

## The Role of Jirga in Conflict Resolution

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### Abstract:

Jirga is the most important institution of Pukhtoon society. It is as an assembly of elders, powerful leaders, chief and religious leaders, who are working for the resolution of disputes. Jirga is the traditional and customary judicial institution in which the cases are tried and punishments and rewards are inflicted. The sphere of influence of Jirga is not limited to trials of major or minor crimes or civil disputes but it also helps in resolving conflicts and disputes between individuals, groups and tribes. The Jirga, by which most community business, both public and private is settled in the Khyber Pukhtunkhwa, Balochistan and Afghanistan, is probably the closest approach to Athenian democracy that has existed since times immemorial. It is only vehicle by which the political administration in the tribal areas dispenses Justice because the political administration lacks the authority to enforce peace; a Jirga is constituted make a truce and place a Tiga, literally a stone, between the warring parties. The origins of the Jirga are lost in the midst of history. It may have been indigenous to the Pakhtoon society or may have been brought over by the Central Asian invaders. The Jirga has, however, helped to enrich the Pakhtoon culture and values. The discourse among the people in the Jirga is an effective way to teach the young ones the real meaning of pashtoonwali. Sitting in a circle, the Jirga has no speaker, no president, no secretary or convener. Though there are no hierarchical positions, yet regard for the elders is always there without any authoritarianism or privileged rights attached to it. The Jirga system ensures maximum participation of the people in administering justice and makes sure that justice is manifestly done. It also provides the umbrella of safety and security to the weaker sections of the tribal people from the might ones. The Jirga is usually composed of the "Spin Giris" white bearded elder men, and other members. The Jirga member may be an illiterate person but he must be honest impartial and capable to announce decision above all doubts and objections of any of the conflicting parties. The Jirga members are not elected by the people of the area but are nominated by a well wisher group of person being engaged in negotiation between the conflicting individual, Tribes. The decision are of two types one is based on the concept of "haq" the right and the other on "Waak" authority. A representative of each party jointly approaches the nominated Jirga with a request to reach on fixed date and spot as selected by the negotiators.

According to the Pashto Descriptive Dictionary Jirga is Pashto word, which refers to the gathering of a few, or a large number of people. The word Jirga is also used in Persian/Dari. According to (Ghyathul-Lughat) it is derived from Jagarra, which means a 'wrestling ring', or 'circle', but is commonly used to refer to the gathering of people. Other scholars believe that the word Jirga

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originates from Turkish where it has a very similar meaning to those in Pashto and Persian/Dari. These meanings of Jirga strongly reflect the rituals and processes of the Pashtun traditional tribal Jirga where people gather and sit in a large circle in order to resolve disputes and make collective decisions about important social issues. Rubin a prominent scholar, describes the institution of Jirga in this way: “The Jirga includes all adult males and rules by consensus. In theory, a Jirga can be convened at any level of tribal organization, from the smallest lineage to an entire confederation. Jirga are most commonly held at the lineage level, but there are larger tribal or even inter-tribal Jirga as well, at least among the eastern Pashtuns.” While this description depicts almost all the important aspects of this traditional Afghan/Pashtun social institution, Rafi, a contemporary Afghan scholar, has formally defined the concept and says that Jirga is ‘... that historical and traditional institution and gathering of the Pashtuns, which over the centuries, has resolved our nation's all tribal and national political, social, economic, cultural and even religious conflicts by making authoritative.’(1)

Jirga system is not limited to Pukhtun tribes. The concept of jerga is universal. In ancient times some Indian villages had councils performed the same function as jerga performed. In Greek city states the people used to gather in a place called “agora” where the people used to discuss different issues and sought their solution through mutual consultation and in Rome comitia Curiata worked as advisory council. The Arab tribal community use the term of Shura for such meetings and consultations.

In Persian it is called Majlis and in Punjabi and Hindi Panchayat.

“The Aryan tribes, which came down in intermittent waves from Central Asia to present Afghanistan and then moved to India (5000 – 1500 BC), tribes practiced a sort of jirgah-system with two types of councils – simite and sabha. The simite (the summit) comprised elders and tribal chiefs. The king also joined the sessions of the simite if necessary and some time the kings had decisive voice in time proceedings of Simite. Sabha was a sort of rural council. Sultan Bahlol Lodhi (1451-1489), a famous Afghan ruler in India, had formed a Jirga of elders to decide important issues. Whenever it was convened, the Sultan used to sit among them in the circle as a member. The Lodi sultans established an efficient administrative system in their kingdom’s central provinces

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that served as a model for later rulers. Bahlol Lodi and Sikander Lodi survived in part because they distributed estates to their Afghan supporters and interfered little with their tribal or personal independence. Similar practice was followed by Sher Shah Suri, another famous Afghan ruler in India. He also kept a Jirgah of elders and used to sit among them in the circle. When their descendants behaved as rulers and tried to suppress the tribal elders, the tribes switched over to their rivals – the Mughals – to put an end to their rules. Jirga may have been indigenous to the Pukhtoon society or may have come to the area from adjoining Iran, but Jirga has helped to enrich the Pukhtoon culture and values”(2)

Younas Fida writes about the Criteria, Members and Size of Jirga,

“The Jirga assembles in a Hujra or a village mosque or in an open field outside the village. The Jirga members usually sit in a circle without any presiding figure. This meeting, like the round-table conference, without a chairman reflects their love of democracy and principle of equality irrespective of birth, wealth, race, color and position etc.

There are no hard and fast rules for the selection of Jirga members. The size of a Jirga depends on the scope and importance of the issue. There are no set principles for the qualifications of its members but social and religious status and proximity to the issue as well as confidence of involved parties. They are normally family elders or their representatives. Religious elders also attend Jirga. Authority and competence of the Jirga member depend on the nature of the problems the Jirga has to tackle.

All reputable elders - Speen Geeri (grey-beards) - are considered eligible for its membership. However, for effective enforcement of the decision taken by the Jirga, the Jirga members should have social status with sound economic position and sufficient manpower at home.

The selection of the Jirga members varies according to the type of Jirga. For Sarkari Jirga, usually the members are selected from the notable elders or the Maliks of the area. In a Shakhsi Jirga the government selects and appoints two members from each side, whereas one member each is selected by the consent of the parties in the dispute. In case of the Ulusi Jirga, the members are usually comprised of elders of the notable families whose social standing and experience with the Pashtunwali entitles them to a place on the council. The size of a Jirga varies from one situation to another,

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based on the nature, significance and sensitivity of the dispute. It might consist of one member, although two members are more usual and often there are four or six experienced members, fully conversant with the laws of the Pashtunwali.”(3)

One of well known writers expresses his thoughts about the Proceedings of Jirga, he writes

“The proceedings of Jirga are carried out in a Mosque, Hujra “Guest House” or under the shade of a huge tree. Both the parties are given time to present their case and there is no discrimination made on any basis. The Jirga operation in minor cases is carried out for a day or two while in major cases it may take as long as nine to ten days. During the functioning of Jirga maximum participation from both the parties and the members of judicial council is highly encouraged. This aids in understanding the nature of problem more effectively and providing possibilities for negotiations between the concerned parties. The crowd is not allowed to participate or interfere in the proceedings of Jirga. Decency, smoothness of the trial, and decorum of the Jirga is highly ensured during the whole process. The Jirga conducts its proceedings in a simple and democratic manner. It interviews both the parties involved, gives them patient hearing and examines witnesses to ascertain the facts of the case, although the Jirga members may know well about the facts. After enquiries, the Jirga makes every possible endeavor to find an impartial and acceptable solution of the problem. The decision is generally based on Shariat and local traditions. In serious cases the Jirga asks a party to clear itself of the imputed charge by taking oath on the Holy Quran. This seals the issue once for all, as the religion is the extremely strong force. The Jirga announces its decision only when the majority of its members reach an agreement. But jirgah members deem it prudent to obtain the consent of both the parties before making its verdict public. This practice is known as Waak or Ikhtiar (power of attorney).

The Jirga reprimands the party, which declines its award. In such a case the Jirga may resort to punitive actions for enforcement of its decision, which includes fine in cash, burning of the house of the recalcitrant members. In a serious case, when a dissident party

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violates the Jirga decision and threatens peace in the area, tribal Lashkar (irregular force) is raised to punish the violator.

The Jirga system does not take the right from either party of appealing against the decision of Jirga council. In that case the appealing party can call for another Jirga gathering the decision of which is considered final. The Pukhtun Jirga exclusively enjoys the role of Judiciary, Executive and Legislature. In case if any party fails to respect the decision of Jirga called “Makh Arawal” meaning “turning of face”, than the Jirga council has the right to impose its judgment by any means. Sanctions are imposed on the rebellious party which may range from imposition of heavy fines, confiscation of weapons and ex-communication with non complying party depending upon the seriousness of matter. If still the party refuses to follow the decision of Jirga than the Jirga has the right to burn down the house of non-complying party by sending Lashkar ‘The tribal Army.’(4)

There are few broad principles to a successful Jirga which are very important for its proceeding. They are:

Transparency, Confidence of the community, Unanimity, Freedom of Speech, Accountability, Process of Jirga Members, Message of Peace. In the light of these principles “Masharan” making their decisions in different types of Jirga. According to most writers Jirga have four general types. One of these is Sarkari or Government Jirga.

Sarkari Jirga refers to a Jirga sponsored by the Government. In the tribal areas of KPK, the British established a contract with the local people, allowing them to settle all issues between themselves and the government through a local Jirga. This contract was pronounced through a local Jirga. This contract was pronounced through the “Frontier Crimes Regulation of 1901 Act” allowing a representative of the government to regulate the formation and reformation of Jirga(s)

Under Frontier Crimes Regulation (FCR) 1901, the Magistrate, the Political agent or his assistant can designate a group of elders to try a criminal or civil case. The FCR authorizes settlement of quarrels by this Jirga. Jirga members two or more depending of the nature of and importance of the case, are nominated arbitrarily by the concerned government officials. The Jirga calls the parties, analyzes the evidence, and recommend a verdict to be considered for approval

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by the Government authority. There is an appellate tribunal of the government that then examines the Jirga decision. This Jirga can recommend a maximum penalty up to fourteen year imprisonment and pass awards based on the local traditions. The political agent can approve such recommendation and enforce them.(5)

The second and the most type of Jirga is Quami/Ulasi or Local-Representative Jirga.

According to Ali Wardak,

“Ulas means People and Qaumi means community. Thus, Ulasi Jirga is an assembly of the elders comprising each household of a certain village or community. It is convened to discuss matters such as collective party, rights and distribution of irrigation water, or common concerns, like the selection of a site for a school, etc. Ulasi Jirga is announced after initial consultation of a few elderly leaders of the community, and it is announced through a Naqqarara or band beat. The venue and time of such an assembly is also given. It is an open assembly in which each person is allowed to speak and all opinions are give space. The decision may be taken in one or more sessions if the issue needs private deliberations by different stakeholders.

Attended by all males and, in some cases witnessed by women, this kind of a Jirga is led by different cards of representatives. These may include a combination of the following:

Spingiries Jirgamar(s) Mashar/Masharan”(6)

Similarly the third one is Shakhsi or third – party Jirga.

“ This Jirga is formulated in the case of a dispute that arises between two individuals or families. The Jirga members are chosen from both of the parties agree to the members to nomination of neutral members. Balance and neutrality are important in order for the members to arrive at a just settlement that is acceptable to both sides. Failure of one party or the other to accept the verdict of the Jirga puts the credibility of Jirga at stake, creating a situation where the original Jirga becomes a party in a second or even third Jirga. Until both parties voluntarily agree to accept such a verdict or until the Jirga has the powers and a misjudgment by the Jirga will not stand the test of Justice. Again raising the Badraga brings the Jirga’s decision to the awareness of the whole community, thus keeping the process in check. Because the process of Shakhsi Jirga involves

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adjudication of the disputes through a process similar to arbitration, credibility is crucial.”(7)

Apart from these types of Jirga one is Loya or Grand Jirga.

“Loya Jirga or the Grand assembly is a process through which representatives of various areas organize to discuss and vote on issues at the national level. A question about the representative’s status of these participants is usually quite sensitive and if the Jirga is even slightly mishandled, the credibility of this national level process quickly loses its efficacy. As discussed earlier, representation or selection of members of the Jirga is a delicate process. Each representative must have the unquestionable confidence of the community he represents and each community must be duly represented at such a Jirga. Each member must be heard at the conference and concerns raised by a member must be taken into account while collective decisions are being made. All decisions of Jirga must be unanimous.

The institution of Loya Jirga in Afghanistan has gained legitimacy as a constitution making body because of the frequency of its practice. There is no fixed size for this kind of a Jirga. The framework for representation is defined by the convening authority, where each administrative unit is allowed to bring forward a representative. Major tribes are also given rights to send representatives and similarly special representation may be allowed for women and minorities. This is a one off assembly convened to address a specific issue or situation of the highest national interest.

The process of the selection of the representatives is often tedious, as there must be a universal agreement to the framework through which the nominations are made. Different methods of selection are applied by the central government, but rarely has the government been able to find a disputed formula to represent the whole width and breadth of its population. As such, each geographical district and each major and minor tribe must be judiciously represented.

Outside Afghanistan the concept of Loya Jirga is applied at the geographical Agency level in Federally Administered Tribal Areas (FATA) as well. The Loya Jirga of a particular agency might be formed to discuss an issue with an adjoining agency. Subsequently a Loya Jirga of all the tribal districts (agencies) may be formed to raise an issue collectively with the government or to set up a new Law for the collective tribal life.”(8)

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After the discussion of nature and mechanism of Jirga know we are going for decision making and implementation of it. One of the famous researchers says,

“The Jirga passes a judgment after necessary investigation into the dispute. No efforts are spared to reconcile the disputants. The decisions are of two types, Haq or the right, and Waak, which means authority, and both sides are allowed to present their arguments before a decision is given.

In case of Haq each party has the right to challenge the decisions of the Jirga on its merit. If one of the parties is not satisfied with the verdict offend feels that the Jirga has not done justice, they can quote precedents and rules (Narkh) to pleased their point and reject the decision. It is interesting that different tribes may have different Narkh in similar cases. In the case of Haq, the aggrieved party has the right to bring another of Jiga to re-examine the issue. In doing so, the decision given on the third occasion is usually considered final.

In the case of Waak, the two parties repose their full confidence in the Jirga and authorize it to decide the case according to its best judgment. The parties have to abide by the decision and cannot challenge it. The decision the Jirga members reach however, is unanimous.”(9)

About the nature and the cause of conflict in Pukhtoon society, Encyclopedia of the Social Sciences, mentioned

“Conflicts occur in all human societies across the world. Conflicts are as old as human society by itself. A conflict can be as small as a disagreement or as large as war. It can initiate between two persons, families, groups or even countries at large. In the past, persons, social groups and the general public had conflicts, and resisted against one another over unjust distribution of resources, i.e., land, money, political power, and even the disparity of ideology. They have even clashed with one another and furiously wanted the removal or suppression of opponent, in order to control these resources and commodities. But at the same time, human societies and groups have found their own ways and means for prevention and resolving conflicts”(10)

Similarly Dr. N.R Pathak writes

“Furthermore a conflict is a state of discord caused by the actual or perceived opposition of needs, values and interests. Conflicts as a concept can help explain many aspects of social life such as social disagreement, conflicts and fight between individuals, groups, and

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even nation. In political terms, “conflict” can refer to wars, revolutions or other struggle, which may involve the use of force as in the term armed conflict. Without proper social arrangement or resolution, conflicts in social setting can result in tensions among stakeholders. Conflict is an interaction between interdependent people who perceive incompatible goals and who expects interference from other party if they attempt to achieve their goals. Conflict is usually based upon a difference over goals, objects, or expectations between individuals or groups. Conflict also occurs when two or more people, or groups, compete over limited resources and / or perceived or actual, incompatible goals. Moreover, conflict can be win-win, situation where both parties at what they want, win-lose where by one party gains what it aspires for where as the other party is the loser and does achieve the destined goal, or lose-lose where both parties don't get what they want commonly defined as, goal when two or more parties, with conceived incompatible goals, and underestimate each other's goal-seeking capability”(11)

In addition, the nature and causes of conflicts and the mechanisms for resolving them are deeply rooted in the culture and history of every society; they are many important ways distinctive to them.

Similarly Ali Gohar expresses his views.

“The main difference between the Jirga system and the criminal justice system is that where the criminal justice system punishes, leaving the enmities as they were, the Jirga resolves the enmity at its roots and adopts certain rules for prevention. Some people argue that the Jirga is an outdated institution. There may be some truth in this, yet it is also true that there is no credible substitute available in the Pukhtoon societies with which to replace the Jirga. The Governmental systems in both Afghanistan and the Federally Administered Tribal Area (FATA) part of Pakistan are as weak as the Jirga, if not more. The institution of Jirga in Pakistan and Afghanistan is still a strong community based on the process of peacebuilding. It is practiced widely at the community level, where it is used as a social organization preparing communities for much needed social change. The Jirga thus involves itself in all aspects of collective decision-making, as well as being used as a forum for the settlement of all kinds of disputes and conflicts.

Some accuse the Jirga of being a parallel system to state-endorsed justice, but this need not be the case: the Jirga supports the

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criminal justice system by providing a forum through which settlements handed down by the court can be properly facilitated. The Pukhtoon code by which families live is based on revenge. Even after a decision taken in a court of law by which guilt is attributed and a penalty assigned, parties to the conflict will seek to punish the enemy in order to make the social norms of Badal (revenge) equal. However if the court decides to reconcile the parties, they are compelled to approach a Jirga to facilitate reconciliation, do not exist in the criminal justice system. For a durable solution Jirga is the only tool with which to end enmity once and for all. Since the modern vocabulary of human rights is not known to the people, the old traditional system of moral codes still exists, and in some cases supports the violation of the rights of children and women. The displacement of the community-based institution known as Hujra to the individual drawing room completely stopped the informal learning of the Pukhtoon code of life, closing one channel through which moral codes can be developed within the community. Without reinvigorating the Pukhtoon Jirga, it is difficult to convince people to accept social and cultural change.”(12)

### **Conclusion**

The institution of Jirga is the oldest and the most dominant component of the Pukhtoon society. Though its history, structure and activities is unwritten yet it is an integral part of Pukhtoon society. It is the only institution that works as a driving force behind the entire lives of individual as well as their tribes. It is the one and only tool for dispute resolution and consensus building in all areas of life. It works like a social body, a judicial court, a watchdog, a democratic legislative body and a diplomatic mission, all at one time. Most of the social institutions of Pukhtoon life rely heavily on the institution of Jirga for the routine working of their lives. The concept of Jirga is uniform in the breadth and length of the Pukhtoon society spread over a large territory comprising central, southern and eastern Afghanistan and western and northern Pakistan. While comparing Jirga with modern judicial system it can truly be said that Jirga perform the modern judicial system. The Jirga believes in facts keeping in view the ground realities of a case while the judicial system examines a case with the arguments represent in a court of law. Criminal Justice System may defend a criminal when a lawyer protects him through his expertise in his filed, but Jirga has no such space for a criminal act to be defended. In so many case people try to

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harm each other even if a case is finalized in a the court but Jirga try to establish reconciliation between the opponents parties. The Jirga not only solve the conflict but make hearts and heads clear of the antagonistic parties/individuals.

Further the traditional Pukhtun Jirga is a cheap, simple and easy way which aims to resolve the complex disputes of the community people through a democratic process of justice. A lay man can approach to this valuable judicial system free of cost. Jirga equally value opponent groups irrespective of their economic, political and social status. An outstanding improvement in this traditional institution of conflict resolution can be viewed in its mixing up with the criminal justice system of police, in the shape of Muslahathi Committee. The new version of Jirga helps people, to resolve their disputes with Jirga rules of justice involving Police and community elders.



**References:**

1. See Jerga- The pathan Judicial System at <http://www.Pashtunarchives.bolg.com./2012/Jerga-Pashtu-Judicial-System>. Accessed on 30.5.2014
  2. Fakhr-ul-Islam, Khan Faqir and Malik Amir Atta, “Jirga:A Conflict Resolution Institution in Pakhtoon Society,”June 2013, <http://www.gu.edu.Pk/NEW/GUJR/PDF/JUNE-2013/87-95/Jerga.pdf>.Accessed on 14.6.2014
  3. Ali Wardak, Jirga: A Traditional Mechanism of Conflict Resolution in Afghanitan,dated14.6.2014,<http://www.Unpan/org/intradoc/groups/public/documents/APCITY/UNPAND-17434.pdf>. Accessed on 10.5.2014
  4. Ibid
  5. Fida Younas, Op-Cit,
  6. See Jerga- The pathan Judicial System at <http://www.Pashtunarchives.bolg.com./2012/Jerga-Pashtu-Judicial-System>. Accessed on 30.5.2014
  7. Ali Gohar, The Jerga in modern day of Afghanistan, dated 18.4.2012 <http://www.restorative justice.org/RJOB/the-jirga-in-modern-day-Afghanistan>, Accessed on 10.6.2014
  8. Dvid L.Sills,International Encyclopedia of the social sciences,(USA:The Macmillion Company, Vol-3), p-23
  9. Dr.N.R.Pathak, Dictionary of sociology,(New Delhi: Vishvabharti Publications, 2004), p-77  
Waziristan Agency,( Peshawar: Pakistan Studies Center, 2008-2010), p-97-10.
  10. Muhammad Nawaz Khan, The role of Jirga in conflict resolution (Assignment) 2012, p-6-9
  11. See Jerga at <http://www.Irani Caron Line. Org/article/Jerga> dated 15.2.2008 Accessed on 11.6.2014
  12. Fida Younas, Afghanistan: Jergas and Loya Jergas, the Afghan tradition, (Peshawar:Area Study Center University of Peshawar, 1992), p-1
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