

Pashtoon Jirga system: A Traditional Approach to Justice

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ABSTRACT

This paper examines the history, cultural significance, and legal issues of the Jirga system, with particular regard to the way it compares to the international human-rights frameworks. The major issue with Jirgas is that they are unofficial. Universal Declaration of Human rights (UDHR), international covenant on civil and political rights (ICCPR), conventions on elimination of all forms of discrimination against women (CEDAW) all international human-rights treaties also denounce the Jirga system. Such international documents emphasize fairness, equality and due process-ideas that are usually disregarded by the traditional Jirga ruling. These are issues, but Jirgas continue to play a significant role in the life of the tribes. Reforms are becoming necessary in order to strike a balance between tradition and law protection. One of the solutions that are promising is an alternative dispute resolution (ADR) mechanism of taking Jirgas into the formal legal framework. The Quran places strong emphasis on justice and equity and reads, "O you who believe! Stand out firmly for justice, as witnesses to Allah, even if it be against yourselves, or your parents, or your kin, or the rich or the poor." (Quran 4:135), ideals which should direct any dispute resolution system.



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Introduction

In Pashtunwali, a social code of the Pashtun, a jirga is a council of elders that makes decisions through a consensus. It is held to settle the disagreements between Pashtuns, as well as other representatives of other ethnic groups that have been shaped by Pashtun traditions in modern Afghanistan and Pakistan. At one time traditionally, a loya jirga or great council is summoned in order to choose a new head of state, a new constitution or to address an emergency issue. Since the rise of the Hotak dynasty to power in the early 18th century, loya jirgas have been held. In July 1747, the leaders of the Pashtun convened in Kandahar to elect a new monarch. They chose one of the chiefs Ahmad Shah Durrani at the age of 25 years who is credited to have established the modern state of Afghanistan. Between 11 and 14 October 2024, the Pashtun National Jirga was held in Khyber where the most acute issues of Pashtuns in Pakistan and Afghanistan were discussed. A full jirga is referred to as loya jirga in Pashto. A smaller meeting is known as a jirgagai.

According to ALBERT EINSTEIN

“Peace doesn’t come from force; it comes from understanding”

Jirga is an indigenous form of Justice in Pakistan that is culturally based and is transmitted over the generations. It is an informal gathering in which disputes are resolved or vital judgments are arrived at through conversation, devoid of legal protocol, judges and juries.

Jirgas do not belong to formal law, however, they are very respected within communities, and teach important lessons to modern justice. Jirga is a word derived in concept of the circle and is used in languages like Persian, Turkish and Mongolian. In other cultures, it may refer to a group of tribal elders or a conventional court.

A Jirga is a meeting where the individuals meet and solve their community disputes. There are other cultures that have similar groups like the Majlis in Persian culture and the Panchayat in Punjab culture. These meetings assist

communities in taking joint decisions and solving disputes.

Jirgas are typically held in a communal area, such as a Hujra (a community meeting hall), a mosque or even an open field outside the village. The participants are seated in a circle and this brings the symbolism of equality and fairness of everybody to speak. The casualness of these meetings is like a round-table dialogue which is conducive to equality and understanding. The main aim is to negotiate and settle conflicts- be it family related, personal disagreements, or conflicts in villages and tribes with the intention of reaching peaceful solution.

Jirga promotes frankness and bargaining towards making decisions that are beneficial to the community (Naz et al., 2017). Nevertheless, the system tends to contradict Islamic law, Pakistani Constitution, and the fundamental human rights (Hussain et al., 2023). Verdicts made by tribal courts and especially in matters touching on practices such as Karo-Kari and Vanni have far reaching negative effects particularly on many people especially women as many of them succumb to death.

An example is that a girl was condemned by a Jirga to death upon her being declared a Kari, a woman who was alleged to have caused dishonor to her family. The Aurat Foundation reports that 550 individuals have been murdered due to tribal justice judgment. Killings are the result of Jirga decisions in Karo-Kari or indecent relations even in Karachi, a city (Hassan, 2021). These killings are acquired in most instances by the family members of the victim causing atrocious deeds all in the name of honor.

Jirgas (local tribal councils) have long-term dominance in the life of women and children, especially in most regions of rural set ups. These councils very often impose severe and unjust punishments, particularly on young girls, when they suffered a crime they did not succeed in. Sometimes, the girls are pushed into marriage to men who are far older than they are or even they are raped as reprimand.

One famous example is that of Mukhtaran Mai

who was gang-raped in 2002 on the instructions of a village council as a punishment to her brother who was accused of having an affair. She was subjected to a lot of pressure but she was courageous enough to speak and demand justice. Nevertheless, there are numerous other girls who go through such treatment and do not say anything as it is their destiny.

In the country, girls are also requested to act as a payback to crimes committed by others. As an example, in the year 2020, a couple married out of love in Kohistan, was brutally killed after only two months due to the orders of a Jirga. Still in another outrageous incident, a 15-year-old girl and a 17-year-old boy were also allegedly electrocuted by their own kinsmen in Karachi after they were ruled against by a Jirga. Such cases reveal the dark side of Jirgas as an illegal alternative system of justice in different areas of the country.

These shortcomings notwithstanding, Jirgas have assisted in upholding law and order in most areas. In contrast to other cases where there are controversial and unjust decisions, there are other instances where Jirgas successfully solve conflicts in a fair manner without using extreme punishments. To illustrate, a grand Jirga was convened in May 2016, in the farmhouse of a tribal leader in Shikarpur, to resolve violent conflicts between Brohi -Kakepota, Bakhrani-Brohi, Sundhrani-Tunia and Marfani-Brohi tribes.

Conciliators were major sardars and waderas of Shikarpur, Jacobabad and Kandh-Kot districts, who were well informed, just and fair. The Jirga was able to bring into reconciliation all the warring tribes. The conciliators listened attentively to both sides and arguments of the parties and their witnesses. They gave their judgments within hours. The representatives of the clashing tribes were pleased; they embraced each other and wished each other well, and previous rivals gave each other hugs (Ali, R., 2021).

In 2008 and 2015, a 20-year-old blood feud between Mahar and Jatoi tribes who had killed 150 members of each tribe during 15 years and a 15-year-old intense conflict between the Jatoi and

Jagirani tribes that had killed 24 individuals was peacefully settled through Jirga, respectively. These tribes have since coexisted and enjoyed harmonious relations with each other with the intervention of their respective chieftains.

Although the Jirga system is free and fast, as well as it offers reconciliators without charge, it may be used as an out-of-court process that allows the system to deliver speedy and low-cost reconciliations that please both parties. The alternative to the criminal justice system of selecting a Jirga might be favorable to poor individuals, who cannot afford the lawyer fees, or to lengthy court proceedings and wish to obtain the verdict immediately. However, it needs reforms to correct the shortcomings.

The weaknesses may be remedied through training the chiefs on victim-offender mediation programs that have been effective elsewhere. The article developed in this paper explores Jirga in Punjab, Sindh, and KPK, and research on how other countries settle conflict between victims and offenders. Through imitation of these models, it would like to determine how the Jirga system in Pakistan would be better than it currently is by embracing the best practices based on the successful patterns all over the world.

Origin & Historicity

The centuries-old institutions paralleling the Islamic shura, or consultative assembly¹³ are thought to have their origins in the ancient Indo-Iranian tribal systems, where the Aryan peoples had an even-jirga like system, consisting of two different councils: the simite, or summit, and the sabha. The tribal elders and chiefs formed the simite in which the monarch also participated in the deliberations but the sabha was a rural council. Similar organizations continue to be found in modern India as samiti and sabha.

The jirga has remained a popular conflict resolution mechanism in the Afghan society and is primarily used among the tribal leaders to solve internal and external conflicts. It is sometimes like a town-hall meeting. The jirga was used to legitimize the power of the Afghanistan leadership after the advent of consolidation of power.

Initially, it was available only to the Pashtuns, but later other ethnic groups, like Tajiks or Hazaras, started to participate. Membership used to be attracted by the royal family, religious leaders and tribal chiefs. This institution is credited to be formalized by king Amanullah Khan.

Throughout the rule of Amanullah, Mohammed Zahir Shah (1933-1973), and Mohammed Daoud Khan (1973-1978), the jirga had grown to be a traditional gathering of local Pashtun elders. Meetings were not held on a frequent basis; instead, the jirga met as an aspect that arose due to problems or disputes. Sessions were not limited in time and generally lasted days because the joint deliberation was needed and the elimination could extend the hearings.

The jirga may address an assortment of challenges, such as natural disasters, international relations, declaration of war, presidential power, and establishment of new ideas or laws.

The jirga is an ancient dispute-resolution process, which is mostly applied in rural and tribal Pakistan, that has received enduring academic, policy and legal attention.

The system is functional based on the community leaders and elders who sit down and decide on conflicts and maintain social order.

The jirga has been examined by scholars in various perspectives and their evaluations of its use and effectiveness have been varied. A conspicuous aspect of the jirga is that it depends on communal wisdom, and the elders and local authorities sit together and administer justice based on established traditions (Tamuly, 2016).

This is a literature review of a range of opinions about the jirga system. Proponents believe that it provides a cheap and non-violent way of conflict management especially when formal legal structures are inefficient.

On the contrary, critics highlight the lack of accountability and transparency, and the possibility of human-rights abuse, particularly of marginalized people. The discussion of these views will help to better understand the intricacies of the jirga and its place in the

sociopolitical context of Pakistan.

A study conducted by Hussain (2017) about communities in the rural area describes the jirga as a pragmatic tool of resolving disputes amongst the poor and illiterate people. It is claimed that the system provides efficient and fast conflict resolution in areas where formal law courts are unavailable. This assertion is supported by empirical evidence that was collected by Khan (2015) and it reveals that the jirga is an effective method of resolving conflicts.

Based on this, one of the key research topics is whether the jirga is attaining its goals, speed and available justice, especially to poor communities.

There have been serious criticisms by critics, who have cited cases of prejudice, discrimination, and violation of human-rights in the jirga particularly when it comes to women, minorities, and other vulnerable populations.

These are the key issues that Ahmad (2019) has highlighted to demonstrate the possible inequalities and injustices associated with the jirga system. The allegations of discrimination and human-rights abuses of marginalized individuals resulted in the call to take an in-depth look into its activities (Amado, 2022).

According to the available public records, the family of the victim is forced in almost all instances to accept the reconciliation conditions of the jirga, and it includes a few hundred thousand rupees as blood money.

Therefore, the offenders seem to be going after women at will based on feudal beliefs.

In some instances, a jirga requires that young girls should marry men of different factions as a way of compensating misdeeds caused by members of their families (Hassan, A. 2021).

Everyday newspaper reports offer the gruesome and sickening consequences of actions by this unofficial institution, which takes many lives especially women in the name of honor.

Therefore, the faster the dispute resolution process is made by fastening the proceedings is a negative result instead of a positive one.

The local politicians, landowners and other rich members of the community often determine many jirga decisions.

Members of the Jirga usually accord these people preferential treatment whenever rules are broken and they punish the poor frequently even when they are not proven guilty.

Such practices depict how unjust jirga decisions are and how they are prone to appease powerful players at the expense of the vulnerable groups.

Similar conclusions were reached by Malik (2018), who noted that the drastic changes were extremely needed to bring the jirga closer to the concepts of justice, equity, and human rights.

The arguments by the scholars represent a strong factor provoking re-evaluation and corrective intervention.

The jirga system should be evolved to be in line with the modern standards of justice and human-rights and be able to maintain its traditional meaning (Alam et al., 2023).

There are different local forums in the world where social justice and domestic dispute resolution used to be administered.

These traditions manifested themselves in the form of jirga-like meetings and panchayats and they have been continuing to date thousands of years in Pakistan (Tomaszewski, 2018).

Unlike the present situation in Pakistan, most of the developing countries see these forums as part and parcel of their local institutional structures.

As a result, understanding the functions performed by jirga assemblies is a subtle concept which allows acquiring a better perspective on the alternative dispute-resolution system based on culture and tradition (Nawaz et al., 2014).

Custom and usage are two of the leading sources of law making the judicial system quite inherent in terms of customary practices.

In line with this, the justice system should have its legal infrastructure that includes customary rules (Rummel, 2020).

The understanding of the legal level of jirgas

would be a precondition of speaking about the methodology of informal conflict-resolution processes.

The decisions passed by jirga assemblies are usually denied a chance by ordinary courts, even though such assemblies have a historical value (Rizvi, 2021).

The results which have been found will form the basis of future studies whereby researchers and policymakers will be encouraged to look at the complex factors that influence the jirga system as legal, economic, and social norms continue to adapt.

The following literature review provides a comprehensive research of the importance, benefits, and limitations of the jirga in Pakistan. Further, jirga is evolving due to the process of modernization and state influence, and it is important to insist on the need to thoroughly question and discuss this traditional conflict-resolution modality within societies.

Types of Jirga

Loya Jirga:(Grand Assembly) is the most important and authoritative kind of jirga, which is held to discuss significant issues in the country or internationally. It is called upon to make major decisions, like the writing or enactment of a constitution, the settlement of serious conflict, or the choosing of a new leader.^{15,21}

Purpose: Loya Jirga is a body which is used to discuss important matters in the country and this way most of the important decisions are implemented upon a consultation basis.

Composition: The representatives of the whole country, tribal elders, religious scholars, political officials, and other influential members of the society are the representatives of this organization.

Significance: This assembly is invaluable in maintaining unity within a nation, as well as

solving acute national issues and, as a result, is a foundation of the traditional government.



Tribal Jirga

A Tribal Jirga refers to a traditional meeting that is used to resolve conflicts in a tribe and follows ancient customs and practices.

Purpose: It is done in the tribal-flat regions in order to resolve any conflict according to the traditional laws and customs.

Composition: The Jirga is constituted of honorable tribal elders and they are well informed about the traditions of their community.

Significance: It is very vital in maintaining social harmony since the cases in dispute are dealt with in a way that is always in accordance with the tribal values and traditions.



Local Jirga

A Local Jirga is a community based meeting which helps in solving disputes in villages or neighborhoods. It works like a lower court but within the frame of traditional customs.^{22,23}

Purpose: It is majorly used in resolving conflicts in the local communities with an aim of providing an alternative to litigation.

Composition: The Jirga is a group of respected elders in the community and influential members of the locality.

Significance: It offers a fast and easily available way of solving disputes hence reducing the workload on the formal courts and offering way-out solutions to conflict at the grassroots level.



Sarkari Jirga (FCR Jirga)

The Sarkari Jirga was a government-sponsored dispute resolution court that was instituted under the Frontier Crimes Regulation (FCR). It was mostly applied to resolve civil and criminal conflicts in regions with either ineffective or non-existent formal systems of law.^{15,22}

Purpose: This Jirga was organized by a political agent appointed by the government and was

intended to settle conflict of honor, wealth and land.

Composition It consisted of government officials and respected local elders.

Impact: The system contributed to the preservation of order in the tribal areas where regular courts were not available though there were criticisms that it was neither transparent nor legal.



Qawmi or Ulusi Jirga

The Qawmi or Ulusi Jirga is part of the traditional council that has the mandate of adjudicating on cases that are disputes between different communities or tribes. It is instrumental in solving common issues, such as property rights and water distribution, to perpetuate intergroup peace.²³

Purpose The convened meeting is to settle intertribal disputes and encouraging mutual

settlement of mutual issues.

- **Composition:** The representatives of various tribes who are highly respected elders form the assembly that makes deliberations and determines the results.
- **Significance:** The Jirga helps in preventing the escalation risk by arbitrating conflicts, using consensual agreements, and fostering intercommunal harmony tribal.



Shakhsi Jirga

A Shakhsi Jirga is a traditional council, which was established to resolve personal disputes between individuals or families. It has a major goal of resolving disputes in a way that will be satisfactory to all the parties involved thus preventing further escalation.^{15,23}

Purpose: This specific Jirga is a formally convened entity to help adjudicate individual disputes to

ensure a fair resolution that will be reached through agreement.

The composition: The participants are invited to both sides of the contest, and they usually include respectable elders and neutral mediators.

Importance: It offers a way to avoid traditional legal practices that would be beneficial in maintaining the peace within the family and community and promoting cultural standards.



Maraka Jirga

A Maraka Jirga is a traditional group that resolves small family conflicts in the civic environment, which is an informal conflict-solving system aimed at preventing the further development of the conflict into the more severe confrontation.

Purpose This Jirga has been specially convened to settle small family disputes therefore ensuring peaceful settlements in families.

- **Composition:** It usually consists of local elders who have wide knowledge regarding kinship relationships and mores of the community.

- Significance: The Maraka Jirga helps in maintaining the unity of the family by taking

care of the conflicts on the periphery before the conflict progresses to a bigger issue.



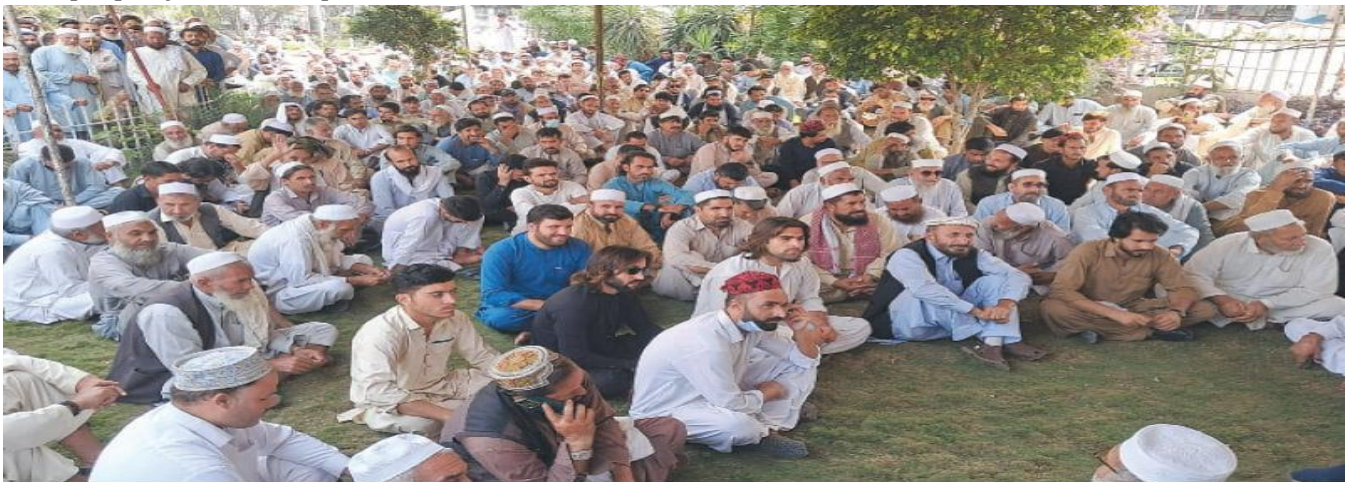
Ulasi Jirga

Ulasi Jirga is a gathering of the community of elders of all households who meet to discuss and agree on minor matters within the community. It acts as a forum to make joint decision making on issues that are related to the whole village or community.²³

Purpose: This Jirga deals with communal issues like property ownership, water allocation to

irrigate land and other local issues of governance.

- Composition: It has representatives of every household and this makes sure that no voice in the community is sidelined.
- Significance: The Ulasi Jirga enhances fairness and inclusiveness, thus, a decision made is based on the common interests of the whole population.



Majlis or Shura

Majlis and Shura are commonly used as synonyms of Jirga especially when consultations were held in an Islamic context. These are bodies that serve a serious purpose in dispute settlement and also in the decision-making of the community.

Purpose: The *Majlis* or the Shura is an arena of collective decision-making and dispute resolution

and focuses on Islamic values.

Composition: The group includes revered people in the society especially the religious scholars and elders who offer leadership through Islamic teachings.

Importance: The assemblies make sure that the decisions are handled with regard to the religious values and the needs of the community.



Functioning Methodology

The most obvious idea of a community council is based on the case of interpersonal conflict; in that case, a jirga can be one of the elements of the dispute settlement mechanism. In most cases, the first step by the disputants is to choose a mediator, usually a high-ranked religious leader, local dignitary or a specialist in mediation like a khan or mashar. Maliks are informal resolvists of local conflicts, brokers between the state policy and state-makers, tax-gatherers, chiefs of jirgas of villages and towns, and delegates to provincial and national jirgas and to Parliament. The mediator listens to the two sides and then assembles a jirga which consists of members of the society who are very old, at the same time making sure that both sides are represented. The jirga makes a decision after discussing the matter and the mediator conveys the decision; the decision is binding.

The judicial system of the Pashtunwali and Shariah known as jirga system has been the foundation of conflict resolution in the tribal areas of Pakistan. Despite being considered culturally significant, it has legal issues; in 2019 the Supreme Court of Pakistan declared the practice illegal because of its randomness, as well as its inability to follow the constitutional norm. This study will look at the functioning of the jirga system, its legal positioning, and its future prospects of reform; with the aim of bringing it to conform to the

international human-rights standards. In the Quran, emphasis is laid on justice and fairness, where the Quran says: O you who believe! Stick to Justice, be witnesses to Allah, even to yourself, or your parents, or your kinsfolk, or the wealthy and the needy.

Although the jirga system has a historical aspect, it has a number of weaknesses. The absence of official regulations and legal duties might lead to the creation of unbalanced verdicts and human-right infractions. Gender discrimination and the violations of the rights of women occur since they are not included in jirga proceedings even when they are directly impacted. The honor killings and the act of compensation of women through bride price is a common practice in the jirga rulings, which makes the process unjust and inhumane (3,17). The second major disadvantage is the threat of corruption and bias; the members of the jirga can favor one party because of personal connections or bribing and make unfair decisions (15,18). In addition, there is no formal appeal system in the process because decisions should usually be final and unquestionable, which hamper accountability and transparency (15). Jirgas were also accused to operate as a rogue judicial system not recognized in the constitution, which in most cases acted against the formal courts. Nevertheless, these weaknesses do not stop their prevalence in tribal regions as the formal justice system has shortcomings, including

time delays and high expenses. There have been attempts to incorporate jirgas into the formal legal system and thus the operation of jirgas has been through the rule of the law, and without any breach of human rights (3).

Literature Review

The jirga system is a part of tribal culture, which is a low-cost alternative to a formal court. It is based on consensus and subject to local customs and the

Islamic law. However, due to informal nature of its operation, it is also known to make unfair decisions which are sometimes against the human rights especially the female gender. According to a survey conducted by the National Commission on the status of Women (NCSW), 70 per cent of married women in areas where jirgas operate were sold off at marriage under jirga verdicts and three-quarters were subjected domestic violence (1, 4).



Historical Significance

The Jirga system is related to early Aryan tribes of Central Asia that later traveled to the modern day Afghanistan and India. Similar to the Islamic notion of shura (consultative assembly), this tradition has long existed and served as a means of the tribal ruler to rule his people and resolve conflicts. King Amanullah Khan formally recognized the Jirga in Afghanistan and remained a powerful institution under the various governments. The Jirga still stands firm in tribal life in Pakistan especially in Khyber Pakhtunkhwa and Balochistan. The body is usually constituted of esteemed elders that make rules based on indigenous practices and Islamic doctrines, usually resolving land, property and inter-tribal disputes.

Cultural Context

The Jirga is not only a conflict-resolution system but also a representative of unity and tradition. It functions according to Pashtunwali which is an unwritten code of ethics that focuses on honor, hospitality and loyalty. Instead of using stern legal

interpretations, Jirga decisions are mostly used to restore social peace. However, the informal nature of Jirga is prone to criticism particularly in the context of the possibility of uneven results. Instances of human rights abuse especially against women have been reported; women in their dominance of Jirga areas tend to be victims of domestic harassments and forcible marriages as a result of Jirga decisions.

Jirga Are Unconstitutional

The Supreme Court of Pakistan has reiterated that Jirgas are unconstitutional since they do not have the statutory backing and often lead to the violation of human-rights violations. In the Supreme Court Case National Commission on the Status of Women v. According to the Court of Government of Pakistan, the Court pointed out that Jirgas encroach the jurisdiction of the formal court, thus, illegal parallel justice systems (PLD 2019, SC 218). However, the Court realized that some customary practices can be allowed provided that they do not violate the constitutional rights.

Jirga system, a traditional dispute-resolution system in Pakistan in the tribal and rural setting, has come under the judicial scrutiny. In 2019, the Supreme Court declared the illegality of Jirgas as they are not legally recognized and the danger of human-rights violations must be considered. This ruling was based on the fact that Jirgas are acting as unofficial courts whereby they undermine the jurisdiction of official courts.

Legal Status

The landmark in the case National Commission on Status of Women v. The Government of Pakistan* (PLD 2019 SC 218) struck down Jirgas as they undermined the powers of ordinary courts, and by doing so, infringed Articles 4, 8, 10 -A, 25, 175(3) of the Constitution. The Court highlighted the fact that Jirgas have no precedents, predictability, and certitude and they commonly have to resort to personal testimony and hearsay.

- ****International Obligations:** The international commitment of Pakistan under the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) played the key role in the ruling of disallowing Jirgas. These tools require that there should be equal protection of the law and due trials, which Jirgas repeatedly fails to maintain.

Challenges

Human--Rights Violations: According to a survey by the National Commission on the Status of Women, 70 percent of women who were married in Jirga-active regions were forced to marry under the arrangements of these councils and three of every four women have been victims of domestic violence due to Jirga decisions.

- ****Absence of Formalization:** Jirgas are informal, and therefore they will act without a regulatory structure hence their decision may be arbitrary and dangerous to the rights of individuals.
- ****Resistance even after Legal Outlawing:** Although the Supreme Court issued an order, Jirgas still operate in most places, which

highlights just how hard it is to enforce court rulings in the rural and tribal realms.

Potential for Reform

- ****Alternative Dispute Resolution (ADR)**:** The Supreme Court implied that Jirgas could be used as ADR mechanisms, but they should act within the bounds of the law and should not violate the mandate of formal courts. This would require regulatory control and formalization to adjust the Jirga system to the constitutional and international laws.
- ****Law Enforcement and Compliance:** Court emphasized that law-enforcement agencies have to execute the judgment and punish the people who organize or attend illegal Jirgas.

To conclude, even though Jirgas are unconstitutional because of the human-rights issue, as well as because they are not legally binding, the integration of the traditional dispute resolution practices into the established legal framework still needs to be done, in a way that will not lead to the violation of the constitutional and international standards.

Case Laws and Petitions

Jirga system faces legal challenges as it is highlighted by the Constitution Petition No. 24 of 2012 and other judgments. The fact that the Supreme Court has declared Jirgas as unlawful is a pointer to the need to initiate reforms that will put them within the confines of the law. In **Mst. Rahmat Bibi v. The Court again said that Jirgas were unlawful, Station House Officer, Karan Sharif, PLDA, 2016, Sindh, 268. In WP No. 868-M/2019, the Peshawar High Court observed that the judgment of Jirga in criminal cases is against the law.*

The article by RSIL, Jirga System in Pakistan: A Transgression of Human Rights (2022) finds that the Jirga system quite often infringes upon basic human rights, in particular, female ones, and that Pakistan needs to follow through on its international obligations under the UDHR and ICCPR. In the case of the High Court of Sindh, Order Sheet in the High Court of Sindh at Karachi (2024) it was confirmed that penalties that are

administered by a Jirga are unlawful and they are in violation of constitutional rights.

The historical significance of the Jirga system is admitted by the article The PIDE, Reviving the Jirga System as Alternative Dispute Resolution (ADR) in the Tribal Areas of Pakistan (2024), but the author is not blind to the flaws of the system, proposing changes, aiming to make it compliant with the current rules of law and based on human rights.

According to NCSW, Women, Violence and Jirgas: Consensus and Impunity in Pakistan (n.d.), Jirgas are the ones that promote gender based violence and such practices include swara and vani. The report recommends the abolishment of the informal systems of justice and enhancing legal protection of women.

The decision made by the Supreme Court in the case of National Commission on Status of Women v. Government of Pakistan held that Jirgas and Panchayats are not judicial bodies and therefore, are illegal parallel systems that are unconstitutional in terms of constitutional rights, such as the right to life, liberty and equality (PLD 2019 SC 218).

The case of High Court of Sindh, Rehmat Bibi Case (n.d.) affirmed that Jirgas are illegal and provincial governments should provide protective homes to people who have fallen victim to unfair Jirga decisions. In the case of Syed Alam, the Jirgas tried to subvert formal courts, but the attempt was denied by the Supreme Appellate Court of GilgitBaltistan, Judgment in Syed Alam Case (2021) noting the loss of the rule of law.

The illegality of detentions meted out by Jirgas was limited by the "Peshawar High Court, WP No. 868-M/2019 (2019) which stated that only courts recognised by the state were in a position to adjudicate and punish disputes.

The Supreme Court Appellate Court of Gilgit-Baltistan once again stated that the interference of the formal judiciary by Jirga is unconstitutional and against the basic rights and especially the women.

Cases: *Constitution Petition No. 24 of 2012 and

National Commission on status of women v. Government of Pakistan* are still emphasizing the fact that Jirgas are illegal because they are not recognized and because they are prone to committing human-rights abuses.

Global Worldview and the Human Rights

The ADR mechanisms are better ways of enhancing access to justice around the globe as long as they do not exceed the limits of law and do not infringe on human rights. Article 10 of the UDHR provides the right to a fair and public hearing to all people and this is another fundamental principle in enforcing the ADR systems in accordance to human-rights standards. The ICCPR upholds the right to fair trial which is often undermined in informal systems like Jirgas.

Alternative Dispute Resolution

ADR programs with global recognition allow offenders and victims to reconcile in the interest of repairing the damage. Such programs reduce the use of formal courts and focus on the use of restorative justice, mediation and community-based forums. These practices are based on dialogue, accountability, and a community solution to conflict and thus encourage healing and civic renewal.

The ADR mechanism that focuses on the dialogue as opposed to just agreement is MEDIATION, especially victim-offender mediation. The mediator helps to provide a non-threatening, respectful atmosphere to both parties and is likely to end up signing contracts to establish restitution, trying to compensate the damage. According to the findings of empirical research, about 70 percent to 80 percent of cases are successfully solved with the help of ADR techniques, which highlights the success of non-confrontational methods.

International Codes and Statements

- **UDHR, Article 10 is focused on the right to a fair and a public hearing, which is often not followed by Jirgas.

- **ICCPR** emphasizes the right to a fair trial which is undermined through informal means

such as the Jirga.

- **CEDAW** does not allow women to be discriminated; the resolutions of Jirga usually violate its doctrines.

Jurist Viewpoints

Legal experts argue that the Jirga system has a cultural value but has not been formalized and is vulnerable to human-rights abuse, and thus is required to be reformed. The cultural value of the Jirga could be more aligned with modern legal principles through institution of the Jirga as an official ADR. The chief justice Saqib Nisar underlined that Jirgas do not have precedent, predictability, and certainty, which are the hallmarks of an effective legal procedure.

It is claimed by critics that Jirgas are acting beyond the scope of any official legal system with no regard to due process, equality, and accountability of the judiciary. They are arbitrary in their choices and choices are mostly made based on social hierarchies and not based on the law and they make the women and discriminated communities vulnerable. One of the agreements between researchers is that Jirgas can only serve as a contemporary ADR tool when monitored by the state and upon a controlled recognition.

Social and Political Standpoints

In terms of politics, Jirga system is resilient, which depicts how difficult it is to project formal legal institutions to remote and tribal regions in Pakistan. The Jirga, being socially revered as a tool of communal cohesion and efficient problem-solution, has brought about human-rights abuses, especially to women, which organisations like the Aurat Foundation report.

Research Methodology

In this research, the qualitative approach is employed, with an exhaustive analysis of the available judicial decisions, academic texts, and other international human-rights reports being conducted. It aims at evaluating the strengths and weaknesses of the Jirga system, highlighting the cultural significance of the Jirga system and the reforms required to make it compliant with both

legal and human-rights regimes.

Results

The results have shown that although Jirga system is enacted with deep cultural significance, it is not legally established and does not pass the test of human-rights. The paper supports the legal system formalisation to enhance transparency, gender inclusion, and the application of human-right-based principles. Reform on the Jirga system to meet the stipulations of the international laws on human rights and the constitution may boost access to justice in the tribal areas but still maintain the tradition.

Provisions of the Constitution that were breached by the JIRGA System.

- **Article 4** ensures protection by law; Jirgas fail to follow the official procedures and this right is disregarded.

- **Article 8** overturns customs, laws or traditions that are incompatible with fundamental rights; much of the Jirga practice is against this provision.

- **Article 10 -A** guarantees the right of fair trial and due process; the informal process files Jirgas frequently does not respect this right.

- **25 of the Articles** ensures that there is equality before the law; Jirgas often discriminate against other women and both marginalised groups.

- **175(3)** requires the separation of the judiciary and the executive; Jirgas, which is not constitutional, violates this separation.

Courts passing decisions that are against the JIRGA system.

- **Sindh High Court Ban (2004)**: The harsh unjust rulings led to the ban of Jirgas although they continue in certain areas.

- **Supreme Court Judgment (2019)**: The Court made the decision that Jirgas cannot legally adjudicate a civil or criminal case, as it has a practice contrary to the Articles of the Constitution to Articles 4, 8, 10-A, 25 and 175(3).

Human-Rights Obligations of the International Type

The involvement of Pakistan with the tools like the UDHR, ICCPR, and CEDAW requires it to uphold the human rights, which include the right to a fair trial and equality before the law. The further use of the Jirga in a manner that does not meet these promises requires reforms which will make the ADR mechanisms to abide by the constitutional and international standards.

Recommendations

- ****Legal Recognition and Formation:** Formalise the Jirga by law making it a secondary dispute-resolution process under strict rules and control.
- ****Gender Sensitivity Training**:** Train the members of the Jirga on gender equality to reduce

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the practice of discrimination.

- ****Observance of Human rights standards:** Make sure that the ruling process is based on the international standards of human-rights in order to reduce unfair or dangerous decisions.

- ****Community awareness:** Initiate campaigns to give the community knowledge on the legal rights and the restrictions of the informal system of justice.

- ****Cooperation with the Legal Authorities:** Devise an organized system of working between Jirgas and the legitimate court of law in order to instil fairness and responsibility.

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