakhtuns, it is the code of life, with its three main characteristics; (a) honor, (b) hospitality and (c) revenge.

Jirga resolves homegrown, local, tribal, internal and external disputes in a way which concealed animosities amongst confronting parties but converts their contentions into peace, harmony and brotherhood. Jirga is the central social institution and a peacemaking mechanism of delivering instant justice to the people. Despite the destructive period of terrorism and with the killing of local “*mahsaran*” (elders) who were more inclined towards Pakhtun cultural dimensions including “*riwaj*” or Pakhtun way of life. This system may face some issues in the coming years as the old generations who better understand this system are shrinking. Despite the weakness of Jirga, still it has its glory being an important institution and works as a source of communication, social solidarity and unity among Pakhtun tribes. All members of the Jirga are normally well-aware of the region and its culture, of the people, and the genesis of the disputes. Being a member of the elderly lot, they are honored to have demonstrated integrity, harmony and maturity through their decisions. All of the decisions made by Jirga are fully consistent with the Pakhtoonwali code of conduct. The members of Jirga are selected from the elite families but their decisions are considered equally by all socio-economic strata.

The main purpose of this study was to explore the recent procedures and functioning of *Ulushi* Jirga among the Tribal people of Dara Adam Khel particularly in the post war on terror situation. How the local people face and address their disputes and from where they find justice? How the local people perceive and articulate the *Ulushi* Jirga process within the emic way?

## Review of Literature

Jirga system has its ancient roots in this region as it remained in practice among Pakhtun, Baloch and other tribal societies ([Mushtaq, Yaqoob & Javaid, 2016: 13](#)). This system was prevailing even before the introduction of Islam and the western democratic system to resolve the issues and feuds among tribal people ([Raza, 2013](#)). [Pashto Descriptive Dictionary \(1978:1272\)](#) defines Jirga as the council of small and sometimes large number of people for consultation. Jirga is a Pashto word which means circle ([Fakhr-ul-Islam, Faqir & Ata, 2013](#)). [Gheyathoddin \(1871:119\)](#) termed Jirga as a ‘wrestling ring’, or a ‘circle,’ with its common usage as the council of men for deliberations on various community issues including dispute resolutions. One can’t trace the exact origin of the Jirga institution (Fakhr-ul-Islam, Faqir & Atta, 2013) but the word Jirga has also been in use in Mongolian, Turkish and Persian languages which has the same meaning related to the word “circle” but usually it is used to denote the assembling of people ([Taizi, 2007](#)). These meanings of Jirga are strongly reflecting the rituals and processes of the Pakhtun traditional social justice system. Jirga comprises elders of village, region and sometimes larger than that who holds knowledge and experience to discuss, address and resolve issues that matters to their tribe/region. Jirga decisions are based on local traditions and somehow in the light of *Shari’ah* (Raza, 2013). Jirga members should have a well-known status in terms of their wealth and approach in political administration and they should be able to bear the costs associated to the Jirga process.

But despite the vivid origin and erratic meanings of the word Jirga, it has some great importance in the

Pakhtun society where it is aimed to provide instantaneous justice to the tribal people and makes it easier for them to live in the prosperity. Jirga incorporates the predominant local way of life, Pakhtoonwali, and it institutionalizes the patterns of *rivaj* and local elders' collective decisions about the conflict resolution by binding the parties (Advocate & Sajid, 2013). Ahmed (1980:6) revealed that there are three main and privileged symbols of tribal community, the *hujra* (male guest house), *topak* (the gun) and the Jirga (the council of elders). Likewise, Barth (1981:97) identified the importance of Jirga in Pakhtun society by mentioning that the "tribal organization is based on the principles, as realized for political and judicial purposes through the mechanism of the council (Jirga)". The concepts of Jirga and *maraka* as informal process of conflict resolution interchangeably used between Pakhtun of Afghanistan and Pakistan (Ahmed & Yousaf, 2018). However, some Afghan culturally rich specialists on the subject make an imperative division between these two. Atayee (1979:39) mentioned about the divergent usages of these two as *maraka* is represented by the elders from various sections of the one *khel* (clan) while the Jirga is of larger scope while including members from the various *khels* (Rafi, 2002).

The Jirga system is normally a "*rivaj*" centric as it follows the tradition of the region. In Jirga the mechanisms are established for the resolution of disputes while having its roots in the customary laws. The decisions of Jirga must be acceptable for both the parties (Advocate & Sajid, 2013). The final tools, which may give such clearance to the alleged man in terms of taking oath on the holy book (Quran). After taking of oath the disputants can't take the cases further to any other courts or Jirgas because Quran is the most valued book and oath on it is the highest commitment by a Muslim (Yousafzai & Ali, 2005).

During the period of terrorism, Jirga gatherings were attacked many times by the militants and tried to restrict its functioning. But it has never stopped its functioning as it has done a lot to maintain the law and order in the society by providing speedy justice to the public. This institution has particularly time and again challenged the writ of militants in the region and the members have outspoken against the militants. Target killing and suicide attacks had been planned and executed on the Jirgas by the militants to pressurize people to follow their decree instead of their traditional code of conduct (Shinwari, 2011). Barth (1972: 96) explains Jirga in Swat's context that at time of any dispute there is social mechanism that exist for a neutral body to arbitrate between aggrieved parties and the role of mediators is very crucial in this time of crisis. The mediators are the influential kinsmen who are either having wealth or prestige and normally they come from the line of descendent of the Prophet or could be elders of a reputed clan. In some cases, like it is in the case of Dara Adam Khel, the role of political agents is very pivotal in conflict resolution. For efficient execution of Jirga's decisions, two ways of warranties are given by the disputant parties; (a) in cash and (b) in kind- firearms, moveable or immovable property. The guilty party had to lose their security and it is distributed among the Jirga members (Wazir, 2010).

There are about four types of Jirgas in Pakhtun society; (a) *Sarkari* Jirga, (b) *Ulusi* Jirga, (c) *Shakhsi* Jirga, and (d) *Loya* Jirga. The *loya* or grand Jirga is very common in the case of Afghanistan where national level council of elders gathers to discuss the issues of greater concerns at national level (Mushtaq, Yaqoob & Javaid, 2016: 14). This Jirga is being represented by the elders of each clan and in some exceptional cases it is also commissioned by the women and minority groups. In contrast to the *loya* Jirga, other three forms of Jirga have a lesser scope, the *Sarkari* Jirga is a state sponsored Jirga in which "political agents" are the main arbitrators who convene the proceedings of Jirga but in some cases they also assign few elders from different clans/tribes to convene the Jirgas on their behalf (Mushtaq, Yaqoob & Javaid, 2016:14). The *Ulusi* Jirga is a village level Jirga which consists of the elders from each household of the village to discuss and resolve issues concerning community matters. The literal meaning of the *Ulusi* is "community" (Mushtaq, Yaqoob & Javaid, 2016: 14). *Shakhsi* is known as third party Jirga, in which the council of arbitrators is selected from each aggrieved party's side. This form of Jirga is applicable for the case of a conflict between two individuals or families (Mushtaq, Yaqoob & Javaid, 2016: 14).

Additionally, Glatzer (1998: 176) has discussed the context of *Quami* or *Ulusi* Jirga by explaining that every male having the right to participate in the proceeding to Jirga and they can argue and present their

perspective in it. There is no specific hierarchy of the Jirga. On the other side, [Spain \(1963\)](#) mentioned that Jirga is one of the main social institutions of Pakhtoon society and in this process there is a need to be formally decreed by the government office of the region specially through Deputy Commissioner office. So, during this time and up till now the Jirga remained effective with the support of the political administration/agents of the region.

## Methodology

This study was conducted in Dara Adam Khel (FR Kohat) as a part of PhD fieldwork executed from June to December 2019 and later on from January 2020 to April 2020. To comprehend the detailed understandings about the procedure and functioning of the *Ulushi* Jirga four KIIs, two FGDs along with twenty IDIs were conducted from the male respondents aged between 45-70 years. The selection of the respondents was made through purposive sampling technique. For the KIIs, we initially selected seven respondents but only four of them were agreed for the detailed interviews as the rest were either reluctant in providing comprehensive information about the practice of Jirga or they were lacking in the in-depth knowledge about the functioning of this institution in Pakhtun society.

At the second stage, we conducted two FGDs and on average we took sixteen respondents (eight for each FGD). At the third stage of the study we conducted IDIs. We approached more than thirty respondents, enumerated their demographic details but few of them showed reluctance in providing the detailed information since they had some reservations about it. Afterwards, we conducted twenty in-depth interviews from the list we made and after that we sensed that the data reached to a saturation pointed- as most of the discussions were only repeating the already collected information. For the comprehensive and descriptive analyses, we used the "thick description analysis approach" of Clifford [Geertz \(1973:5-6, 9-10\)](#) to break the detailed ethnographic information down, sorting through layers of significance to derive the meaning from the emic perspective.

## Major Findings

Dara Adam Khel is located in between district Peshawar and district Kohat in KP. Before the emergence of militancy and the merger of FATA into KP province it was controlled by the political agents who were further assisted by the officially appointed Maliks- the designated chiefs of different villages. Every village has its own Malik and he has to perform a bridging role between political administration and the local masses. The Maliks were assigned the responsibilities to convey the messages of political agents to the people of tribal community. Despite official appointments of Maliks, they were also performing some other responsibilities too as majority of them were assisting the political agents in maintaining law and order in the region. In addition to that they were also helping them in organizing *Sarkari* Jirgas to resolve the disputes related to their villages.

The basic feature of Jirga is to resolve disputes of the community through informal conflict resolution under the code of the culture, *riwaj*. The Jirga system has different functions keeping in view the culture of the particular Pakhtoon tribal region. In the case of current locale, Dara Adam Khel, two major types of Jirgas were in practice; (a) *Sarkari* Jirga and (b) *Ulushi* Jirga. The *Sarkari* Jirga was convened by the political agents or their designated individuals but on the other side, the *Ulushi* Jirga was a community level Jirga in which local influential people were being selected as its members keeping in view the following characteristics; (a) political patronage, (b) economic status, (c) social prestige, (d) the size of the clan, (e) public goodwill, and (f) the hospitable nature.

For the current study, we have focused only on the *Ulushi* Jirga as it is more effective in terms of community's trust and its functioning. In *Ulushi* Jirga both disputants expect from the Jirga members to convene Jirga by strictly adhering to the *riwaj* (informal customary laws). There were three distinguished ways of convening the *Ulushi* Jirga in Dara Adam Khel; (a) showing decision with the disputants and taking them into confidence- "*pa khano*," a more consultative way (b) obtaining undertaking from the disputants-

“*pa obbo wary waak*,” a more formal one (c) under Pakhtoonwali code- “*pa liyare waak*,” stricter to the Pakhtoonwali code.

The proceedings of the *Ulushi Jirga* under “*pa khano*” were very open to the disputants and their perspectives were taken in well before coming to any conclusion. The Jirga members pay three-to-four visits to each aggrieved party separately for comprehending it well. The arbitrators show their final verdict to both the parties and take their perspectives on it. According to Malik Zaman;

“*The first and foremost Jirga in accordance with our tribal “riwaj” is “pa khano”. As per its process, the Jirga members visit both the disputants’ hujra and listen to their grievances and issues and make notes.*”

Malik Taimor said “after consulting the disputants the Jirga members sit together and write a decision which is normally acceptable for both the disputants. If they feel any differences in the decision they further submit their case to another Jirga but the changes of such cases are few.” Malik Ajmal Khan elaborated “we create an environment of peace and harmony among both the parties and make them to accept the decision irrespective of the certain losses or profits to each other and that is the best way to resolve the issues. If both parties agree, then Jirga members show their final decision to the public and announce it openly. If they reject the decision, then they move forward for another Jirga, which we call “*pa liyare*” or “*pa riwaj*”. The decision made under this type of Jirga can also be challenged if one party is disagreeing.

In “*pa khano*,” Jirga, the final written verdict is shared openly with both disputants’ consent. In this Jirga both disputants give authority to Jirga members to decide whatever the verdict may be, shall remain acceptable to them. In case the disputants did not give unconditional authority (*waak*) to the Jirga members. The verdict of this type of Jirga can be challenge by any side and must have no binding on both parties. In such a condition the dissent party can approach for “*pa lare waak*” “*riwaj waak Jirga*”.

The second category is “*pa obbo wary waak*” or “*bibaka waak wala Jirga*” in this type of Jirga unlimited authority is given to the elders of council by both disputants to decide their dispute as per the *riwaj*. The proceedings of the *Ulushi Jirga* commence under this category by asking for undertaking from both the disputants. In undertaking they sign on a plain paper by mentioning that they will accept whatever the decision comes their way through the rigorous proceedings convened by the worthy members of the *Ulushi Jirga*. Normally, the Jirga members, under this proceeding, keep in mind their reputations to give the best decision keeping in view the rules and regulation of the particular culture (*riwaj*) in mind.

In this type of Jirga, the final verdict is not shared among the disputants unless they assure their confidence in the members by signing the undertaking of trust. The undertaking was not like we have a formal affidavit in most of the settled areas rather it was only a signed plain white paper. They do this to show their confidence in these members and pass them on with an authority to write whatever they wanted to irrespective of the decision is in their favor or it is against them. As per *riwaj* no one can challenge the final verdict of such Jirga. If someone is not happy with the decision and refused to accept the final decision his *machalga* (token money) is confiscated by the Jirga members and is distributed accordingly. Such open resistant for Jirga by one member show his dissent for unjust verdict. Once verdict is announced openly in *pa obbo wary waak Jirga*, no one can challenge such decision of Jirga member anywhere. Even he can challenge the verdict of such Jirga in *Sarkari Jirga*.

If the Jirga members made a wrong decision, then one can challenge it while reaching to another *riwaj Jirga*. That Jirga will thoroughly check the recommendations and decision of previous Jirga. If they find something against *Riwaj* they will call that *pa obbo wary waak Jirga* members and discuss in detail that why it had happened. The *pa obbo wary waak Jirga* deals with disputes of immense importance, such as death, communicable property claim among agnates or Clan members by two sub-branch of tribe etc. The basic purpose of such Jirga is to restore harmony and peace by converting enmity into peaceful solution. In line with the proceedings of this Jirga, Malik Inyath Ullah said:

“*In the “pa obbo wary waak” Jirga the disputants can’t challenge the decisions made by the Jirga because they have already given undertaking and power of decision to Jirga members. In this type of Jirga, the disputants tell the Jirga members that now I am at your disposal whatever comes to me I will accept it.*”

If someone repudiates the decision under such proceedings of the *Ulusi Jirga*, he is considered as “*Zalim*” (cruel) and “*Parr*” (guilty). His *muchalga* (the mutually agreed money, 50,000 as a token money, by both parties to the council of elders for arbitration) is also confiscated by the Jirga members and distributed equally amongst them. In the case of noncompliance, the community can also show rudeness to those individuals by normally social boycotting.

The last category is “*pa laray waak*” or “*pa riwaj*” which means proceeding with the Jirga while strictly adhering to the *Pakhtunwali* code of conduct. This Jirga category is being practiced in the case when there are some doubts about the incident, damage is done unconsciously by the actors, or it had been the outcome of an incident. This Jirga deals with accidental or unintentional death or blame of dishonor and shame (*tor*). In *pa liyare waak*” or “*pa riwaj*” Jirga the customary laws are kept in mind while proceedings are initiated with having strong faith in the *Pakhtoonwali* code. According to Malik Latif Khan;

“*In a case when any dispute arises among different clans then they consult the Jirga members but these members ask them under which category of the Jirga you people wanted to proceed the case. If both clans don't agree on a single category, then the Jirga members propose that the case shall be proceeded and resolved while following the Pakhtun code of life or riwaj.*”

Malik Yousaf added that if one group is feeling guilty of doing wrong then that group normally keeps aside and accept the decision of the Jirga. If the Jirga members did wrong decision, then you can challenge it while reaching to another Jirga. That Jirga will thoroughly check the recommendations of previous Jirga. If they find something against *riwaj* they will call that Jirga members and discuss in detail that why it had happened. If those Jirga members had decided against the *riwaj* then their decision is considered as null and void and the new Jirga members commence the new proceedings.

Malik Mehboob further explains that “*sharishta*” or the tribal *lashkar* (the volunteer informal armed force for the implementation of Jirga decision or to mobilize armed men to protect the area in case of attack from outside) was pivotal and integrated system of the tribal structure upon which members of tribal judiciary implement significant decisions. Not only that but this system was also capable of eradicating any form of social evils and maladministration prevailing in the area. The *sharishta* was pillar of Jirga system, which always implements the decision of the Jirga by hook or by crook, no one can dare to underpin the Jirga decisions and they make people accept and respect the decisions. As Malik Majeed said that before Taliban whenever we convened a Jirga in other *quam* or *khels* each Jirga member considered fully backed-up in shape of *sharishta* by the people of that particular section of the area. The *sharishta* was the major force behind rendering Jirga decisions unanimous, indiscriminately of everyone, rich and poor.

With the advent of militancy, tribal elders were obviated through target killings and suicide bombings. This created leadership vacuum in the area as they were the main force behind the organization and mobilization of tribal *sharishta* because every elder was followed and tied-up by their local tribesman of *khel* and *kandi*. Due to militant acts like target killing of influential and elders of the areas along with and carrying suicide attacks on gathering was hard to call for *sharishta* that in result weakened the strength of local people. The merger of tribal areas into mainstream Khyber Pakhtunkhwa rendered *sharishta*. The police system has replaced the existing old *khassadar* and *Levis*. Carrying weapons was the major source of *sharishta* but now it is considered as an illegal act and against the law of the province.

Now the Jirga members take decisions and it's up to the disputants to accept it according to the *riwaj* or not. Now, the disputants can also register first information report (FIR) in police station against each other by sidelining the decisions of Jirga. But when the case moved to court the decision of Jirga put forward as precedent of local impeachment. Jirga system has still the value as most of the people want to resolve their issues through local *riwaj* but at the same time with the introduction of Police system it has lost its glory and strength. The people who are influential and want to abrade his opponent registered cases with police and process it through session or high courts. The absence of *sharishta* enfeebles the Jirga system and made lost its power which once was part of it in tribal areas before the Taliban regime. Now, the Jirga members couldn't implement their decisions by exercising power nor are they as efficient and accustomed to

traditions as they were before, for the reason that Taliban regime assassinated all the knowledgeable, respected and powerful people of the area who were adhering to the local traditions and thus it created a void among people.

## **Conclusion**

Jirga institution has faced new challenges with the merger of FATA into mainstream Khyber Pakhtunkhwa as for now the state is restoring its formal institutions like police and judiciary. Before this, the people of Dara Adam Khel were happily following the traditional way of dispute resolution. Their faith in the Jirga system remained intact as most of them were not going to the political agents for the *Sarkari* Jirga rather they were stick to the *Ulushi* Jirga which was more communal in nature and its members were selected amongst the community. They were strictly adhering to the Pakhtoonwali code and the proceedings of the Jirga were totally in line with this code. We found that there were three categories of *Ulushi* Jirga being practiced in the locale keeping in view the nature of the disputes. But majority of the disputants were still adhering to the customary norms related to the Jirga proceedings and verdicts. Jirga could have some merits and demerits but the process was so rapid. The Jirga is comparatively more economical, it is proficient in execution of disputes, and it plays a pivotal role in converging hatred into brotherhood. The tribal people were fully supporting the Jirga system and they wanted to continue this system in their local areas for the dispute resolutions. But situation may change dramatically since this region has been annexed to the Khyber Pakhtunkhwa and formal proceeding of dispute resolution are taking over to replace the *Ulushi* Jirga.

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