

INSTALLATIONS OF THE JUDICIAL SETUP IN THE NEWLY MERGED AREAS OF ERSTWHILE FATA: THE FUTURE OF JIRGA

Mr. Hameed Ullah Khan, Dr. Manzoor Khan Afridi & Mr. Shan Zeb*

Abstract

The Pashtun Jirga, a traditional dispute resolution system, has historically played a crucial role in promoting peace and resolving conflicts within Pashtun communities. However, the recent installation of a formal judicial system in the merged areas of the former Federally Administered Tribal Areas (FATA) in Pakistan raises questions about the future of the Jirga. This study examines the significance of the Jirga in Pashtun society and analyses the potential impact of the new judicial system on its continued existence. The research concludes that the formal system has had minimal influence on the prevalence of the Jirga primarily due to two factors: The local population is accustomed to and trusts the traditional Jirga system. Certain complex cases in the region prove challenging for the formal system to handle effectively, necessitating the assistance of the Jirga. Based on these findings, the study recommends the coexistence of both the Jirga and the judicial system. This approach would enable the region to benefit from the strengths of both traditional and formal systems, ultimately contributing to lasting peace and security.

Keywords: Installation; Judicial; Jirga; Draconian; FATA; Constitution, FCR.

Introduction

Pakistan's semi-autonomous regions the Federally Administered Tribal Areas (FATA) have been merged with the adjoining province of Khyber Pakhtunkhwa (KP) recently. The purpose of this amalgamation is to gain control over terrorism and extremism. For decades, these areas have been havens for extremists and terrorist groups. Along with this, the area was given semi-autonomous status in the constitution of Pakistan. The Pakistani parliament and higher judiciary had no jurisdiction over these areas. These areas were controlled by the federal government of Pakistan. The President of Pakistan was in control over the ex-FATA and the Governor of Khyber Pakhtunkhwa exercised power as the President's representative in those areas. The Governor of Khyber Pakhtunkhwa delegated his power to the Political Agent (PA) of the area. Each agency was controlled or administered by the PA, and he was the chief executive, chief justice, and chief administrator of the area, he was like Hobbian Leviathan all in all. The former FATA was governed by the Frontier Crimes Regulations (FCR), a special administrative and judicial

*Mr. Hameed Ullah Khan is a PhD. Scholar, Department of Politics and International Relations International Islamic University Islamabad. Dr. Manzoor Khan Afridi is Professor & Acting Chairman Department of Politics & International Relations International Islamic University Islamabad and Mr. Shan Zeb M.Phil, Department of Political Science, Hazara University, Mansehra.

system. The British-created system of FCR was imposed to control the Pashtun resistance across the Pashtun region. The FCR was a bunch of strict and draconian laws, and the tribal people were fed up with them and wanted to get rid of them forever. Finally, in May 2018, the government of Pakistan decided to merge these areas with the adjoining province of Khyber Pakhtunkhwa and let them get rid of the British-imposed system.

On the one hand, the FATA amalgamation into Khyber Pakhtunkhwa is a positive step by the government of Pakistan toward the establishment of peace and stability in this region, but on the other hand, this integration has created several challenges for the successful implementation of new systems. The recent constitutional amendment has had overwhelming impacts on the political, socio-economic, administrative, and judicial systems of the area. The installation of a formal judicial setup in these areas is one of the major challenges in front of its old traditional justice system, the *Jirga*. On one hand, the tribal residents are accustomed to this indigenous justice system, while on the other hand, the Supreme Court of Pakistan declared the *Jirga* system unconstitutional. Along with this, thousands of cases remain pending in the newly established areas that are difficult for the judicial system to handle without the help of the *Jirga*. The current study highlighted *Jirga's* role in Pashtun society. Furthermore, this paper explored the impacts of this installation on the *Jirga* system of the area. At the same time, how the *Jirga* can further maintain its influence in these areas is part of the current study. The information has been gathered from a variety of research papers as well as genuine newspaper articles that address the topics of this paper.

In the Circle of Honor: The *Jirga*

In the heart of Pashtun communities, where tradition and honour weave a tapestry of life, lies the concept of *Jirga*. This is not just a gathering, but a sacred circle of elders, steeped in wisdom and respect. Here, disputes are settled, not by the weight of law, but by the guiding light of *Pashtunwali*, the unwritten code of conduct that binds the Pashtun people. Imagine a gathering under the open sky, perhaps beneath the watchful gaze of ancient mountains, or the comforting shade of a sprawling tree. Elders, chosen for their integrity and experience, sit in a circle, each voice carrying the weight of generations. Here, no one holds a gavel, for decisions are reached through *shura*, a process of open discussion and consensus. The *Jirga* is more than just a conflict resolution mechanism; it is a platform for reconciliation and restoring balance. It upholds the delicate fabric of the community, ensuring harmony and fostering a sense of collective responsibility. From personal disputes to matters of critical importance, the *Jirga* serves as a cornerstone of

Pashtun society, preserving traditions and ensuring the continuation of their unique way of life.

The word "*Jirga*" is made up of two Pashtu words: "*jar*" means "open tone," and "*gah*" means "place." As a result, the *Jirga* serves as a forum for people to freely express their opinions and perspectives. In other words, *Jirga* is a Pashtu word that means "circle."¹

This consultative group refers to people gathering to discuss community issues. The word "*Jirga*" has the same meaning in the Persian and Arabic languages. This indigenous justice system was continued in practice before the emergence of Islam and the Western democratic system in Baloch and Pashtun societies. They resolve their internal as well as external issues through the prism of the *Jirga* system.² In Pakistan's Pashtun belt and Afghanistan, the *Jirga* is an ancient custom with an unrivalled potential for conflict settlement.³ A *Jirga* is best defined as a strategic conversation between two or more people to resolve a problem through verbal communication. The exchange may or may not lead to a resolution of the issue, but the procedure itself encourages all parties involved, including interveners, to maintain a certain level of formal dialogue, thereby ensuring peace. To the average individual, the *Jirga* is a body made up of local, elderly, and powerful men from Pashtun communities who deal with disputes mostly through arbitration. In comparison to today's governments' court systems, the *Jirga* provides citizens with quick and inexpensive justice.⁴

According to sources, this council of man system originated with the Indo-European-speaking tribes known as the Aryans. Between 2000 and 1200 BC, they migrated from Central Asia to Afghanistan.⁵ The Aryan tribes used this gathering council, which was led by the tribe's ruler, to settle their conflicts according to their customary laws. They eventually made their way to India from Afghanistan.⁶ In India, Bahlul Khan Lodi, 1451–1489, was the chief of the Pashtun tribe.⁷ To resolve people's problems, the founder of the Lodi dynasty of the Delhi *Sultanate* established the *Jirga*, a council of elder tribe's people.⁸ The *Sultan* and several elderly people sit in a circle, taking part in the *Jirga's* activities.⁹ This mechanism of King Bahlul Khan Lodi became an example for succeeding kings of Afghanistan and the sub-continent.

The British, like previous invading powers, encountered significant Pashtun resistance in the subcontinent's frontier regions. They saw the tribal "*Maliks*" as a viable alternative to governing these areas. For control over these Pashtun regions, the British granted several privileges and favours to the tribal *Maliks*, and they were more loyal to British India than to indigenous customs and traditions.

Various colonial monographs and publications, including those by Howell, Warburton, Caroe, and Enriquez among others, cite Pashtun *Jirgas*. Even though the *Jirga* process with the tribes was difficult and unlikely to achieve consensus most of the time, administrators in the British *Raj* recognised that there was no other proper way to deal with the Pashtun tribes.¹⁰ The British used their Political Agents to wield power, as well as the inhumane legal system known as "the Frontier Crimes Regulation," which was backed by *Maliki* and the *Jirga* mechanism. Apart from that, under the concept of "collective tribal territorial responsibility," collective fines and retributions were levied. The British claimed that the complicated laws were unsuitable for rude and ignorant people who were unfamiliar with the written law. In the tribal lands, endowments and benefactions in the form of allowances, as well as force in the form of military operations, became the means of recompense and punishment. Furthermore, the British skilfully created the appearance that they were not against their independence or attempting to hinder their daily lives. The truth was that the British desired a cost-effective and efficient administrative framework that would allow them to maintain ultimate control over the tribal areas without requiring the same level of administration as the rest of British India.¹¹

By bringing *Jirga* under the jurisdiction of the FCR, a colonial legal administration that existed in old FATA until May 2018, the British integrated and, in some ways, corrupted it. Many believed that the FCR's continued existence (until May 2018) was one of the major causes of lawlessness in the former FATA, as it kept the "tribal" Pashtuns out of the mainstream, subjected them to inhumane collective punishment and responsibility provisions, and created a leadership and administrative vacuum.¹²

Woven Together: The *Jirga* and the Spirit of *Pashtunwali*

The *Jirga* serves as a lubricant for the tribal social structure at the individual and group levels, tying the Pashtuns together in a social fabric known as *Pashtunwali*. It is deeply entwined in the significance Pashtuns give to their lives, and it allows them to continue.¹³ The cultural and traditional phenomena differ by tribe and region, but the core of Pashtun society is built around the elements of *Pashtunwali*, the Pashtun's verbal code. This code is a doctrine, a law, a norm, a system, and a way of life that allows for the integration of modern practices and traditions to embrace some type of modernisation and change.¹⁴ The *Pashtunwali's* normative content is changeable, and it's better understood as a code of honour than a legal system in the traditional sense. The *Pashtunwali* is a set of metarules that define appropriate means to resolve the disagreement, a form of a general guideline that relies solely on "common cultural knowledge" and has no written code to refer to.

Pashtuns have a tendency to live their own moral lives, which is characterised as *Pashtunwali*. *Pashtunwali* is made up of "*Tarborwali*" (agnatic rivalry), "*Badal*" (vengeance), "*Milmasitya*" (hospitality), "*Panah*" (asylum), "*Jirga*" (traditional social justice system), "*Marakah*" (negotiations), "*Tegah* or *Konray*" (conflict resolution), "*Nanwathy*" (regret and seek apology), "*Hujra*" (common gathering place for men), "*Badragah*" (escort), "*Payghor*" (taunt/provoking), "*Ghayrath*" (courage), "*Nang*" (passionate for honour), "*Namus*" (grace), "*Turah*" (bravery), and "*Wororwali*" (brotherhood). The rituals and practices of the Pashtun traditional social justice system are substantially reflected in these interpretations of the *Jirga*.¹⁵

Pashtun heritage and *Pashtunwali* are carried down the generations by oral traditions passed down from parents and elders. Pashtun civilisation follows a strange mix of rules and ethos, but this mix results in a properly developed way of life for a society. In *Hujras*, Pashtun heritage and *Pashtunwali* are carried down through an oral tradition passed down from parents to children in their houses and from elders to children.¹⁶

Beneath the Banner of Unity: Distinctions within the *Jirga*

Mostly there are two types of *Jirgas* in the Tribal area: the "*Sarkari Jirga*" and the "*Private Jirga*". The *Sarkari Jirga*, also called the *FCR Jirga*, had the support of the government. The British-established *Jirga* was operating in the tribal areas of Khyber Pakhtunkhwa.¹⁷ The *FCR Jirga* was pronounced through the "Frontier Crimes Regulations Act 1901" by the British, allowing the locals to settle their disputes accordingly. In the official *Jirga*, the Political Agent (PA), magistrate, and Assistant PA used to nominate the elders of the agency for resolving criminal and civil cases. These *Jirga* elders would call both sides, listen to their differences, gather the necessary evidence on the issue, and recommend a decision of approval in front of the PA and other officials. If anyone was not ready to accept the verdict of the *Jirga*, then he was considered "*Kabarjan*" arrogant. The *Jirga* had decided on fines for the refusing party based on local traditions such as house burning, social boycotts, heavy fines, and so on. These decisions were imposed by the PA of the area. Firstly, the conflicting parties had no right to "appeal," "*wakeel*," and "*daleel*," but after governmental reforms, an appellate tribunal was established to examine the decisions of the *Jirga*.¹⁸

The second indigenous justice system for conflict resolution is the private *Jirga*, also called the *Shakhsi* (person) *Jirga*.¹⁹ This type of local *Jirga* is currently operating across the Pashtun region of Khyber Pakhtunkhwa and the areas of Balochistan and Afghanistan. Private *Jirga* organised and settled conflicts between individuals, families, and different tribes²⁰. The *Jirga* members intervene between the conflicting parties through shuttle

diplomacy or at the discretion of the parties. The *Jirga* members' settlement is based on balance and neutrality and is agreeable to both parties. The *Jirga* members take *wak* (discretion) from both parties and select an arbitrator with the discretion of the conflicting parties. The arbitrator, after hearing and before judgment, takes "*wak*" (discretion) from both parties, collects the necessary evidence, and decides impartially between them.²¹ Rather than the *Sarkari Jirga*, in a private *Jirga*, the conflicting parties have the right to withdraw from the judgment decided by the arbitrator, but most people wholeheartedly accept and respect the *Jirga* decision, and they worry about further conflict expansion. In such cases, the *Jirga* has the power of confiscation against the refusing party.

In 2011, the government decided to implement changes in FCR to a great extent and divided the tribal areas into two types of zones in terms of conflict settlement: the protected areas and the unprotected areas. Protected areas are those public interest areas that fall under the direct jurisdiction of the government of Pakistan, such as schools, roads, and other government buildings. Here, a civil servant was exercising authority on behalf of the government. If a civil or criminal case arises, the civil servant would delegate responsibility for problem resolution to the *Sarkari Jirga*. In unprotected areas, the inhabitants of the area have the right to decide their disputes according to their own sweet will and customs of *Pashtunwali* without government interference.²²

The Heart of Pashtun Justice: The *Jirga*

Generally, a *Jirga* performs three types of roles in the peacebuilding of Pashtun society. The first and foremost step towards peacebuilding is the keeping of *Tega* (stone) between the conflicting parties. Under this system, the *Jirga* members ask for money and weapons from both parties and declare a temporary ceasefire till the final decision. If the ceasefire is violated by anyone, the *Jirga* has the power to seize the money or other things of the party. The tribal "*Lashkar*," a voluntary force, imposes the *Jirga* decision.²³ However, this imposition is only applicable to the decisions of the "*Sarkari Jirga*," not to private *Jirga*'s.

In this type of role, the *Jirga* intervenes between the two conflicting parties through the use of shuttle diplomacy. The purpose of such a type of intervention may be based on its discretion or the request of parties in conflict. They first listen to the parties and then convince them to accept a peaceful solution to the problem. They also lost awareness of both the parties' further damage if the problem was not solved. At the parties' discretion, these *Jirga* members look for an arbitrator, an impartial person, for the final judgment. In this process, both parties submit their differences in front of the

arbitrator for judgment. An arbitrator consists of a "Khan", "Malik", "Mashar" or "Mullah" senior religious leader.²⁴ The arbitrator, after hearing and before judgment, takes "wak" (discretion) from both parties, collects the necessary evidence, and decides impartially between them. There are two places where the *Jirga* activities operate: the *Hujra* and the street mosque. The verdict of an arbitrator cannot be challenged.²⁵ However, the arbitrator's verdict is not challengeable in *Sarkar Jirga*, while in private *Jirga*, any one of the parties has the power to withdraw from the judgment decided by the arbitrator.

Besides conflict resolution, the *Jirga* plays an important role in community building and development. They change the *Jirga* role and regulations and introduce new laws with the passage of time and community needs. The *Jirga* also maintains close contact with government agencies for the improvement of the area.²⁶

The 25th Constitutional Amendment and the Judicial System

Before the merger of FATA into Khyber Pakhtunkhwa, the tribal agencies resolved their differences through the prism of the *Jirga* system. They resolved these clashes through four types of *Jirga*. The group of civil and government officials known as the *Sarkari Jirga* was considered the most effective body for conflict resolution among the tribes. The *Ulusi Jirga* was made at that time when clashes erupted inside the village on the issue of water irrigation and grazing rights. When an issue or conflict arises between two individuals or families, then by the intervention of a third party, a neutral body named the *Shakhsi Jirga* was made up for settlement. The fourth type was the *Loya Jirga*. As the name implies, this type of *Jirga* was involved in national issues.²⁷

Before the merger of FATA into Khyber Pakhtunkhwa, the residents of the area had no right to submit their cases in any court of law because the PA of each agency was the judge, jury, and executioner. Its decision was declared final, and no one had the power to challenge it. The PA was exercising his power through the prism of FCR. The British imposed black draconian lawfully authorised the PA and the *Maliks* of the area to exercise their authority. The FCR blacks out article 40 of "Collective Responsibility". Under this article, if a crime is committed by a member of any tribe, then the whole tribe will be responsible for it. The civil government of Pakistan finally decided to merge these areas into Khyber Pakhtunkhwa and overcome these issues. The Pakistani parliament on May 28, 2018, unanimously passed the Khyber Pakhtunkhwa-FATA merger bill and merged these areas into the adjoining province of Pakistan, Khyber Pakhtunkhwa. This constitutional amendment has had an overwhelming impact on the political, economic, social, and administrative systems of the area.²⁸ Along with this, the legal system of the area changed after its merger into Khyber Pakhtunkhwa. Former FATA FCR-regulated

areas are no longer regulated under the separate judicial system. The jurisdiction of the Supreme Court and Peshawar High Court would be extended to these areas. The residents of the area have the right to submit their cases in front of the higher judiciary of Pakistan in a formal way.

The Future of the *Jirga* System: Tradition in a Changing World

After the 25th constitutional amendment and before the complete installation of the judicial setup, the government promulgated the Interim Governance Regulation (IGR) Act. The purpose of the establishment of this provisional structure was to oversee the law enforcement, governance, and justice administration in merged districts till the complete installation of the judicial setup. The FCR was repealed by IGR and changed the names of Political Agent and APA to Deputy Commissioner and Assistant Commissioner, allowing them to exercise the same power exercised by PA and APA under the FCR. Under IGR, the DC of the respective agency had magistrate and judicial powers, as well as the authority to tender pardons and refer matters to the elder council *Jirga*. IGR was created by the duplication of the Provincially Administered Tribal Areas (PATA) regulations of 1975.²⁹

Before its complete implementation, the Act was challenged by the Peshawar High Court (PHC) and declared null and void on the plea that after the elimination of FCR, the extension of higher judiciary has been extended to these areas and further space for the new concept of law is illegal.³⁰ The decision of the PHC was challenged by the government in the Supreme Court (SC) of Pakistan. The Supreme Court of Pakistan, however, addressed this issue in writ petition no.3098-P/2018, in which the IGR's judicial provisions and the formation of a parallel legal system were abolished, and the government was ordered to establish a unified judicial system throughout the region. This ruling now heavily favours the region's transition from an informal to a more formal legal system.³¹ With the decision of the SC of Pakistan, the *Jirga* system and repulsive FCR were eliminated. In January 2019, the SC of Pakistan announced that both the systems, the *Jirga* and the *Panchayat*, were illegal. Furthermore, the SC declared that both systems could operate within the allowable bounds in terms of mediation, arbitration, and reconciliation forums between parties involved in civil disputes.³²

For the complete installation of the judicial setup in the merged districts of Khyber Pakhtunkhwa, the PHC demanded 52 judicial officers and an amount of RS 13869 million for infrastructure. The court forwarded the summary of human resources and infrastructure requirements to the provincial government of Khyber Pakhtunkhwa. The establishment of seven judicial complexes at the district level is also part of this summary.³³ The Khyber Pakhtunkhwa government's provincial cabinet directed the

appointment of 28 judicial officers in the former FATA, including seven district and session judges and 14 civil judges. On March 11, 2019, a student seeking admission to a university in district Khyber filed the first case in tribal history, which was heard by civil judge Zafrullah Khan.³⁴

Tradition and Transformation: *Jirga* Viewpoints on Constitutional Reforms

Exponents of the Khyber Pakhtunkhwa-FATA merger assume that the 25th constitutional amendment is a bell of alarm for the centuries-old *Jirga* system.³⁵ They believe that after the merger of FATA into Khyber Pakhtunkhwa, the effectiveness and legal reliability of the *Jirga* in these areas have been lost. The recent merger not only abolished the British-established draconian laws of FCR but the corruptive system of PA and tribal *Maliks* also. This amalgamation paved the path for the formal judicial setup in the tribal region. One of the loyal respondents to the *Jirga* System added that:

*The recent merger will bring positive changes to the former FATA. For decades, ex-FATA was the victim of an unaccountable and lacklustre system where the PA and tribal Maliks ran the machinery according to their own sweet will. It is hoped that after they get their rights like the rest of the country's citizens, we will make them answerable and bring about a smooth system of transparency in their areas. These improvements will be felt throughout the Jirga system, and we will eradicate the black sheep from the system, increasing people's confidence in the system.*³⁶

According to Nisar et al., the local population of the former FATA is seen as satisfactory regarding this amalgamation.³⁷ They stated that their old local *Jirga* system for conflict resolution is a respectable phenomenon in place of the courts' involvement in these areas. They further said that when dealing with local community issues, they felt more secure and in control of their old system. There is no doubt that some drawbacks also exist in the *Jirga* system, but it will take time to eliminate such vulnerabilities from the system and at the same time run it with the newly established system. Furthermore, there is a need for quick attention to the accomplishment of a reliable judicial system and police stations to win the confidence of the area residents.

According to Zaman and Khan, asking many respondents about the effect of this merging on their old traditional *Jirga* system, they responded that "the current *Jirga* system is not satisfactory, because it is a bunch of corrupt and incompetent people and they run it with their own sweet will".³⁸ One respondent stated: "We should not blame the *Jirga* system because it is the most effective and quick alternate regarding conflict resolution, but those elders that *manipulate* it for their personal or political gain".

During the conduction of an interview with the tribals, Zaman and Khan asked whether they accepted the new formal judicial setup or remained satisfied with the centuries-old *Jirga* system, in which most of the residents of the area supported the formal judicial system.³⁹ In this regard, a respondent expressed their views and said that: "It's difficult for us to handle 10 to 20 lawyers at a time to feed up and pay for it. By "lawyers," he means the members of the *Jirga* system. Before the final decision, the *Jirga* members ask for pocket money and demand feed in quality restaurants and hotels, but on the other hand, they do not proceed with the process. These expenses are difficult for a poor man to handle. So, I will prefer the formal judicial system, in which I will pay only for one lawyer to fight my case in court."

But on the other hand, we found some of the residents of the area have positive orientations regarding the old *Jirga* system and they want its permanent maintenance. On the last day, a Khyber *Qabaili Jirga* protested against the recent merger and chanted slogans against what they called "unconstitutional". The leader of the KQJ, Haji Bismillah Afridi, expressed his views in this way:

*The recent amalgamation into Khyber Pakhtunkhwa was imposed by the government of Pakistan because they ignored the people and the grand Jirga of all tribal agencies. He said that KQJ would never accept it because it is a violation of Quaid-i-Azam Muhammad Ali Jinnah's commitment to the tribal people about the future of the region. He further said that there was clear ambiguity about the power-sharing between the different governments and that, due to this, there was chaos everywhere. The parliament, the head of state, and the head of government have no authority to change the geographic and administrative status of FATA. We demanded the revival of the Jirga system and FCR with updated reforms."*⁴⁰

The FATA *Jirga* demanded a separate province and opposed the merger of FATA into Khyber Pakhtunkhwa. The FATA *Jirga* was attended by parliamentarians, *Ulema*, and *Maliks* from all tribal agencies and frontier regions. They said that: "They had always opposed the merger. It was a plan to scuttle separate provinces' demand for natural resources and nothing more. They further said that the government imposed the new administrative and judicial setup and trampled on the local traditional system of *Jirga*."⁴¹

It can be inferred that the local population of the area has different orientations about the establishment of the formal judicial setup and maintaining their own customary-based old *Jirga* system. However, 4 years have passed since this merger. It can also be inferred that both the federal and provincial governments have failed to facilitate this community. If the government of Pakistan is serious regarding the complete installation of a formal judicial system in these areas, then they should work on it quickly

and smoothly and win the people's confidence that they have lost since independence. Otherwise, on the other hand, the government will not win the people's confidence but will lose it. And these areas once again face the draconian and strict laws created by the British that have just emerged from this dilemma.

Balancing Scales: Tensions between Formal and Informal Justice

Integrating a formal judicial system in the former FATA regions faces significant hurdles due to the continued prevalence of the informal, indigenous justice system known as the *Jirga*. Residents are accustomed to the *Jirga's* cost-effective and swift dispute resolution mechanisms, readily accepting its decisions due to its local nature and perceived legitimacy. Furthermore, inadequate government attention towards these areas further impedes the successful establishment of a formal judiciary. These factors contribute to the challenges faced by the formal system, including building trust with the local population. While the judiciary faces additional challenges in these areas, such as land documentation and taxation management, this study specifically focuses on the obstacles directly linked to the existing *Jirga* system.

In this regard, Turk suggests that the locals have limited awareness of formal and state laws.⁴² They are unfamiliar with the formal judicial process and are not accustomed to it. Their strong inclination towards their customary systems hampers their access to new systems. The formal legal system, with its delays due to procedural formalities, may pale in comparison to the swift and seemingly judicious solutions provided by the informal Sharia and customary law justice systems, to which the people of the region are innately drawn. According to Shahid, after the 25th constitutional amendment, these areas were merged constitutionally into Khyber Pakhtunkhwa province. However, the people of the former FATA still utilize their traditional *Jirga* system for conflict resolution. They readily resolve their conflicts through the prism of the *Jirga* system instead of resorting to the courts. On the other hand, the state has no control over whether the parties involved in the conflict choose to hold a *Jirga*.

Will the *Jirga's* Existence be Jeopardised Further?

After Pakistan's independence, these areas were annexed under the condition that their *Jirga* system be maintained. While the Pakistani government instituted some reforms over time, resentment towards the draconian British system remained widespread. Finally, on May 28, 2018, these areas were merged with the adjoining province of Khyber Pakhtunkhwa, gaining the same legal rights as the rest of Pakistan. This raises crucial questions: Will the residents of the area adapt to the new system, or will the lure of

the familiar *Jirga* remain? Moreover, can the centuries-old *Jirga* system itself survive within this new legal framework? Here are some justifications that indicate *Jirga's* potential future.

The establishment of the formal judicial system in the merged areas has significantly impacted the role of local political *Malik's* (tribal leaders). Prior to the merger, residents had no access to higher courts, and their fate was decided by the FCR *Jirga* composed of local elders and some officials. These decisions were final, with no right to appeal or legal representation. However, after the merger, residents now have the option to present cases before the formal judiciary, diminishing the effectiveness of the *Jirga* system.

Secondly, Furthermore, some tribal members now prefer the formal system, potentially seeking legal means to address grievances that might not have been addressed previously through traditional power structures held by the *Malik's*. Thirdly, prior to the merger, important agency-level decisions such as inter-agency disputes, land issues, and taxation were under the authority of the *Malik's*. With the merger, these powers now reside with the state machinery. Fourthly, the role of tribal elders (*Malik's*) extended beyond conflict resolution; they were also significant figures in local development. The PA would allocate development funds to the *Malik's* for use at their discretion. However, the recent constitutional amendment shifts this authority to state officials (AC, DC, MNA, MPA, and local bodies' members). These funds will now be utilised according to the will of the general population rather than solely at the discretion of the *Malik's*.

Fifthly, before the merger with Khyber Pakhtunkhwa, residents were bound to a *Jirga* nominated by the PA. Currently, the conflicting parties have the discretion to select the *Jirga*, which may be a key factor in the diminishing influence of the *Jirga* in the region. Sixthly, prior to the amendment, individuals had no right to appeal the *Jirga's* decisions. However, after the merger, they have the right to appeal if the decision is deemed unsatisfactory. Seventhly, the potential benefit of the merger for the *Jirga* system is the ability to conduct decisions more freely and fairly. Proponents of this perspective highlight that in the past, the *Jirga* was bound by the will of government officials. However, it is crucial to acknowledge that achieving true fairness and impartiality often requires a system of checks and balances, which may not be readily present in the traditional *Jirga* system.

From the above discussion, it is evident that the recent constitutional amendment significantly impacted the *Jirga* system in the area, particularly affecting *Jirga* members who previously benefited from substantial privileges granted by government

officials. While tribal members remain accustomed to the traditional local *Jirga* system, the new formal system is often disregarded due to its higher costs compared to the *Jirga* process. Moreover, the *Jirga* offers swift dispute resolution and easy access for everyone. Therefore, it is unlikely that this long-standing system will disappear entirely. It will probably persist alongside other forms of *Jirga*'s that continue to operate throughout the Pashtun region.

Conclusion

The Pashtun *Jirga* is a traditional council that plays a key role in keeping peace and resolving disagreements in Pashtun areas like Khyber Pakhtunkhwa, Balochistan, and Afghanistan. The *Jirga* system is a big part of Pashtun culture because it follows the *Pashtunwali* code of conduct. People in Pashtun communities trust the *Jirga* to find peaceful solutions to problems. While there might be slight differences in how the *Jirga* works across regions, its main purpose remains the same.

Pakistan's government merged tribal areas known as FATA into the province of Khyber Pakhtunkhwa to reduce violence and establish a formal government system. This change greatly impacted the traditional *Jirga* justice system. While the amendment aimed to replace the *Jirga* with a formal court system, it wasn't completely abolished. Locals still prefer and rely on the *Jirga*. Compared to Pakistan's current legal system, the *Jirga* is often seen as faster and more connected to Pashtun society. With its local understanding, it can be a valuable part of the justice system. However, the *Jirga* should be formally recognised within Pakistan's legal structure, as the existing courts cannot handle the volume of cases.

The government should initiate educational programs to inform tribal communities about the potential limitations of relying solely on the informal *Jirga* system for conflict resolution. Encouraging the participation of young, educated individuals in *Jirga* processes would help modernize decision-making and align it with contemporary legal principles. Ideally, the government of Pakistan should enact laws that formally recognize the *Jirga* system, allowing it to function alongside the court system. In cases of long-standing tribal disputes, the government could consider granting the *Jirga* the authority to issue binding decisions that may even supersede court rulings, offering a unique path to resolving deeply-rooted conflicts.

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