

Role of Jirga and Dispute Resolution Councils in Khyber Pakhtunkhwa: A Comparative Analysis

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Abstract

Jirga is the centuries old institution of alternative dispute resolution in Pakhtun society. With the passage of time the efficiency of the said institution deteriorated which automatically destroyed common people reliance on Jirga. This paper analyses all the factors which made Jirga institution weak decision-making body and provided the room for establishment of this Alternative Dispute resolution mechanism. This study is qualitative in nature. Data has been collected through primary and secondary sources. People of this region are strict in following of their cultural and traditional values so complete abolition of Jirga system was not possible, to fill the gap in the traditional structure, Dispute Resolution Councils has been established in KP since 2012 as a modified form of traditional Jirga. DRC is functioning in numerous districts of KP and people have a positive image about its efficiency for resolving local disputes.

Keywords: dispute, conflict, *jirga*, *pakhtunwali*, dispute resolution council (DRC)

Introduction

Disputes and conflicts are the part of human life from the time unknown. There are multiple reasons due to which human beings confront each other's and disturb the peace of society. It is the law of the nature that every problem has a solution and according to this law in each era of the history of humans every type of dispute has a procedure for its resolution (Agarwal, 2014). According to (UNDP ,2006) report 80% of the total conflicts in the rural area of Pakistan are resolved through ADR but in many cases, it raises serious questions of concerns regarding violation of fundamental human rights. In *Pakhtun* society Jirga is the centuries old mechanism for resolution of every type of dispute but with the introduction of new trends in the society this institution lost its sanctity and most of the people began to resolve their disputes through formal courts. Khyber Pakhtunkhwa government took the initiative to formulate a government based Jirga called Dispute Resolution Council to facilitate the local people in solving their dispute (BarkatUllah and Sajid , 2013).

In the last few years its credibility has been questioned due to certain injustice decisions taken by this institution especially against

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women folk of community (Chaudhry, 2011). With the changing pattern of life and demand of people the need for the reformations of this traditional institution was felt seriously (Lal,2018). In this context the government of Khyber Pakhtunkhwa take the initiative and introduced a total new institution on the pattern of old Jirga with the similar purpose of dispute resolution. This institution named Dispute Resolution Council works under the direct supervision of the police department (Dawn, 2014). Structure of the DRC is as it will have twenty-one members from all communities including religious scholars, professionals, Retired civil and military officers and educationists. The membership of the council is not permanent. The members can be changed. Each council will further be divided into panel of three members. The police station will be responsible for maintaining record of the council activities. This study will try to investigate the reasons due to which the need for the reformation of the old Jirga system was felt among the people (Dispute Resolution Council..., 2014).

Research Questions

1. What are the factors responsible for the failure of *Jirga* in *Pakhtun* society?
2. Why the need for establishment of Dispute Resolution Council was felt in Khyber *Pakhtunkhwa* province of Pakistan?
3. What is the common people point of view about this reformed shape of Jirga?

Objectives of the study

This study has two types of objectives, Broader and specific. In broader objectives we will try to understand the weaknesses of Jirga system all over Pakistan. The specific objectives will be to study the decision-making procedure of both Jirga and DRC. It will also cover the implementation procedure of the decisions of both institutions. This study will also examine the common people satisfaction level on both institutions' verdicts. This study has to highlight the improvement in decision making of DRC as compared to the old Jirga.

Literature Review

Brohi Nazish (2016) report is basically about the anti-women verdicts given by the Jirga throughout Pakistan where the decision of Jirga violated the fundamental rights of women. This report gives a detailed history of the evolution of Jirga from the colonial era and also describes the scenario in which this institution services were needed to the local community for resolving their pity disputes. According to this

report all those decisions of Jirga in which crimes of male were compensated through women not only diminished the credibility of Jirga nation-wide but also provided a forum to international human rights activist to indulge in those decisions and to criticise this centuries old institution. Zaman Lal (2018) also focus on the future of Jirga in case of Federally Administrated Tribal area (FATA) merger with KP. This research work provides the inside expressions of the local people of FATA that how they consider this merger and would they be able to utilise the forum of Jirga as a dispute resolution body after that merger? This study finds out mix responses of the people about the future functioning of Jirga after FATA merger with KP. This study concluded with the fact that Jirga is culturally deep-rooted institution in *Pakhtun* society so it cannot be totally abolished from that culture. It will need reforms in its procedures that it can positively play its role in peace making in *Pakhtun* society. The Jirga: Justice and conflict transformation (2012) is the Report published by CAMP (Community Appraisal and Motivation Programme) which deeply analyse the role of Jirga after militancy in Swat and Malakand districts of KP. This report has found out that Jirga has certain limitations in the current situation of Pakistan and it is not as powerful as the old Jirga system of this society. The main reasons for the weakness of this institution according to CAPM are corruption of elders, Lack of women representation and violation of fundamental human rights. Some of the respondents of this study expressed their opinions about Jirga that it is nowadays a commodity that can be purchased by any influential and wealthy person for the right price. This report recommended for reformation of Jirga system and the state administration should be responsible for implementation of Jirga decisions. Islam Faqir & Atta Jirga: a conflict resolution institution in Pakhtun society is the research work composed of a brief discussion about Jirga origin and its role as a conflict resolution body in Pakhtun culture. Different types of Jirga which includes Sarkari Jirga, Olasi Jirga, Shakhsi Jirga and Loya Jirga are also explained with its procedure in different sections of Pakistan and Afghanistan. The writers explain in details about the weaknesses of Jirga just like Bribery of the members, violation of human rights through its harsh decisions and decision making by least experienced people in criminal cases. Respondents of this research expressed their views about the Jirga in such a way that it clearly identifies the weak position of Jirga in numerous parts of the country.

Methodology

This study is qualitative and co relative in nature which attempt to know relation between the two aspects of under discussion

phenomenon, current status of Jirga and factors responsible for establishment of DRC in presence of Jirga. For data collection primary and secondary sources are utilized through interviews and other researcher's articles. Qualitative and descriptive approach has been adopted in this study. Data collection for this study has been made from district Swabi where two types of questionnaire were prepared. For the first type having the basic questions, 60 respondents were taken on common ground without knowing their qualification their jobs and their ages. In these 60 respondents 10 were female and 50 were male. For the second type of questionnaire 40 respondents were chosen who expressed their opinions regarding the said topic. Respondents were above 45 years of age from different walk of life including teachers' retired army personnel judges' notable elders of the community businessmen and land lords.

Factors responsible for the failure of Jirga

Jirga was the traditional tool of justice provision from the centuries but recently has been subjected to crucial junctures due to multiple factors, some of them are

Unjust Decisions: Jirga decisions are some time high jacked by the influential members of the community and they take biased decisions. These biased decisions not only harm the marginalised group of that society but also damage the honour Of this prestigious institution. Especially when the dispute occurs between the weak and influential class then the reliability of Jirga institution become a question mark. (Shah, 2017)

Lengthy Procedure: Jirga decision making sometime take a long time due to the non-availability of both parties to the dispute. They do not have any legal authority to call the parties in a particular time period. They just have to inform the disputant parties that their case will be preceded on a prescribed date and both the parties are requested to attend the Jirga on the given date. The disputant parties have an open choice to attend the meeting or to remain absent and delay the decision-making process because Jirga cannot take decision in absence of any party to the dispute. In such scenario the case lingers on and after a long period of time the claimant take their decision to formal court (CAMP, 2012).

Inexperienced decision makers: Jirga is almost comprised of the local elders of that community. There are no hard and fast rules for appointment as a Jirga member. Those people who have spent their lives among the villagers in a decent and transparent way society take them as a respectable citizen and entrust the decision making through Jirga on them. In Many cases Jirga members are uneducated and have

only customary knowledge on the basis of which they made decisions (Interviews from the respondents).

Anti-human rights verdicts: Jirga is an institution which derived all its rules from customary law. They have no link with the constitution of Pakistan. Many times, Jirga decisions are against human rights but accepted to the community because of their cultural traits (Orakzi, 2009). In 2011 in Haripur district Jirga punished a middle-aged woman to walk naked in front of male because of and alleged crime of her son. In another decision of Jirga in Swat husband killed his own wife because of suspicion of illicit relation with his brother. Such inhuman verdicts were tolerated by the people because of their traditional bonds with the system. (Barkatullah and Sajid, 2013). Another inhuman and anti-women decision of Jirga is SWARA. It is the phenomena when the girls are given to the opponent party to resolve the dispute emerged due to murder from one of the disputant party. Those who commit the crime give their daughter or sister to the deceased family as compensation to resolve the dispute. According to CAMP (2012) report 250 cases of SWARA was recorded in District *Swabi* and *Mardan* in 2006.

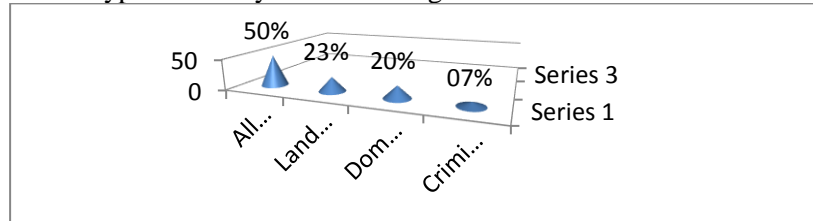
Lack of women representation: Jirga is totally male dominated in every part of the country. Although majority of cases decided by the Jirga are family disputes which not only effect male members of the family but also female members with the same threshold. In the family matters decisions of female are taken by her father or brother whom she nominates for Jirga to represent her point of view (NCSW, 2016). In KP it is against the norms of Jirga that women will have decision making status in the society. In District Swabi majority of villages has their local Jirga but none of them has a single female member. Even it also depends on male member of the plaintiff that the decisions made in family disputes are acceptable to them or not. Women are not allowed to tell anything in their defence. All the matters would be settled through her father or brother in front of Jirga. In land inheritance disputes whenever a woman demands her due share in property from her brother, she gives her authority of decision making to her sons or her husband and the authorised persons then decide according to their own will.

Discussion and Findings

The data collection mechanism while conducting this study was comprised of personnel interviews and questionnaire. The questionnaire contained the questions related to types and nature of conflict in the selected universe. The mechanism of conflict resolution, satisfaction level of common people about this institution and methods

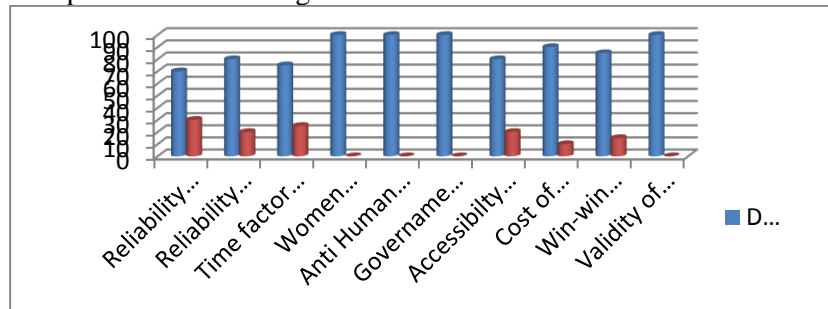
of its conflict resolution were the main questions from the general population of the universe.

Which type of cases you refer to Jirga?



In the response of the second question 50% of the total respondent said that they refer all type of dispute to Jirga for seeking its solution. They further explained that Jirga is such a dynamic institution that it can solve all types of disputes of the local people within a short span of time. 23% had the opinion that Jirga can bitterly decide Land disputes just like boundary demarcation irrigation water root and distribution of inherited land among its owners. So they only refer these cases to Jirga for resolution and for the rest of the disputes they approach formal courts. 20% of the respondents refer only family dispute to Jirga as it's the family matters which cannot be discussed in formal courts. Jirga is comprised of the local elders who can easily understand the family matters of the disputed group and can compensate both parties with in a win-win situation. Only 07% people said that we refer criminal cases to Jirga as it need investigation from formal courts and police department so we cannot afford all the complicated matters involved in criminal cases.

Comparison between Jirga and DRC



Total ten questions were asked from the respondents of this study about the comparison of Jirga and DRC. The first question was about reliability of both institution decisions making, either people consider it trustworthy or not. From total of 60 respondents 70% considered DRC as much trustworthy institution in decision making. Their pleas were decisions made by this institution are fair transparent and free of any biasedness. Only 30% agreed with the fact that Jirga decisions are also trustworthy and they support their argument in such

a way that traditional institutions almost have positive impacts on the society. Although they did not deny they efficiency of DRC but they consider both institution on equal footings in reliability and trustworthiness in decision making.

The second question of data collection is about the reliability of decision-making procedure. Respondents were asked about both the institution that; what is the level of people reliability on this whole mechanism? Their meetings, investigation method, involvement of disputant parties in decision making and issuing of final verdict. 80% of the respondents consider DRC mechanism most reliable and according to the need of the local community. They said that DRC investigate about every matter deeply and involve both parties in decision making process. Their members are trained professionals who not only listen to the claimant and defendant but analyse the case through in-depth investigation. They appoint special investigative committees from the same locality where the dispute occurred. After collecting facts through those committees, they take final decision about any dispute. 20% respondents were not completely satisfied from decision making mechanism and they said some time the members could not understand the sensitivity of the dispute due to which they issue a general verdict for resolving that dispute. Both the parties reject it and they forward their case to formal court for decision making.

DRC claims for its efficiency for timeliness of its decision making. Respondents of this study were asked about time management factor of DRC decision making that how long their decision-making take place? 75% of the respondents were totally satisfied with quick dispute resolution mechanism of DRC. On the other hand, 25% of the respondents said that decision making through DRC is not as quicker as compared to local Jirga. DRC is a government supervised body so they work through a proper channel. Especially in land dispute such like inheritance issues or boundaries demarcation DRC first has to collect all the relevant information from land revenue offices. Keeping in view official record then they decide they case. Data collection from government offices take a lot of time and decision remains pending for that. While in Jirga they decide they case on the spot keeping in view ground realities. Both the disputant parties then go to their concerned office to collect their documents after decision has been accepted by both the parties.

Culturally *pukhtoons* are conservative by nature and they want their women to remain inside the four walls of the house. In comparison of DRC and Jirga it is the major point of difference that traditional Jirga never allow women to participate in decision making.

Respondents of this study agreed with this fact that every DRC has a woman representative although this representation is very few in number but they have taken the initiative of women involvement in decision making. On the other side Jirga never had women participants and decision making on domestic issues become a problem when women stance has been represented by male member.

In the second decade of 21st century Jirga has been criticised by many social activists for its anti-human rights decisions just like *SWARA* and *WANI*. Respondents of this study expressed their opinions that Jirga is autonomous body so there is no check on its decision making. They can decide any case according to the cultural values and customary laws of the region. All the respondents were agreeing with the fact that Jirga often make such decisions which is contrary to human rights. On the other hand, since its inception of DRC has never made such anti human or anti women decision. Its work under the supervision of Government and take their decisions according to the constitution of Pakistan. If some issues do not have solution under the constitutional clauses, then consensus of opinion is made among the members and disputant parties and that decision never contradict with human rights.

About government support and supervision all the respondents opined that DRC has full government support as they are working under police department. The entire infrastructure is provided by the government. They have assistants from police department who maintain their record of decision making. Jirga is totally local institution formed by the villagers on self-help bases. There is no proper meeting area for them. They can sit anywhere to decide the dispute. Their members are not fixed and it depends on the nature of dispute that how many members will decide it. Jirga members are fully autonomous and not responsible to anyone in the locality.

Both *Jirga* and DRC are public bodies' institutions and every one can access it to get cheap justice. With the passage of time Jirga remains the institution of the influential class of the community. In the question of accessibility to the institution only 20% responded considered Jirga as an easily accessible institution to the common people. The remaining 80% said that as compared to Jirga it is very feasible to get access to DRC. In a matter of dispute, the disputant just gives an application to the nearby police station, the DPO mark it to DRC and their case precedes according to the set rules of DRC. Jirga is nowadays considered a little bit costly as all the matter has to be set up by the parties to the dispute by themselves. As compared to Jirga disputants have nothing to do with the decision making of DRC. From the total 90% of the respondents opined for DRC as a less costly institution. The remaining 10% responded that Jirga is our cultural

institution from centuries that's why it is also cost free for provision of Justice.

The best attribute of ADR is it provides a peaceful settlement to all disputes. In comparison of DRC and *Jirga* 85% of the respondents said that resolving disputes through DRC create a win-win situation for both the parties to the dispute. Decisions are made on give and take and no one is completely deprived. The matter is not only resolved but reconciliation is made among the parties which reduce the chances of future enmity. DRC after issuing verdict ask the disputant to shake hand and to hug each other in front of panel members which is a sign of complete abolishment of enmity. On the other side 15% of respondents expressed the same opinions for *Jirga* settlement of disputes. They said that *Jirga* is comprised of local people so they can easily understand the ground situation for resolving the dispute permanently. *Jirga* decision can easily be denied by any of the disputant party. It was the most serious drawback of *Jirga* as an institution of conflict resolution. All of the respondents agreed with the fact that DRC decisions have weightage in formal courts. Any of the disputant party if refuses to accept DRC decision can take their case to formal court and formal court can ask the concerned DRC about their verdict of that specific case.

Conclusion

From the respondent's point of view and consulting secondary sources this study reveals that establishment of DRC was the need of the time. *Jirga* lost its sanctity due to many factors which includes wastage of time, nepotism, partiality in decision making, inhuman decisions against the lower class, negligence of human rights and totally ignoring women folk of the community. *Jirga* remained a nominal institution but still its existence cannot be denied due to the cultural traits of the *Pakhtun* society. The only solution to remove the weaknesses of *Jirga* was its reformation according to the modern trends. This institution not only restored the confidence of people on Alternative Dispute resolution mechanism but also shared the burden of formal courts.

Recommendations

Some policy recommendation to the government of KP regarding DRC.

1. Proper documentation procedure should be provided to the police stations to keep the record on same format as there is no uniform format for compilation.
2. Separate waiting areas should be provided in each police station for disputant parties.

3. Women representation should be increases in DRC panels.
4. There should be proper review committee for the efficiency of DRC to communicate its results to common masses.
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