JIRGA: A CONFLICT RESOLUTION INSTITUTION IN PUKHTOON SOCIETY

1Fakhr-ul-Islam, 2Khan Faqir & Malik Amer Atta 3
1Pakistan Study Centre, University of Peshawar, Pakistan
2University of Science and Technology Bannu, Pakistan
3Institute of Education and Research, Gomal University, D.I.Khan

ABSTRACT

Jirga is a unique institution that exists in Pukhtoons social organization. It is a Pashtu word which means circle. (Gankoski and Malik, 2006). It is difficult to trace exact origin of Jirga. Nevertheless, it is as old as the community itself. In this paper the writer has dwelt upon origin and evolution of Jirga. How did Afghanistan and Pakistan adopt and accommodate the concept of Jirga as state institution has also been taken into consideration. Apart from consulting published material, the writer reached out to a number of people belonging to FATA (Federally Administered tribal Areas) and settled districts of Khyber Pakhtoonkhwa province of Pakistan for ascertaining their views on the subject. In this way, the paper contains up-to-date information and communal critique rather than review by a single writer.

Key Word: Jirga, Pukhtoons, Tribe(s), disputes, verdict.

INTRODUCTION

Pukhtoons or Pathans (as called by other races) are the significant and major ethnic group living in most parts of Afghanistan and tribal belt of Pakistan. They are in majority in Afghanistan, Khyber Pakhtoonkhwa; second biggest ethnic group in Sindh’s capital Karachi and occupy the most populous part of Balochistan. In Punjab, they are settled in Mianwali and parts of Attock districts. In India, they are scattered in various parts of that vast country. They migrated to India during different points and times since 11th Century AD. Pukhtoons possess tremendous quality of adaptableness to alien environment, they are therefore dispersed in various parts the world. The Pukhtoons social organization, tribal structure and peculiar customs and traditions sometimes lead to disputes. In fact, the age-old Pukhtoon code of life or Pukhtoonwali responds to situation arising off and on. Hassan and Gohar opine that Pukhtoonwali not only provides equal opportunities to the community to settle their squabbles but also generates self-confidence in Pukhtoons. Some elements of Pukhtoonwali may sound strange to rest of the world but Pukhtoons follow them religiously. (Yousafzai & Gohar, 2005) Different reasons responsible for conflict may be summarized as:

- Animosity
- Badal(revenge)
- Taunt
- Honour killing
- Swara
- Chagha
- Property disputes
- Other social evils

If on one hand, some traditions of Pukhtoons cause conflict, on the other hand they have in their midst institutions which remove the strife. Of these institutions, Jirga is unique and distinctive
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to Pukhtoons society. *Jirga* is a council of elders that intervenes in disputes arising of intra-tribal clashes. It listens to parties and passes judgments which are binding on all stakeholders. Although one may not strictly define *Jirga* but few writers have given their own definitions. James W.Spain characterizes it “a group of members of a particular sub-group of Pathans considering a matter of common interest”. (Spain, 1990) Qayum Afridi considers it a court whose judges are nominated in equal number by the disputing parties from amongst the elders of repute. (Afridi, 2003) The type, power and function *Jirga* vary depending on nature of cases before it. There are four types of *Jirga* namely:

**Koranay or Shakhshi Jirga:**
In this type of *Jirga*, cases between individuals or families are disposed of. Members of this *Jirga* are selected with mutual consent of the parties concerned. As mentioned, its scope and function is limited. How the *Jirga* proceeds? Here a sequence followed by *koranay Jirga* in North Waziristan tribal area is given which, with minor variations, may be true of the whole FATA and Khyber Pakhtoonkhwa. The proceedings go like the following:
The parties approach influential elders of the tribe and seek their intervention in the case in question. Upon consent of *Jirga* members, the process is kick-started. The *Jirga* members establish contacts with the parties and record their statements. After examining the statements, the next stage is announcing verdict. Normally the *Jirga* gives its verdict at this stage, however, sometimes serious problems arise. For instance, both the parties stick to their stated positions and urge upon the *Jirga* to decide in their favour. In that precarious situation, the *Jirga* ask the parties to give them *Waak/ikhtiar* (mandate) which means they will accept the verdict wholeheartedly. Finally the case is decided on merit. Interestingly, no state or non-state authority is available to execute verdict of this non-official *Jirga*. For effective implementation of *Jirga* decision, surety in cash or kind (weapon, moveable or immovable property) by parties is deposited with *Jirga*. Any party found guilty of violating the verdict may lose their surety which may be confiscated by the *Jirga*.(Wazir, 2010)

In Khyber Agency in particular and other tribal areas in general a specific methodology is adopted for resolving disputes arising out of murder. In case of murder, both the aggrieved and assassin parties confine to their houses. The *Jirga*, first of all, tries to make both the parties agree on *Tigga*. *Tigga* is a Pashtu word which means stone. Symbolically, a stone is fixed which means that the disputing parties have agreed to decide their case through *Jirga* and cease fire will exist till verdict(Afridi,2003).

**Olasi or Qami Jirga:**
Unlike the *koranay/Shakhshi Jirga*, the *olasi/qami Jirga* is constituted for taking up issues or cases of collective importance of a community or tribe. The basic unit of this *Jirga* is every house hold which may send one member to it. Numerous cases of collective nature such as settling disputes with other tribes, community share in forests and other natural resources, distribution of irrigation water, launching of developmental projects, and dealing with outlaws in the area etcetera are put before the *Jirga*. After selection of members, the holding of *Jirga* congregation or assembly is announced. During deliberations, every participant is
given the right to speak. Decision may arrive in one or more than one sessions depending on the nature of dispute. The most accurate sequence of proceeding adopted in Olasi/qami Jirga is given below:

“In this kind of an assembly, all participants have a right to speak but most prefer to observe only. Without any formal facilitator, each one offers the other, opportunity to start the talk. In the end, someone begins with a tale or a narrative, setting the stage for discussion on the issue. Various parameters of the issue are discussed by addressing concern from each individual from the community, while the leadership listens and facilitates further. Finally a common ground is identified and announced for agreement by all” (Yousafzai & Ali, 2005)

Both Koranay and Olasi Jirgas are unofficial in nature; therefore, people prefer them over Sarkari (State-controlled Jirga). However it does not mean that people are fully satisfied with them. When this writer asked Pukhtoons to identify shortcomings of unofficial Jirgas, they listed many. These defects have been given in the survey section of the article.

**Sarkari (State-controlled) Jirga:**

The evolution of Pukhtoon society from state-less stage to emergence of state has affected the institution of Jirga as well. In 1849, after replacing Sikhs in the present day Khyber Pakhtoonkhwa and subsequently pursuing their Forward Policy (Spain, 1985) towards Afghanistan, the British Indian government faced the wrath Pukhtoons. The latters were averse to British occupations of Afghanistan. From 1849 to 1908, the British Indian government conducted almost 49 expeditions against the Pukhtoon tribes. (Nevill, 1912) Finally they introduced a hybrid administrative system under Frontier Crimes Regulations 1901, where community was involved in disposal of cases. That was the beginning of Sarkari Jirga.

In the Frontier Crimes Regulations, all details about the Council of Elders (Jirga) have been given in Chapter IIII (section 8 to 20). In the same regulations, the Council of Elders (Jirga) has been defined as:

“...a Council of three or more persons whether official or otherwise convened by the Deputey Commissioner and presided over by a magistrate invested with powers under section 30 of the Code of Criminal Procedure 1898” (Ali I, 2003)

The Provincially Administered Tribal Areas (PATA) Regulations also provided for Jirga system. PATA include six districts of Malakand Division viz Buner, Chitral, Dir Upper, Dir Lower, Malakand, Shangla, Swat and some parts Hazara Division. In these areas, a special law namely PATA Regulations was enforced in 1975. Sections 5-11 of PATA Regulations, describe formation and procedure of Jirga. As per Section 6, Jirga, to be appointed by the Deputy Commissioner, shall consist of five members, one of them its President and four ordinary members. The President must be a government official, not below the rank of Tehsildar or Naib Tehsildar. The ordinary members are from the community appointed after consultation with the parties concerned. (Ibid) In 1994, when PATARs were declared unconstitutional by Supreme Court of Pakistan, (Bangash A, 2010) the government promulgated the following regulations at different times:


(ii) The Sharia’I Nizm-e-Adl Act 1999
(iii) The *Nizm-e-Adl* Act 2009

A glance at the above three regulations reveals that people from the community were included in the judicial system with different titles and responsibilities, the spirit of *Jirga*, however, existed one way or the other. In Section 6 of the Provincialy Administered Tribal Areas (*Nafaz-e-Nizam-e-Shariah*) Regulation 1994 and subsequent rules framed thereunder, 30 *Muavinen-i-Qazi* (People assisting Qazis) were provided in every district of Malaknad Division. They were appointed for one year and supposed to associate themselves with courts in the disposal of cases. (*Nafaz-e-Nizam-e-Shariah Regulation, 1994)*

In the Sharia’h *Nizm-e-Adl* Act 1999, three categories of community leaders, mostly ulama, are, *Muavineen-e-Qazi* (People assisting Qazis), *A’alim Wakeel* (Religious Solicitor) and *Musliheen* (conciliators) are appointed. (*Gazzette of Government of NWFP, Extraordinary, 1999)* Similarly in the Sharia’i *Nizm-e-Adl* Act 2009, the role of *Musliheen* (conciliators) has been retained. (*Jang, 21 April 2009)*

Another official form of *Jirga* was provided in the Local Government Ordinance 2001. Chapter XI of LGO 2001 consists of five articles (Article 102-106). This chapter provides for *Musalahati Anjuman* (Council of Conciliation). *Musalahati Anjuman* consists of three members (conciliators) headed by a convener amongst them. These members will not be amongst the members of union council but will be drawn from the community for a term of three years, on the basis of their conduct and reputation. The authority for constituting *Musalahati Anjuman* is called as *Insaf* (Justice) Committee of a Union Council. (Article 102 of Local Government Ordinance (LGO, 2001: 111) The referring of case to *Musalahati Anjuman* shall be in the following manner:

Any court of competent jurisdiction may, in a case where it deems appropriate, refer a matter to the *Musalahati Anjuman* through the Union Nazim for settlement.

The court making a reference to *Musalahati Anjuman* for settlement of a dispute may lay down the procedure for summoning the parties to the dispute, the terms of reference, the period during which settlements to be made, the manner in which report of the settlement is to be submitted and such other matters as it may deem appropriate for resolution of the dispute.

iii) Where on a reference made by the court, the dispute is settled between the parties, the court may make such settlement as rule of the court.

iv) The *Musalahati Anjuman* shall inform the court if the dispute is not settled within the time fixed by the court or, may ask for extension in time for settlement of the dispute. (Article 104, LGO, 2001)

The LGO remained enforced in Pakistan for nine years, but the institution of *Musalahati Anjuman* could not take its roots and it remained confined to statutes book.

The recent constitution of Afghanistan provides for two houses of parliament, which have been named as Jirgas. As per article 82 (Ch. 5, Art. 2), the parliament is to consist of two houses: *Wolesi Jirga* (the House of People) and *Meshrano Jirga* (House of Elders). (Article 82 (Ch. 5, Art. 2), Constitution of Islamic Republic of Afghanistan)

On the whole Pukhtoons do not like Sarkari or official *Jirga*. During the course of this research, this writer asked about choice between Sarkari and Olasi *Jirga*, from people belonging to different parts of Khyber Pakhtoonkhwa.
Interestingly, 90% of them opted for olasi Jirga.

**Loya (grand) Jirga:**

Loi or Loya is a Pashto word which means big. Loya Jirga is the biggest of all categories. It is convened when the whole Pukhtoon race confronts with inter racial or inter tribal dispute. This term originated from Afghanistan and the first Loya Jirga was convened by Mirwais. Nevertheless Afghan king Amanullah Khan strengthened it. The composition of Loya Jirga is such that members of ruling class, ulama and tribal chieftains represented in it. In modern times, Loya Jirga was convened by King Amanullah Khan(r.1919- ), Shah Zahir Shah(r. 1933-1973), Sardar Daud(r. 1973-78) and Hamid Karzai(r. 2002 onwards). The session of Loya Jirga is convened on need basis. With promulgation of new constitution of Afghanistan, Loya Jirga has also been made state organ. In chapter 6, Article 110, (Ch. 6. Art. 1) of that constitution, the composition and other details of Loya Jirga are entirely different from the non-state racial/cultural body mentioned above. Its members include Members of both chambers of parliament, heads of provincial and district councils, cabinet ministers, Chief Justice and judges Supreme Court. Of these, heads of provincial and district councils, cabinet ministers, Chief Justice and judges Supreme can only participate in the sessions the Jirga without exercising right to vote.(Ibid, Article 110) As per article 111, Loya Jirga may be convened to take up issues such as: Amendment in constitution, Impeachment of President as per relevant provisions of the constitution.

Any other issues pertaining to independence, national sovereignty, territorial integrity

**Advantages of Jirga System**

The institution of Jirga has come to the rescue of Pukhtoons as and when they came to blows against each other. Few advantages are given below:

(i) Jirga administers swift justice. In view of peculiar Pukhtoon social structure, one can not afford to wait for snail-sped disposal of cases by state judiciary. For instance, some times a small dispute may lead to blood shed. Here a case is cited to understand that role of Jirga. In the Miranshah area of North Waziristan Agency, two families led by Azan Gul and Younas Khan clashed over matrimonial issue. The daughter of Azan Gul was engaged to the son of Younas Khan. However, after a year or so, Azan Gul changed his mind and decided to break the engagement as in his opinion his daughter’s fiancé was not having good moral character. Younas Khan and his family took serious note of it which resulted into gun battle between the two sides. The case was heading towards bloodshed when Jirrga intervened and resolved the dispute amicably(Ahmad S, 2010).

(ii) Besides petty family disputes, Jirga helps in resolving community-wide issues and saves the community from surge of intra-tribal clash.

Jirga is an institution which imparts positive norms of social responsibility, reconciliation, protection rights of the oppressed, freedom of speech and respect for justice and fair play to the upcoming generation.

(iii) Jirga dispenses justice to all and sundry irrespective of their social status, influence and wealth.(Beg A, 2000)

(iv) Jirga is custodian of religious injunctions and Pukhtoons’ code of life i.e. Pukhtoonwali.
Disadvantages of Jirga System:
Besides its conflict resolution role, Jirga has been suffered from many diseases, which are briefly discussed below:
The members of Jirga have been performing their duties without receiving any fee or emoluments from parties concerned. However, in the recent years, Jirga members in tribal areas have started receiving money from parties in the form of fee and in some cases as bribe. The amount of fee and bribery varies from case to case. (F. Islam with A. Nawaz, 2010)
The role of Jirga dealing with Chagha has not only been criticized by people but courts have also taken their cognizance. Chagha is a strange tradition among Pukhtoons in the settled areas and adjacent tribal areas of Khyber Pakhtoonkhwa. Chagha is a Pashto word which means yell. According to its family of a boy unilaterally declare his nuptial ties with a girl without seeking her or her family’s consent. This declaration is done publicly with loud voice, that is why it is called as Chagha. The girl’s family cannot deny the engagement else they will be presented before a Jirga whose decision in similar cases is final. In South Waziristan, this custom with a slightly different detail is called as Zhagh. Akhtarullah Mehsud explains it as:
“A person who has enmity may make a Zhagh announcing that nobody should marry the sister or daughter of his opponent till his claim is settled. This in fact places ban on anybody claiming the girl’s marriage and this ban continues till the person making the Zhagh is satisfied. In case he fails to prove his case, the Zhagh is withdrawn.” (Mehsud A, 2004)
Chagha phenomenon was brought to lime light in mid 2012, when verdicts of jirgas in Chagha cases were challenged in Peshawar High Court. According to details of one case, Muhammad Nawaz Khan coming from Sharikaera village in the vicinity of Peshawar recorded statement before Peshawar High Court that he worked abroad. In his absence, his relatives unilaterally declared marriage of their sons with his(Nawaz Khan’s) teenager daughters named Shaista and Zenab. (Ajj, 22July 2012)
The Peshawar High Court, in its preliminary hearing asked the provincial government to frame laws for eradication of that bad custom. Though the Khyber Pakhtoonkhwa provincial assembly was functioning but it did not take any step towards that end. Resultantly, the Governor promulgated Ordinance “Khyber Pakhtoonkhwa Elimination of Custom of Ghag 2012” which declared the custom of ghag as cognizable crime. (Jang 22 November, 2012) Later on, the provincial assembly converted the ordinance into act.

Community’s view about Jirga:
In order to ascertain views of the community, a survey was conducted among selected respondents of Federally Administered Tribal Areas (FATA) and settled districts of Khyber Pakhtoonkhwa province. The FATA respondents belonged to political agencies/regions such as Khyber, Kurrum, Mohmand, North Waziristan, Orakzai, South Waziristan, and Frontier Region(FR) Bannu. The settled districts where survey was carried out included Bannu, Buner, Chitral, Charsadda, Dir Lower, Dir Upper, Malakand, Mardan, Nowshera, Peshawar, Sawabi and Swat. In the questionnaire the following close and open ended questions were asked:
1. Is Jirga inevitable for Pukhtoons society? Yes/no
2. Do you support continuation of Jirga system? Yes/no
3. Which type of Jirga you support, official or olasi?

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(4) Which type of *Jirga* is functional in your area?

(5) Identify merits of *Jirga* system in your area.

(6) Identify demerits of *Jirga* system in your area.

(7) How far *Jirga* is relevant after 9/11 and rise of Taliban?

1. Is *Jirga* inevitable for Pukhtoons society?

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<td>Yes</td>
<td>78</td>
<td>97.5</td>
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<td>No</td>
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Of the two respondents who said, no, one male belongs to Chitral and the other female hails from Swabi

2. Do you support continuation of *Jirga* system?

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Interestingly in the other category, 7.5% respondents opted for both types of *Jirga*.

4. In response to a question as to which type of *Jirga* is functional in their respective areas, 3.75% said there was no system of *Jirga* existed in their respective area. Interestingly respondents of this category belonged to Chitral, Mardan and South Waziristan. The nonexistence of *Jirga* System in Mardan and South Waziristan is unbelievable. May be the respondents could not understand the question. 8.75% people said that they have both types of *Jirga* in their area. An overwhelming majority i.e. 87.5 % informed that *Olasi Jirga* functioned in their areas of domicile.

5. There were several positive points presented by the respondents when they were asked to identify merits of *Jirga* system in their area. The merits are summarized as follow:

- *Jirga* administers speedy justice
- It works as an effective conflict resolution tool
- It comes up with solution to problems
- It resolves disputes peacefully
- It transforms enmity into friendship
- It is an inexpensive justice system
- It is a collective approach to dispute resolution
- It brings about durable solution
- It protects people from intricacies
- *Jirga* announces verdict in the light of local culture, customs and traditions
- There is real democracy in the *Jirga* system
- It punishes oppressor and helps the oppressed
- Besides local culture, customs and traditions, it gives weight to the teachings of Quran and Sunnah
- Justice is not delayed in *Jirga* system
- Everyone is equal before *Jirga* law
- Structurally, *Jirga* is quite a simple body
- It promotes social harmony, peace and tranquility

6. If the respondents were showering praises on *Jirga* on one hand, on the other hand they also highlighted its demerits of the system. Majority of them (22.5 %) alleged that corruption has permeated into the jarga system. (72.2 %) of the
respondents listed variety of defects, while (5%) opined that the system is free from errors. Their views are summarized below:

- The amount or weapon kept a surety bond is misused.
- Normally the jarga members are illiterate. As such their decisions are influenced by ignorance.
- In some cases, decisions are influenced by politics.
- In many instances, verdicts of Jirga are not in consonance with modern days trends.
- Jirga has always promoted inhuman traditions like Swara, Wani, and forced expulsion of culprits from his area.
- Rich and resourceful people dominate proceedings of Jirga.
- Force is used in execution of Jirga verdict.
- Jirga members are generally ignorant of law.
- Sometimes Jirga fails to execute its verdict.
- No fixed criterion exists for nomination of Jirga members.
- Members fleece money in return of their favour with one party or the other.
- Since Jirga members belong to different tribes or different sections of the same tribe, therefore their intra tribal friction adversely affects decisions of jirga.
- Jirga members have been performing duty voluntarily, but in recent days some of them have started asking for compensation.
- The biased approach of Jirga members promotes social evils and lawlessness in the society.

7. Needless to say, in the post-9/11 scenario, Jirga has been adversely affected. The tribal areas where Jirga reigned supreme, has now been replaced either by Taliban insurgents or security forces. So answers to question as to how far Jirga is relevant after 9/11 and rise of Taliban, were interesting and numerous. 62.5% are of the view that Taliban have fully controlled the system and Jirga has vanished from the tribal society. Nevertheless, there is still a sizable number of people (37.5) who do not believe in reducing Jirga institution to a dead horse. They are of the view that the volatile situation of the area and domination of non-state actors has made Jirga more relevant.

CONCLUSION

Jirga is integral part of pukhtoon social organization. Although state institutions (formal) have replaced this informal body to a great extent, but it’s vitality did not vanish. Jirga system has been a success story that is why the concept has been incorporated into state institutions of Pakistan and Afghanistan. With the passage of time, some negative trends like conservatism, male chauvinism, political and factional biases and corruption have permeated into the institution of which human rights organizations and Government have taken notice. However its merits are more than the demerits. The administration of speedy and inexpensive justice, proficient conflict resolution, transformation of enimity into friendship, effective execution and regard for moral and cultural values; are positive attributes of jirga. Interestingly, the tribal community is fervent backer of continuation the institution of Jirga. Pukhtoon is general and tribesmen in particular opine that solution to the current crisis in FATA and rest of the country, lies in reactivation of Jirga system.

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