



## JIRGA AS A DISPUTE RESOLUTION BODY: IT'S PERFORMANCE IN KHYBERAND KURRAM DISTRICTS

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### Abstract

*This study provides a comprehensive analysis of the Jirga as a dispute resolving body and its overall performance in Khyber and Kurram districts. Informal justice works throughout the world and plays very positive role resolving disputes. In the same way jirga also works as informal justice system which resolves disputes. People have great reliance on it plus regard it effective and accessible institution. For the collection of data, mix method comprising qualitative and quantitative used. The data available in the form of books, journals, articles, newspapers, official documents and progress reports concerned for covering the secondary data was utilized. Similarly, the primary data was collected via questionnaire from the respondents of Khyber and Kurram districts and were recruited through purposive sampling technique. This study is response to the core research questions i.e. to define the causes and impacts of disputes and the subsequent role of Jirga in resolving these disputes in Khyber and Kurram districts.*

**Keywords:** Disputes, mediation, resolution, Jirga, Khyber and Kurram Districts

### INTRODUCTION

Khyber and Kurram districts are two tribal regions inhabited by different tribes situated along Pak-Afghan border. Before recently merged in the mainstream Pakistan, the districts and their people were governed through centuries old customary practices, especially Jirga was used as a dispute resolution body. In these two districts people have many disputes. The causes of disputes are varying and have different kinds in Khyber and Kurram districts. These disputes include tribal, social, cultural, religious and economic in nature. Therefore the nature of disputes varies from place to place. Mostly in these two districts, the major causes of disputes are due to struggle for *Zar, Zaan and Zameen* (money, woman and land). In the struggle for achieving these possessions the disputing parties try to counterbalance, injure or remove their enemies. Beside this, disputes also occur in families for gaining power, wealth; land and acquiring social position in community (Turi, 2022).

Moreover, People in Khyber and Kurram districts retain antagonism on the minor problems. In this way the differences turn into hot clash and thus disputes remain for years. Taking revenge from enemy is another major cause of dispute among the people in Khyber and Kurram districts. In this case the members of the bereaved family regard it their due responsibility to take revenge of their loved ones. Therefore revenge is taken from the offender or his family and bloody dispute remain among families for long time. Nevertheless, sometimes with jirga engagement and mediation, the bereaved family also accepts the payment offered by the killer's family or even forgives them (Shinwari. Int., 2022).

Besides this land is another major cause of dispute and enmity among the people. Land is regarded very important in Khyber and Kurram districts and mostly depends on it for their survival. Every family has their specific land divided into sub-sections within the major family. Sometime dominant individuals or *Maliks* occupy land. Hence illegal occupation of other people's property causes dispute amongst the individuals. (Khan. Int., 2022). Furthermore, in Khyber and Kurram districts most marriages are arranged. Boy and girl's parents reach an agreement for marriage with certain terms and conditions. Sometimes their relations turn into enmity when the promises are not fulfilled. Thus engagement is broken and serious dispute arises among the families. Denial after

engagement is another basic reason of the enmity and disputes amid the people in Khyber and Kurram districts (Rehman. Int., 2022).

Likewise people are greatly religious in nature in both districts. As a result faith has excessive impact over the lives of the people. In recent past several groups in both districts fought on the differences over religious issues which led to violence as well as serious disputes. Financial dealings are also sometime result in disputes among the people when a party is unable to pay his loan, then such conditions give birth to disputes among various tribes and families. Besides this theft is another cause of dispute among the people in former tribal regions of Pakistan. The above mentioned causes are some of the main factors that create many disputes among the people in Khyber and Kurram districts. In order to solve these disputes the institution of Jirga plays very important role and solve all problem peacefully and successfully (Khan.Int, 2023).

### LITERATURE REVIEW

Margaret S. Herrman (2006) writes about mediation and dispute settlement. Deepak Malhotra (2016) has written on the art of mediation. Sharafat Ali and Mehran Wazir (2013) in their research article explain the major causes of disputes born in FATA. Marian Liebmann (2007) has written very thorough book on the subject of restorative justice. John Braithwaite (2002) in his book writes that restorative justice as an informal justice system plays very vital role in restoring victim's lost reputation, returning wrongdoers to community and re-establishing community norms as a stake holder in a dispute. John Braithwaite (2006) book *Crime Shame and Reintegration* is also related book regarding restorative justice. James. W. Spain (1985) explains that Jirga is an assembly of elders that deals with community problems. Leslie Mallam (2011) found Jirga system very useful. Nichols (2013) mentioned in his book about the Jirga. Rome (2013) also shed detailed light on the Jirga system in the Pakhtuns society perspective. Fakhru- ul Islam (2013) in his research article digs deep about the origin and evolution of Jirga. Siddique's book (2014) is also a related study shedding light on the importance of Jirga system. M. Ashfaq Ali's book (2015) is a very thoroughly investigated book about official Jirga. Sharifullah Dewar's (2017) book is about social norms and Jirga. Sher Muhammad Khan (2003) depicted the tribal culture and the role and importance of Jirga in dispute resolution and settlement. Khan (2005) is also a related and detailed book about the district Khyber and Jirga system. Siddique Ullah Reshteen (2010) explains Jirga system. Sher Zaman Taizai (2007) explains jirga system in details. Ahmad Salem's (2006) work focuses on Loya jirga and traditional Jirga system of Pakhtun society. Idris Khan (2010) work explains that in Pakhtun society Jirga resolve all disputes ranging from family to tribal level. Badrul Hakeem Hakeemzai (2009) in his book explains Jirga as a body of experienced wise elder people who settle all kind of disputes through consensus. Sana Haroon (2007) says that Jirga works as a court in which equal members are nominated by rival parties to resolve disputes. T.L Pnnell (2002) has briefly discussed Jirga system. Bangash's (2016) book is also a related study with a brief and general approach to the Pakhtuns' way and Jirga.

Thus the available literature discusses the role of Jirga generally. However, the current study provides a holistic approach to the role of Jirga plays in resolving disputes in Khyber and Kurram districts which are the most ignored and inaccessible areas.

#### **The Role of Jirga as a Dispute Resolution Body in Khyber and Kurram Districts**

For the resolution of disputes, there is a formal and in some of the societies, there exists an informal justice system. Likewise in Khyber and Kurram districts Jirga exists for the resolution of disputes as an informal justice system. Thereby this study is a valuable contribution for studying Jirga in Khyber and Kurram districts as a dispute resolution body. People's way of life is based on the core principles of Pakhtunwali that regulate every aspect of their lives. Therefore Jirga also works on the basic principles of *Pakhtunwali* from centuries and resolve disputes.

It is a very prominent institution and decides serious disputes successfully in Khyber and Kurram districts. That is why every individual in both districts knows about the basic procedure and rules of the jirga and whenever they face issues, approach to jirga, settle their disputes timely and successfully. Thus the role and importance of jirga in Khyber and Kurram districts is very

significant, resolves serious disputes swiftly and effectively. Hence, people in both districts highly rely on jirga for resolving their disputes (Rasheed, 2023).

The basic structure, composition and function of jirga are the same. However in religious domain, the role of jirga in district Kurram is high. The main reason is due to the two dominant sects of Shia and suni in the area. Thereby in district Kurram jirga works in two ways i.e. resolving disputes among Shia sects via their written code called *Turizuana*. It includes of written codes that are derived from *Turi* tribe's customs and codified in 1944. For that reason most disputes are resolved by Shia community in district Kurram via *Turizuana* (Khan, 1944).

In the same way, disputes among Shia and Suni are also resolved via jirga. The role of jirga becomes very crucial during religious rituals and in sectarian issues in district Kurram. During Muharam, *Ashura*, *Chelam*, *Eid-Milad-u-Nabi* and other religious events, jirga plays active role for peace, harmony and protection of the area. Thus, with the help of Shia and Sunni sects, joint jirga restores peace and r sectarian harmony in the area (Bahadur.Int. 2023).

Likewise, the basic structure, composition and proceedings plus resolving disputes methods are the same in district Khyber. Nevertheless jirga in district Khyber remain s active all the time due to area's geographical position as well as ethnic composition. In comparison to district Kurram, the population of district Khyber is predominantly Sunni and sectarian disputes do not occur here. Nonetheless sometimes intra sects disputes occur which ultimately turn into very serious conditions. In order to resolve these kinds of disputes, a joint jirga of elders and ulema is set up which represents all religious sects. They work together to resolve religious differences through mediations and negotiation with the help of jirga (Hussain, 2023).

Besides this, jirga plays very active role in land, monetary and business related disputes. In district Khyber, land disputes occur among various tribes frequently which sometimes turn into serious conditions .whenever such critical situations emerge, the grand jirga of all tribes is convened in district Khyber which immediately intervene and starts mediation among the rival parties. Thus with the help and timely intervention and mediation of jirga, disputes are resolved swiftly and successfully and people are saved from losing their lives and property. Moreover, Jirga's role is also unique in district Khyber in relation to government's support in protection of Pak-Afghan road during VIPs' visit the area as well as movement to border region and Afghanistan. Similarly the grand jirga of district Khyber supports government in times of need.

As a result Jirga's role and performance in Khyber and Kurram districts is very vital and high. It works in different capacities in both districts, resolves disputes swiftly and thus provides speedy and inexpensive justice to the people. Jirga also works as an indigenous institution for dispute resolution in Khyber and Kurram districts. It has the capacity to settle disputes among people, groups and tribes and to satisfy people worries and needs. Therefore Jirga is very easy-going in nature in these two districts as there are slight documents involved, dispute resolution procedure is flexible, thus disputes are settled timely and bloodshed is stopped(Gul, 2023).

#### **Theoretical Framework:**

Restorative justice gives theoretical explanation to this research article in which the role jirga as informal justice system is highlighted. The fundamental principles of the restorative justice are the provision of a platform where all stakeholders i.e. victim, offender, their families and community come together and participate in dispute settlement. The basic aim of the restorative justice is the restoration of justice, elevating peaceful social relationship among the victim and offender families. Hence the involvement of all stakeholders brings peace and harmony to the community again and disputes settle an unacceptable way.

Therefore it is a community-based model of disputes resolution mechanism which works as a community court for peace-making, improving law and order situations, bringing harmony and social integration to the society. Restorative justice underscores that the offender to be declared accountable and victim must be satisfied with the justice system. Beside this government and community should involve in the peace process. Thus comprehensive and cooperative efforts should be initiated in order to restore peace, promote justice and maintain law and order situations (Braithwaite, 2002).

### Discussion: Jirga as a dispute resolution body in Khyber and Kurram districts

In modern times there are many problems and challenges faced by formal justice system in south Asian countries. It includes issues like working independently, failure to promote impartial justice system, influencing judicial decisions, lengthy and complicated trial and dispute settlement process. Similarly informal justice system also works in these countries and regard it integral part of justice system. Jurists are of the view that the customs and mechanisms of formal justice system are greatly influenced by the remains of colonial rule. Thereby the utility and role of traditional justice system have been relatively remained ignored after the development of the formal judicial system in several developing countries of the world. Nevertheless law jurists are of the view that the judicial system can be improved by incorporating some modules of the informal justice mechanisms into the formal justice system. Hence to resolve people's disputes and provide speedy and inexpensive justice to them, informal justice practices should be brought under the wider regulation of the formal justice system and its proceedings should be legalized and recognized (Tobiko, 2013).

The *Quomi* and *Aman* Jirgas of the Khyber and Kurram districts respectively play vital role in resolving disputes. Thus Jirga in both districts plays very vital role to decide people's disputes swiftly and successfully. In this regard for primary data collection, field work was conducted in both districts in which the people responded about the nature of disputes, its impacts and the role of jirga in resolving these disputes. The primary data was collected via questionnaire from the respondents of Khyber and Kurram districts and were recruited through purposive sampling technique. Furthermore during research work a maximum number of the respondents endorsed to the occurrence of different types of the disputes in the districts of Khyber and Kurram.

They strongly agreed that due to hostile relations among people and tribes often change into disputes and enmity which ultimately turn into bloody wars and long-time hatred. Furthermore the respondents from both districts explained that the common reasons causing disputes are money, women and land connected disputes. Land distribution and its forceful occupation, women and women related issues and in the same way financial matters also cause disputes and amenity. During field work respondents from Khyber and Kurram districts explained that mostly disputes result in heavy human and material loss. Thus respondents strongly agreed to the notion that enmity and dispute brings huge damage which cannot be returned or compensated. Therefore hostility and disputes bring ruin plus have great negative impacts on people's lives and property. In order to resolve disputes and reduce its negative impacts on people's lives and property, the rival parties approach on time to the dispute resolution bodies like chiefs of the tribes, elders of the family as well as the relatives and engage them for dispute settlement and defusing tension.

Hence mostly rival parties take wise action and consult jirga on time and request to play their key role in settling dispute. In both districts the respondents strongly supported the role and importance of jirga in dispute settlement. They endorsed the jirga role in solving many serious disputes in short time and restored peace in the area. Furthermore jirga was favoured by people in both districts because its' timely engagement brings peace and settles disputes successfully. Thereby respondents' from both districts strongly endorsed that they always approach jirga for solving their disputes. Thus every section of the district Khyber as well as district Kurram favoured and supported the active role of jirga in dispute settlement. They were of the opinion that rival parties' timely approach to jirga brings peace and save them from many dangers of dispute. That's why the disputed parties approach to the jirga and request for settling their dispute.

Usually the rival parties' trust on jirga resolving disputes in Khyber and Kurram districts are due to its fast and reasonable resolving methods. Beside this, respondents also strongly endorsed the timely and significant role of local jirga in deciding their day to day disputes in the Khyber and Kurram districts. Furthermore they suggested that the rival parties should approach jirga for effective settlement of their disputes because it has the capacity solving criminal and civil disputes successfully. Respondents of both districts have expressed their strong faith in Jirga potential in settling serious disputes effectively in very short span of time and changing enmity into amicable situations. Thus with sincere efforts, jirga solves civil and criminal disputes of minor nature



efficiently and save the rival parties from lengthy, expensive and complicated formal system of dispute resolution.

Beside this, respondents also appreciated the historical role of jirga in settling civil and criminal disputes of grave nature in the past. Therefore among the respondents from both districts totally supported the Jirga's role in deciding civil and criminal disputes skilfully and developing harmony in community. Hence people have great regard for jirga in relation to their dispute settlement in the Khyber and Kurram districts. Respondents also expressed satisfaction over the decisions made by jirga and regarded it more democratic passing and implementation its decisions. They were of the opinion that jirga members try to the best of their knowledge and wisdom to make justice and merit based decisions and avoid exploitation and injustice.

Amid the respondents from both districts accepted that mostly jirga makes decisions on merit base. Disputing parties expressed their pleasure and satisfaction over the verdicts of the Jirga in dispute settlement. Respondents of all ages from both districts recognized the positive role of *jirga* in peace prevailing. They were of the opinion that throughout jirga played very vital role in establishing peace and harmony in the area and giving protection to peoples' lives and property. Furthermore, respondents also praised jirga role in establishing peace and settling disputes in past. They acknowledged the jirga positive role and explained that it always brought peace in the area and resolved disputes among the many tribes of the Khyber and Kurram districts.

Thereby jirga plays significant role in peace building and dispute settlements. People have dependence on jirga system, thus recognised its role in settling disputes, bringing peace and speedy justice in the area. Likewise the role of jirga in disputes settlement and restoration peace in the areas is also endorsed by respondents in both districts. They were of the view that many disputes need urgent attention to stop injury or damage among the rival parties. In this regard jirga is the only institution that has the quality and capacity to fulfil this challenging task with great success. So jirga provides speedy and inexpensive justices to the people in Khyber and Kurram districts.

Respondents from both districts elaborated that traditionally people are highly relying on the jirga system in settling their disputes because it was the only platform where they could access to inexpensive and speedy justice. That's why most of the respondents appreciated the key role of jirga in the area. They have accepted Jirga's positive role in provision of swift and affordable justice in district Kurram and district Khyber. Moreover the respondents highlighted the vital role of jirga in time of crises in both districts and appreciated its effective role in bringing peace and harmony without any delay or ignorance. Hence jirga according to the respondents' opinion is the only institution form centuries which provided speedy and less expensive justice to the people and settled their disputes successfully.

Overall the respondents believe that jirga is an indigenous institution and people prefer to resolve their disputes through it. They further elaborated that the obvious reason is due to the people's knowledge and clear concept about the basic model of jirga proceedings in settling people's disputes. They have explained that people's love for jirga is due to its roots in *Pakhtunwali* and *Pakhtun* culture. The respondents also admitted that people's lack of knowledge about formal judicial system often make them hesitate to resolve their disputes in courts. Thus they regard jirga more convenient and affordable. Respondents accepted jirga as an indigenous institution for dispute settlement among the people of Khyber and Kurram districts because they regard it as a native institution for dispute settlement among the people. People look it more accessible and affordable in comparison with formal justice system.

Consequently they were of the view that more people of the area like and have reliance on jirga in resolving their disputes and endorsed the jirga positive role. The respondents were also of the opinion that jirga has less costly and more useful nature to the local people resolving their disputes in contrast to official court system. Furthermore they have also explained that tribal people understand the jirga proceeding while on the other hand due to illiteracy and lack of familiarity with recognized courts, people hesitate to approach for settling their dispute via formal court system. Therefore people in Khyber and Kurram districts prefer to resolve dispute through local jirga.



Thereby Jirga is the popular component of Pakhtunwali that works from centuries and resolve disputes in Khyber and Kurram districts. People in both districts know about the basic procedure and rules of the jirga and whenever face issues; they approach to jirga to resolve their disputes timely and successfully. Thus the role and importance of jirga in Khyber and Kurram districts is very significant. Jirga in these two districts plays very important role and resolves serious disputes swiftly and effectively. People in both districts highly rely on jirga and resolve their disputes via it. In both districts the basic structure, composition and function of jirga is the same. However in religious domain, the role of jirga in district Kurram is high. The main reason is due to the two dominant sects of Shia and suni in the area. In district Kurram jirga works in two ways i.e. resolving disputes among Shia sects via their written code called *Turizuana*. It includes of written codes that are derived from *Turi* tribe's customs and codified in 1944. Hence most disputes are resolved by Shia community in district Kurram via *Turizuana*. In the same way, disputes among Shia and Sunni are also resolved through jirga. The role of jirga becomes very important during religious rituals and in sectarian issues in district Kurram. During Muharam, *Ashura*, *Chelam*, *Eid-Milad-u-Nabi* and other religious events, jirga plays active role for peace, harmony and protection of the area. Thereby, with the help of Shia and Sunni sects, jirga restores peace, resolve disputes and struggle for sectarian harmony in the area (Husain.Int, 2023).

Similarly, the role of jirga in district Khyber is also very important. The basic structure, composition and proceedings plus resolving disputes methods are the same. However jirga in district Khyber remain s active all the time due to area's geographical position as well as ethnic composition. the population of district Khyber is predominantly Sunni and sectarian disputes do not occur here. Nevertheless sometimes intra sects' disputes occur which ultimately turn into very serious conditions. In order to resolve these kinds of disputes, a joint jirga of elders and ulema is set up which represents all religious sects. They work together to resolve religious differences through mediations and negotiation with the help of jirga.

Moreover, jirga plays very active role in land, monetary and business related disputes. In district Khyber, land disputes occur among various tribes frequently which sometimes turn into grave situations. Whenever such critical circumstances emerge, the grand jirga of all tribes is convened in district Khyber which immediately intervenes and starts mediation among the rival parties .Thereby with the help and timely intervention of jirga, disputes are resolved swiftly and successfully and people are saved from losing their lives and property. Furthermore, Jirga's role is also unique in district Khyber in relation to government's support in protection of Pak-Afghan road during VIPs visit the area as well movement to border region and Afghanistan. Likewise the grand jirga of district Khyber supports government in times of need. Consequently in Khyber and Kurram districts Jirga works as informal justice system from centuries, deeply rooted in culture, society and history of these two newly merged districts of Khyber Pakhtunkhwa (Nazir.Int ., 2023).

Besides this jirga is basically a traditional justice system that works as a mediator and a neutral third party among the rival parties in Khyber and Kurram districts either voluntarily or formed and convened on the request of disputants to settle their dispute. Thus throughout the history it worked as traditional justice systems that operated based on traditional code of life known as *Pakhtunwali*. Historically it is used in both districts as traditional justice system to resolve disputes, provide inexpensive and speedy justice to people.

The function of Jirga in the form of traditional justice system is the restoration of peace and safety for victim, punishment to the offender and restoring communal harmony and norms alive for the well-being of the people. Its working principles are reconciliation, mediation, imposition of fine and demand for compensation to the victim. Thus the main emphasis of the jirga system in Khyber and Kurram districts is restoration of justice, promoting communal harmony and peace. Thus, Jirga's role is very vital. It works in different capacities in both districts, resolves disputes swiftly and thus provides speedy and inexpensive justice to the people (Dawar, 2017).

## CONCLUSION



The prime focus of this research is to highlight the disputes and its impacts on people in Khyber and Kurram districts and the subsequent role of Jirga in deciding different disputes through mediation and negotiation. In both districts jirga is a channel of dispute resolution that plays very important role in settling disputes peacefully. It is a product of centuries' old social practices and many generations' collective wisdom and experience. Thus it keeps people in harmony in both districts and reduces potential danger to it. The centuries old system of dispute resolution system plays very vital role in maintaining peace and settling minor and major disputes in this area. Jirga provides a good platform for providing timely and speedy justice and avoiding bloodshed.

Moreover traditionally people have great trust and faith in Jirga system because it has deep roots in local culture and proves very much helpful in solving day to day issues of the people of the area. For resolving disputes, the formation, function as well as process of Jirga is very simple and democratic in nature. All members of Jirga have equal rights to speak and express their free will on the occasion. However due space is given to the elders of the community due to their vast cultural knowledge and experience. Thus, Jirga offers a good platform for community, providing them timely and speedy justice and helping to resolve their disputes. It is the most sacred institution throughout the history in the tribal society of Khyber and Kurram districts.

Restorative justice gives theoretical explanation to this research article in which the role jirga as informal justice system is highlighted. The fundamental principles of the restorative justice are the provision of a platform where all stakeholders i.e. victim, offender, their families and community come together and participate in dispute settlement.

Furthermore the article focuses on Jirga as a Dispute Resolution Body: It's Performance in Khyber and Kurram Districts, the two newly merged districts of Khyber Pakhtunkhwa. These are the districts of the former tribal areas of Pakistan amalgamated into Khyber Pakhtunkhwa in 2018 with the introduction of 25<sup>th</sup> constitutional amendment in the 1973 constitution of the Islamic Republic of Pakistan. In addition this research also highlights the overall institutional role of jirga in restoring peace, disputes settlement and maintaining peaceful situation in Khyber and Kurram districts. In both districts disputes include tribal, religious and economic in nature. Therefore the nature of disputes varies from place to place. However the major causes of disputes are due to struggle for *Zar, Zaan and Zameen* (money, woman and land). In the struggle for achieving these possessions the disputing parties try to counterbalance, injure or remove their enemies. Beside this, disputes also occur in families and tribes for gaining power, wealth, land and acquiring social position in community.

To resolve these disputes peacefully and successfully, Jirga was favoured by people in both districts because its' timely engagement brings harmony and settles disputes effectively. Likewise respondents from both districts strongly endorsed that they always approach jirga for resolving their disputes. Thus every section of the district Khyber as well as district Kurram preferred and supported the active role of jirga in dispute settlement. The *Quomi* and *Aman* Jirgas of the Khyber and Kurram districts respectively play vital role in resolving disputes. Thus Jirga in both districts plays very important role to decide people's disputes swiftly and successfully. Hence, being an indigenous institution for dispute resolution, Jirga role and performance in Khyber and Kurram districts is very significant. It works in different capacities in both districts, resolves disputes rapidly and thus delivers speedy and inexpensive justice to the people. Therefore it is advisable for the district administration in both districts to establish tribe-wise committees tasked with gathering data on disputes within their respective areas. These disputes should be accurately analysed and documented. Subsequently, local Jirgas should be convened to address and resolve these disputes, thereby fostering peace and harmony among the local population. In consequence it is also wise that jirga should not be banned or abolished rather it can be kept as an Alternative Dispute Resolution (ADR) body in the newly merged tribal districts. Likewise, the preservation of the centuries-old cultural institution of Jirga in Khyber and Kurram districts is vital due to its historical role in maintaining peace, harmony and successfully resolving people's disputes.

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