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A Sociological Study of Jirga System in Haramosh Gilgit Baltistan

Abstract: *Jirga is a unique traditional justice system, the word “JIRGA” in Shina (local language) means Arbitration in English. Its employees a process of dispute settlement with the intervention of notables of the society followed by the free consent of the disputing parties. This study was carried out to study the structure and functioning of Jirga system. Researcher adopted the purposive sampling technique and collects the data from 36 respondents; area of the study was Haramosh Gilgit-Baltistan. Study focus the Jirga system and its implications; researcher designed the questioner to investigate the validity and accountability of Jirga system. Study defines the merits and demerits of Jirga system.*

Key Words: Jirga, Conflict Resolution, Arbitration.

Introduction

Conflicts are the part of humanity, in formal system law and justice institutions resolves the issues within individuals and groups at district level. There is a hierarchical system of justice from district to national and national to international level. Historically a parallel traditional justice system prevails in the shape of Jirga in Pakistan, the words Jirga refers the regions of khyber pakhtunkhwa and Gilgit-Baltistan. Traditional justice system prevails in all societies with different names, before formal justice system Jirga was the only medium of Justice. Gilgit-Baltistan is situated in the northern belt of Pakistan, in the presence of formal justice system still individuals and tribes' beliefs in Jirga. The word “Jirga” in Shina (Local Language) means Arbitration in English. Traditional court of justice is headed by *Jirgadaran* (Arbitrators), appointment/selection of Jirgadaran according to their status, powers and worth among the society in general and among the disputing parties in particular.

In modern age Jirga plays a key role in community policing, Police Order 2002 also supports the traditional system of jirgas. In Mushrif's regime dispute resolution councils operated at district or Police Station level, these councils were inspired by Jirga system. Study focuses the Jirga system and its implications on the individuals and groups. Literature review help out to design the questioner and creates better understanding. This paper focuses on the structural system of jirga, role of Jirgadars and appellants of the Jirga. Scholar mentioned the valid role of jirga within the community and the verdicts of jury. In brief study examines the merits and demerits of the traditional system of justice. One of the major concerns in the formal as well as in the non-formal systems is accountability; study highlighted the duties and responsibilities of the Jirgadars. In detail study investigate the hidden truths, representation of women, political influence and focus on the marginalized communities. Study also reviews the concerns of the appellants. The interviews divided in to two parts firstly 28 respondents respond about the jirga system, validity of Jirga and accountability in second phase Jirgadars respond on Jirga system, validity and accountability of non-formal justice system.

Literature Review

In Scientific research work one of the major parts is literature review, literature review creates better understanding and help out to design the questioner. There are so many meanings of Jirga in different areas in Jirga system mostly people are sitting in a circle where all are almost equal in power. The importance of review of literature in the fact that research and the scientific studies have to take guidance from previous work done in the relevant field.

The origin of the word Jirga is derived from the Turkish word ‘*Jirga*’ which means ‘*circle*’. According to the pakhtu descriptive dictionary Jirga is a pakhtu word which mean gathering of few or a large number of

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people. While some researches show that the word Jirga is derived from a Turkish word Jirga which mean circle. In Jirga system mostly people are sitting in a circle ([Marcoux, 2010](#)).

The word "Jirga" is comprised of "Jar," and means stay things openly, ga and mean, "Place." Mostly held in the open air, the element of transparency is the main strength of Jirga process. The issues presented in Jirga are openly discussed and argued. Due to openness of process, community duly support the efforts and the Jirga moves along with the opinion of the community as a whole. ([Gohar, 2005](#))

In many parts of the world, traditional way of justice or locally integrated conflict transformation or resolution institutions are being approached to resolve conflicts, and to ensure peace and stability ([CAMP, 2013](#)).

Jirgas are used to resolve conflicts relating to land, money and women; specifically, land conflicts between two warring factions, water disputes, inheritance disputes, honor breaches, and internal and external tribal killings ([Brohi, 2017](#)) In Jirga system every member of Jirga equally participated in administering justice it also provides the umbrella of safety to the weaker of the society ([Gauhar, 2013](#)).

Jirga is a unique institution that exists in Pukhtoons social organization. It is a Pashtu word which means circle. 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 ([fakhu-ul-Islam, 2018](#))

The Colonial judicial system was a complex system. Panchayat system was its alternative that took decisions on the basis of norms and customs. During the Mughal period the panchayat comprised of laymen. The kings had always been sanctioning the panchayat system ever since the medieval era ([Ali Shan Shah, 2013](#))

Moreover, Jirga is less expensive and easily accessible for the locals. Due to the role of Jirga the locals do not need to go to the courts and waste plenty of their time for the solution of their minor problems. An amalgamation of Jirga and the judiciary can prove to be a source of free, fair and quick justice for all the people of Pakistan which ultimately will lead to the prosperity of the country with a fair and noble judicial system ([Javaid, 2016](#)).

Jirga is an informal mechanism in Pakhtun society for the resolution of civil and criminal disputes. Article took a spatial of Jirga system in the light of constitution. For the said purpose, Pakistan Criminal Law Journal, Supreme Court Monthly Review, Pakistan Legal Decisions and other sources were consulted. The findings show that Jirga system is in contradiction with some of the constitutional provisions in Pakistan. However, it cannot be discarded immediately. There is a room for improvement in the Jirga systems. ([Sajid, Jirga System in Pakhtun Society, 2013](#)) In rural societies there are a considerable number of people who have never heard of formal courts and other entities while they are very much aware that informal dispute resolution mechanisms existed in their respective areas ([Gauhar, 2013](#)).

[Shinwari \(2011\)](#), survey attempted to gauge the level of trust the respondents have in the type of Jirga they have access to. The respondents were asked about the types of Jirga they trust the most for resolving disputes. The respondents were given options of Taliban, FCR (Frontier Crimes Regulation) or government and OlasiJirgas. Well over two-third of the respondents (70.47%) identified OlasiJirga as the most trusted one followed by FCR Jirga with just 12.07%. However, keeping in view the ongoing security situation and wide spread perception that FATA is under full influence of Talibanisation, the survey results for Taliban Jirga are quite astounding with only 0.67% support. ([Shinwari, 2011](#))

Methodology

Methodology techniques are very important for analyzing sociological problems authentically and it is vitally important to explain the knowledge and verification of hypothesis. Methodology is the study of the principle of investigation, including philosophical foundation of choice methods (Green & Brown, 2005). Study present the detail of methodology used to achieve required objectives of the present study "Sociological study of Jirga System in Haramosh Gilgit Baltistan". To design research, researcher adopted non-probability sampling technique, in which Purposive sampling methods adopted for the collection of data. In qualitative research technique anonymous interviews were taken from the respondents.

Sampling

In purposive sampling technique the number of people selected according to the desire of research. For the

presentation of Jirga system 36 respondents were selected, 28 respondents were those who were appellant and being a part of traditional justice system. Other 8 persons were Jirgadars (judges of Jirga). In detailed depth interviews were taken on the merits and demerits of Jirga system. The response rate during data collection was 100%. Firstly, some of them hesitate to respond but their trust was won by giving them proper respect and soft words and by assuring them that their information will not be misused. That was also tried at the best to get the true and relevant information and quality data to conclude accurate results.

Analysis

Study analyze the facts of jirga system, it's an old traditional justice system in which participants are free to being a part of Jirga system. Jirga prevails in the world with different names but in short it is a best platform of free and fair trial. In Haramosh Gilgit Baltistan Jirga system is strong and almost fair. Some concerns from the appellant side observed like Jirgas are politically infected, some of the examples are also reported on media. Researcher also found the violation of women rights representation in jirga. As a whole the merits of Jirga system are higher and it is a good system but need to formulize.

Results and Discussion

In the results and discussion part response from the appellants and Jirgadaran reported; in this part 28 members from appellant's side and 8 Jirgadaran briefly elaborate their experiences about the traditional system of justice. Respondents from appellant side were belongs from different group of ages, 23 were male and 5 were female. Respondents represent the whole community of Haramosh Gilgit Baltistan. Respondents were literate mostly were high educated and some of them had primary education.

Appellants of Jirga

The first part of the result and discussion, discuss the response of the respondents. Respondents Idealized Jirga is a settlement of dispute and eradication of enmities from among the people by the decision not of a regular ordinary Court of law but of one or more persons who are called JIRGADARAN (Arbitrators) appointed by the disputing parties with their free consent and parties agree to accept as binding the decision of JIRGADARAN (Arbitrators) whether they agree to the decision or not.

Jirga System

Most of the respondents admired the traditional system of justice, respondents said Jirga system in the area is not less than a blessing for the people. As it eradicates and eliminates contentions and enmities from among the people at dispute. It bridges up the gaps among disputants and resolves a number of social and religious issues at the door step. Two respondents were not in the fever of Jirga system, these two respondents argued that Jirga system not followed the rules and regulations. One of the aged respondents compared the Jirga with formal system of justice, respondent mention the facts that formal justice system is delayed and expensive but on the other hand traditional system of justice system is reliable, transparent and represents its traditional values the community. All respondents were not agreeing on the representation of women as Jirgadar because social norms and values not permitted them, although some of them agreed to reform Jirga on modern based but not fully agree on the due representation of women.

Valid System of Justice

In Haramosh Gilgit traditional system of justice considered as the most valid system of justice. Natives of the tribal areas relied on Jirga system because of its traditional values and In Haramosh Jirga is the most powerful institution. All the respondents suggested that Jirga system can be improved and more effective by providing the Jirgadaran with resources and support by government and other agencies. Verdicts made by Jirga should be formed and enacted to safeguard the interest of Jirga proceedings. Mostly all the respondents mentioned the rights of minorities never violated in Jirga, one of the respondents disagreed and coded the decisions against the women and marginalized communities. Overall respondents mentioned the positive role of Jirga for the settlement of conflicts.

Accountability of Jirga

The Jirgadaran in the traditional system of justice are well known strong people within the community and have good reputation in society. Most of the respondents acknowledged the Jirga efforts are lacking in the present era which causes a great discomfort and discourage to the Jirgadaran. Apart from the above stated core issue other issues are lack of resources rather absence of all the resources for Jirga members is

another core issue/problem which hinder the execution and furtherance of Jirga in the society. Most of the respondents argued that bribes never fascinated the Jirgadaran. Some of the respondents mentioned the political influence on jirga system they said although traditional justice has no comparison with formal but somehow it is biased due to political influence. Jirga have social influence on the individuals and groups and have capacity of transformation.

Jirgadaran (Arbitrators)

In second part writer reported the interviews of Jirgadaran, to develop better understanding about the traditional system of justice. Majority Jirga member defined Jirga system as the word "JIRGA" in Shina (Local Language) means Arbitration in English. It employees a process of dispute settlement with the intervention of notables of the society followed by the free consent of the disputing parties without intervention of any other regulatory authorities in any official capacity.

Jirga System

Selection of jury considered according as the knowledge, status and experience about culture, customs, traditions and norms of the society, cost also matters in selection. Ordinary people are normally not selected for Jirga as its employees very rational mechanisms to reach reasonable and amicable resolutions. All the respondents mentioned the non-formal structure of jirga its size is not specific, it formulated on disputes. Almost all the respondents responded. In support of their version, they stated that Jirga system is the only adjudicating mechanism which provides speedy resolution of disputes. It not only saves the time of disputants it saves the disputants from financial investment which they normally would pay to lawyers and other persons. One of the respondents argued that Jirga ensure maximum justice to the aggrieved party, it does not cause prejudice to any of the disputants owing to status and influence. One of Jirgadar mentioned, Jirga system has no force to implement its decisions and absence of definite structure imports lack of hierarchy.

Valid System of Justice

All the respondents mentioned the validity of Jirga system, more than 90 percent cases resolved in Jirgas, both parties agreed with the verdict of jury. Parties who were not satisfied they have right to appeal in the formal justice system. Respondents highlighted the investigation method of Jirga, "Jirga adopts statements recording mechanism to surface the cause of dispute. Statements of either parties or witness are recorded and relied after through cross examination." To probe into the dispute Jirga calls the parties at dispute one by one to record their statements or point of view. Jirga may inflict oath on both or one of the disputants. Respondents mentioned the way of punishments decided by jury, "Jirga can be inflicting financial sanctions and social sanctions which are better effective and result oriented than formal punishments provided under other courts of law etc." Some of the respondents argued that though there are no punishments formally enlisted but in practical a number of pun alive measure are taken to punish the one who was wrong or reason of dispute. All respondents highlighted the blessings of Jirga they further argued that Jirga is a purely a social and voluntarily services. Thus, no expenditures are incurred onto the disputing parties. It is speedy justice system in the sense that its proceedings normally start and come to the conclusion in a single sit-in except some cases where probe into the actual root cause requires a thorough investigation

Accountability of Jirga

Traditional system of justice named Jirga has no expenses like the formal system of justice. Respondents elaborate the accountability standers of Jirgadars, no fee being paid to Jirgadars" stated to the respondents. Jirgadars normally avoid private transactions and interactions even with the disputing parties during the period of time when Jirga proceedings are underway. Even the members of jury pay all expenses by own. All respondents disagreed with statement of political influence on the decisions of Jirga, they argued that both parties are free and right to appeal in the formal justice system, further they mentioned they are bounded with socially constructed norms and values. Most of the respondents argued on the representation of women as a member of Jirga, "Women are meant to carry the business of family matters with in the premises of house and are not allowed at all to interfere into the affairs of men." They further argued that we are an Islamic society and Islam discourages women as Qazi and no women have remained Qazi in the history of Islam. Some of the respondents mentioned the rights of women, "Women should be allowed to take part in Jirga proceedings". They argued that time has changed and women have become competent enough to compete with men in walks of life, so they must be allowed to carry Jirga proceedings. Further respondents suggested

to formulize the jirga by decisions made by Jirga members must be accorded and endorsed by formal courts of law and must be made rule of court in cases which are sub-Judice in courts prior to submission of same to the Jirga.

Conclusion and Recommendations

In concluding remarks Jirga system in Haramosh have a powerful structure, Jirga system in the area is not less than a blessing for the people. Although Jirga system has their own merits and demerits but if we compare the merits, they are much higher. Study analyze the Jirga system which was totally volunteer based and after Jirga's decision parties have right to move for further proceeding in the formal justice system. Overall structure of the Jirga based on social norms and values, Jirgadars also obliged the Islamic rules. On the other hand, Jirga violate rules for the representation of women and somehow Jirga is political infected. As a traditional system of justice bridges up the gaps among disputants and resolves a number of social and religious issues at the door step. It is recommended that Jirga system must be supervised by district administration at district levels and should be supported by provincial government at provincial level. Support may be offered to Jirgadars in shape of an office and a hall to conduct Jirga proceedings.

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