SPCRD GLOBAL
PUBLISHING
Sustainable Solutions

RAMSS Review of Applied Management
and Social Sciences

Journal homepage: <http://ramss.spcrd.org>

ISSN (Print): 2708-2024

ISSN (Online): 2708-3640

The Perils of Jirga and the Miserable Plight of Women

Hamida Bibi ^a, Surat Khan ^b

^a Lecturer Bacha Khan Medical College Mardan

^b PhD Scholar Department of Political Science University of Peshawar

ARTICLE DETAILS	ABSTRACT
History: Accepted 26 May 2020 Available Online 30 June 2020	<p><i>This study was conducted to critique and asses the institution of Jirga and its practice of Swara. The data was collected through vis-à-vis semi-structured interviews from the Jirgees and Swaras, the two most proximate stakeholders of the institution of Jirga. For the analysis of data, the tool of Thematic Analysis, developed by Braun and Clarke (2015), was used. The findings of the study show that Jirga – besides being unconstitutional – is involved in multifarious inhumane practices and its members are mostly uneducated. Its decisions are completely void of the canon international law and human rights. Jirga is involved in the felonious practice of Swara. Swaras – women atoned by Jirga in reprisal for an offence – are living wretched lives facing multifarious forms of violence, discrimination, humiliation and other forms of inhumane behaviors. Besides, they are suffering from depression, inferiority complexes, suicidal attempts, malnutrition, verbal abuse, etc. The findings also imply that illiteracy, passivity and condonement of the judiciary and law enforcing agencies, and the higher rate of crimes in the area are the factors contributing to the practice of Swara. In the light of the findings, the researcher recommends that the practice of reprisal reiterated by Jirga should be completely extirpated. Education should be disseminated and the government and law enforcing agencies should work in proximity to mitigate the rate of crimes in the area. The government should frame inclusive economic policies in order to promote peace and prosperity in the area.</i></p>
Keywords: Jirga, Jirgees, Pashtuns, Disputes, Swara	
JEL Classification: P16, P19	
DOI: 10.47067/ramss.v3i2.41	

© 2020 The authors. Published by SPCRD Global Publishing. This is an open access article under the Creative Commons Attribution-NonCommercial 4.0

Corresponding author's email address:

1. Introduction

Soon after the inception of human society, conflicts started fomenting. The scarce resources

of money, power, land, natural resources and ideological differences served as the main factors sparking these conflicts. Soon after realizing the threat these conflicts posed to peace and coexistence in human society, human beings started contemplation to develop and adopt certain measures and mechanisms to resolve these complicated conflicts. Consequently, institutions like Panchayat in India (Rajpurohit & Prakash 2015), Mediation Committees in the Republic of China (Hualing, 1992), and Jirga in Afghanistan (Wardak, 2003) were adapted to address and redress conflicts and disagreements. Being deeply rooted in the cultures of the respective societies, these community-based judiciary institutions are totally different, both in nature and practice, from those practiced in the western world.

For Mahmood, Ullah and Ashfaq (2018), Jirga is a Pashtu word which means circle or gathering of a group of people in a circle. Jirga – an oldest and well-established conciliatory body in Pashtun society – is as old as Pashtun society itself, making it difficult to trace back its exact origin. Pashto Descriptive Dictionary (1978) defines it as gathering of people or consultation. Rafi (2002) defined Jirga as the historical institution where Afghans gather and solve their social, cultural, economic or even religious conflicts by making authoritative decisions.

Known for their justice, honesty, ingenuity and better knowledge of Pakhtunwali and Islam, the noble elders of an area are anointed as the members of a Jirga. Having both the power of judiciary and executive, a Jirga can settle grave disputes like blood feuds, property, money, and other civil and criminal issues in no time (Mehmood et al, 2018).

2. Types of Jirga

2.1 Local Jirga:

Local Jirga deals with the local village-based conflicts and disagreements among individuals or families. Both the dissenting parties anoint the Jirgees – the members of Jirga – on their mutual consent. Disputes of trivial importance are put before local Jirga (Yousaf & Farrukhzad, 2020).

2.2 Qawmi Jirga:

In this kind of Jirga, the cases of the collective importance of a community or tribe are mediated and redressed. The cases of dissent include disputes with other tribes, community share in forest and other resources, distribution of irrigation water, etc. Besides, empowered to settle graver issues like murders, injuries, theft, robbery, etc., Qawmi Jirga enjoys the widest jurisdiction. In order to empower the Jirga and compel people to accept its decisions, the members of Qawmi Jirga are hired from different influential tribes of the area (Mehmood et al, 2018).

2.3 Sarkari Jirga/Governmental Jirga:

For Yousufzai and Gohar (2005), being sponsored by the government or its representatives, Sarkari Jirga is under the influence and control of government. Formed under the “Frontier Crimes Regulation of 1901 Act, the British established this Jirga to allow masses to settle disputes between themselves and the government. The magistrates and the political agents anointed the members of a Jirga at their own disposal. After the recommendation of a verdict represented by the Jirgees in the light of available evidences, the Political agent would approve and enforce the decision. According to Mushtaq, Yaqoob, and Javaid (2016), Sarkari Jirga as a Council of three or more persons whether official or otherwise convened by the Deputy Commissioner and presided over by a magistrate invested with powers under section 30 of the Code of Criminal Procedure 1898.

2.4 Loya Jirga

Loya Jirga is a Pashto phrase that consists of two words – 'loya' which means 'grand', and 'Jirga' which means gathering, or 'assembly'. Loya Jirga in Afghan political culture means a 'grand assembly' of Afghan tribal leaders, elders and other influential persons who gather in order to address vital national and international issues and make collective decisions. Loya Jirga settles and redresses issues like the legitimization of rulers, conflicts with neighboring countries, the borderline issues, etc. (Wardak, 2003).

According to Shah and Tariq (2013), after its independence in 1947, Pakistan adopted the colonial legal system operational in British India long before the creation of Pakistan. With westernization as a prime ambition of the then British government, this system was prepared to anglicize the people and to create the English legal culture in subcontinent. Despite being a time tested system, the colonial judicial system was lengthy, expensive and cumbersome. The difficult-cum-expensive court proceedings were creating too many difficulties for the people compelling them to adopt some other legal systems. Arbitration, Jirga and Panchayat were the some parallel justice systems prevailing in different parts of the country. The Feudal landlords and Waderas – the then two most powerful and efficacious classes – were supporting the Panchayat and Jirga system in the country for their own interests. The Jirga and Panchayat justice units were misused to suppress the poor segments of the society by the Chaudhrys, Khans, MGul Daliks, Waderas, landlords and aristocrats. Having the power to manipulate the decisions of Jirga and Panchayat, these aristocrats controlled their people and clan members. Severe punishment was inflicted upon those contacting the legal judicial system of the country. The decisions of these legal systems were imposed by force and might. As they were not allowed to participate, women and indigents were having no representation in the Jirga and Panchayat resulting in their ultimate loss and desolation. These institutions always safeguarded peace and tranquility at the cost of women.

As they served to legalize their extrajudicial activities and exert influence in the community, the Jirgas and Panchayats were greater sources of power for the local landlords. Besides representing the mainstream think tank of the Panchayat and Jirga, these landlords were also the elected members of the parliament. In order to protect Jirga and Panchayat and their ultimate influence and power in the community, these parliamentarian landlords always impeded in the way of legislation desiring to reform the institutions of Panchayat and Jirga. Every legislation against these institutions was perceived as a direct threat to the interests and power of the landlords.

3. Review of Literature

According to Advocate and Sajid (2013), Jirga is an illegal and unconstitutional institution prevalent majorly in the Pashtoon dominated built. Despite its prevalence and quick redressal of issues and conflicts, Jirga, as a judiciary institution, lacks prominent features. Based upon poor witnesses and poor understanding of the issue, the decisions of Jirgas mostly reflect injustice and do not comply with the established law and human rights. The worst aspect of Jirga is its practice of Swara or Vani – a girl or woman given in reprisal to the aggrieved family by the offenders in order to end a deadly dispute. Despite being declared an illegal practice by some major human rights watchdogs, the practice still continues haunting women because of the weaker writ of the government and condonement by the law enforcing agencies.

In her study titled “Women, Violence and Jirga” Brohi (2016), has limelighted Jirga and its misogynist practices and the ultimate victimization of women. Being purely a male-driven

institution, multifarious forms of anti-women practices are embedded in Jirga. Banishment and stoning of women, Child-marriage, Barter of women, Honor-killing, Swara, etc. are the commonest misogynist practices exercised by Jirga for the resolution of disputes and feuds. Made exclusively to restore peace and equilibrium, the Jirga's verdicts do not reflect justice and human rights. It is worth noticing that owing to the social and cultural taboos, people usually do not limelight such cases in order to avoid social dishonor and reproach. As per the statistics drawn by the author, in a total of 21 verdicts in Punjab, 10 in Khyber Pakhtunhwa, and 39 in Sindh, a total of 49 women – 24, 16, and 9 respectively in Punjab, Khyber Pakhtunhwa and Sindh – were scapegoated by the Jirga. According to Mumtaz and Nosheen (n.d.), a Swara – the victim of Jirga – being totally at the disposal of her in-laws, is all surrounded by dejection and despondency living a wretched life.

The Panchayats have been enjoying broad support and fame due to their ability to provide quick justice, as compared to the legal courts taking years to settle disputes. But their verdicts have always made women suffer. Women are raped, dishonored and scapegoated for no fault of theirs. In reprisal of an offence, women are put to rape in order to dishonor the aggressor's family through the loss of their women's honor. (Pakistan's Jirga System, 2014).

According to "Jirga System and Plight of Women" (2013), Jirga – albeit an apocryphal judicial system – is frequently resorted to by people for the settlement of their disputes. Allegedly due to its lengthy, laborious and expensive procedures, people are reluctant to seek the assistance of formal judiciary. This flight from legal judiciary to Jirga has resulted in the ultimate prevalence of Jirga and people's mistrust in legal courts. As Jirga comprises only male members, most of its verdicts are gender-biased and misogynistic. Women – those scapegoated in the honor crimes – are condemned unheard without being provided a chance to prove their innocuousness. Besides, the Jirgees – the members of Jirga – are mostly the influential aristocrats of the locality. In addition, the offenders in most of the disputes also hail from these aristocratic families. Due to this proximity between the offenders and the brokers, the institution of Jirga is suffering from jobbery, favoritism, partiality and injustice. Owing to its harsh punitive verdicts, Jirga is exercising illegitimate power thus causing peace to a few at the expense of distress to many. Consequently, this or that, but reforms in the Jirga system is the dire need of the hour.

In her report titled "The Horrors behind the Jirga System in Pakistan", Babar (2017), claims that our inhumane treatment of women and the commitment of misogynistic atrocities have ranked Pakistan among the world's most dangerous countries for women. Although women have been facing violence and discrimination since ages, the institution of Jirga has further deteriorated the plight of women by introducing new forms of antagonistic hostilities against womenfolk. Jirga – primarily established to promote and dispense justice in community – has become a hub of anti-women practices encroaching upon human and civil rights of women. "Women have, time and again, been the targets of these 'decisions' that are usually based on the actions of men" (Babar, 2017). For the settlement of disputes, women and minor girls are handed down to the aggrieved family in compensation (Singh, 2009).

For Wardak (2002), Jirga reflects a balance among modern legal laws, Islam and Afghan tribal traditions. The legal judiciary system is both time consuming and corrupt compelling most of the Afghans to avoid going to the courts for the resolution of their conflicts and disagreements. For Rehman (2002), the courts are overburdened hindering the timely execution of cases. These drawbacks and pitfalls in the legal judiciary institutions have resulted in the ultimate fame and prevalence of Jirga system in Pashtoon society.

4. Objectives of the study

Following are the objectives of the study:

- To know the life of a Swara
- To know the reasons behind the practice of Swara
- To know about the reasons behind the fame and prevalence of Jirga
- To know about the Jirgees.

5. Research Methodology

The current study was conducted in District Malakand, KPK, Pakistan. In order to get accurate and reliable data, the nearest stake holders of the institution of Jirga were interviewed for data collection. A sample of 12 people was taken through purposive sampling method. Half of the interviewees, videlicet 06, were male and half, viz. 06, were female. All the male interviewees were Jirgees – the members of Jirga – while, all the female interviewees were the victims of Jirga, to wit, Swara and Vani. Due to the social taboos and cultural restrictions, factitious names were given to all the interviewees. Semi-structured in-depth interview was used as research tool for data collection. Due to the scarce availability and reluctance of the interviewees, it took much human labor and time to collect data for this study. For the analysis of data, the tool of Thematic Analysis, developed by Braun and Clarke (2015), was used.

6. Data Analysis and Discussion

The findings of the study show that, besides, the absence of judiciary and law enforcing agencies, it is the lengthy, laborious, expensive and unjust procedures of the formal courts that have compelled people to recourse unto Jirga contributing to its fame and prevalence in the tribal areas. “The poor availability of the law enforcing agencies and the non-execution of their operations in the area has turned women’s lives down”, narrated the 55 years-old Jirgee Mumtaz Nabi.

“Jirga does not decide as per the law of Pakistan. We have our own tribal code of law based upon our culture and customs”, recorded the 59 years-old Jirgee Khan Daraz. The most melancholic part of the findings was to know the fact that the verdicts of Jirga are not determined by law and human rights rather culture and customary codes. “We – the Jirgees – are mostly uneducated and unaware of law. Jirga decides according to the severity of the offence having no space for the canon law and human rights”, reported Karim Khan, a senior Jirgee. Solely determined to retribute peace and eradicate enmity, the decisions of Jirga do not reflect justice and law. “Neither there was any law in our village nor did anybody know it. The decisions of all the village were based upon the local customs and traditions”, reported Tasleem Begum, a 45 years-old Jirga-stricken Swara.

“Spreading education and mobilizing the law enforcing agencies can only address our grievances”, narrated Mumtaz Bacha, the 62 years old Jirgee. It has been surveilled while scrolling down the interviews that all of the interviewees were of the opinion that education and law enforcing agencies can hunt down the decades-old inhumane practices in the area. “According to my point of view, the activation of education and a hike in the rate of literacy can eliminate the curse of Swara from our society”, documented Karim Khan.

In answer to the question “why do people prefer Swara over other means of atonement and expiation?”, it is entailed by the findings that people do so in order to mortify and humiliate the family of the offenders. “As a woman is the true incarnation of honor and grace in Pashtoon society,

the antagonistic impulses of the aggrieved families quench their evil passions by victimizing the Swara”, recorded the shrewd Jirgee Kaka Wazir, 51. The findings of the study show that people forechoose Swara over property in reprisal. It is so because Swara is an irremediable mortification of honor to the families of the offenders.

“In the course of my career as a Jirgee, I have observed that the curse of Swara is directly associated with murder and other grave offences. In order to eradicate this curse, perhaps, we need to drastically reduce, rather eradicate, crimes especially murder and other grave extrajudicial doings”, narrated the resourceful Khan Babu, the 65 years-old Jirgee. To settle and redress murders, women are scapegoated. “After my brother murdered a remote villager, I was put at stake in compensation for his crime in order to settle the conflict and restitute peace”, narrated the teary-eyed Nusrat Shaheen, a 45 years-old Swara. The findings of the study show that murders have been the prime cause behind Swara. Therefore, any attempt to end the practice of Swara would be futile without attempts to end enmities and the culture of murders.

“We are starved, we are battered, we are condemned, we are abused, and, above all, we are put, daily, to death. We are doomed to live in dejection and despondency. Surrounded by the vast sea of misery and despair, humiliation and frustration is our ultimate fate”, storied Nasreen Bibi – the 53 years-old Swara – while her lips trembled and her eyes burst into tears. The data shows that Swaras are living wretched lives. They are put to discrimination, malnutrition and violence. They are battered regularly. “Being a Swara, we are always pricked by our conscience while we observe the countenance of others which are always full of abhorrence and repugnance. Here Swara means shame, humiliation, and utter dislike”, storied the watery-eyed-cum-broken-heart Lalmaala, the 26 years-old Swara. In addition to the physical violence, these women are facing multifarious psychological traumas. “I am haunted by depression and fear”, said Husan Fari. “I am haunted by inferiority complex and suffering from low self-esteem. I have tried many times to commit suicide”, narrated Tasleem Begum. After women are scapegoated as Swaras in reprisal for crimes, their stories do not end rather begin. “The Jirgees have done me an immensurable harm to punish me for no fault of mine. It is a bizarre justice to rob Peter and pay Paul, viz. to punish a woman in reprisal for the fault of a man”, narrated the brave Haleema Bibi, the 32 years-old Swara.

“I was not willing but it didn’t matter for the Jirga. A Swara is neither honored like other women nor granted rights. Normally we face mortification and humiliation. We are not allowed to meet our relatives. Above all, we are treated with an iron hand. The practice of Swara is a cruel inhumane custom. It ought to be completely obliterated”, reported Husan Fari.

The feedback to the question “have you sought law’s assistance in the midst of this chaos” was very gloomy and despondent. “We are living to please men at the expense of our own lives. Here you cannot think of consulting the law. If you do so, you are deserted. Here the standards of morality and goodness for women are very bizarre. You have to live intramurally bearing all good and bad quiescently. Here every woman’s man is law”, recorded Husan Fari. The findings show that women are hopeless from law due to the social taboos and less availability of institutions. “Living here is very different. One cannot raise her grievances, cannot question her rights. We are walking statues living at the directives of others. You talk of contacting the law? Here one cannot think so. The life-long traditions have put women under many social yokes”, storied Lalmaala. The data suggests that the local social code of behavior and the less judiciary availabilities have made it hard for women to seek the help of law. “Sense I have owned reason and wit, I have seen and heard of many major

offences, committed against women, never been limelighted by judiciary. Here crimes against women are condoned and overlooked which in turn has always emboldened the offenders”, storied Haleema Bibi. The findings, catholically, entails women’s despondency and despair from law and judiciary.

“Take my humblest words to the judiciary and law enforcing agencies to execute their services properly. For God sake, don’t punish one for the fault of other. It’s every man’s and woman’s will to live a happy and independent life”, narrated Haleema Bibi, the 47 years-old Swara. The passage entails Swaras’ expectations from the law and judiciary. “Although the modern age has witnessed a drastic reduction in the practice of Swara, still the judiciary must work to ameliorate the situation. “There is a dire need of legislation in this regard. Those found involved in the guilty practice of Swara, should be gravely punished in order to get rid of this curse”, limelighted Tasleem Begum. “I am addressing the law enforcing agencies and government of Pakistan that Swara is an inhumane practice. Neither our religion, videlicet Islam, nor human rights permit it. The government should properly legislate in this regard and play an active role for its complete obliteration” commented Husan Fari.

The frequently reiterated factors by both the stakeholders, viz. the Jirgees and the Swaras, were education and law. “Education and law can address our grievances and mitigate our miseries. A spike in the rate of literacy is the dire need of the hour”, commented Lalmaala, the 47 years-old Swara. The data suggests that literacy and law can end the practice of Swara. “Educating men will mitigate the rate of crimes and educating women will help them cope with undesirable situations in the face of adversity”, reported Mumtaz Nabi.

7. Conclusion and Recommendations

The findings of the study show that Jirga is completely an unconstitutional local judiciary body. Its members are uneducated and unaware of law. The decisions of Jirga are completely void of international canon law and human rights. Primarily meant to restitute peace and equilibrium, these decisions only reflect inhumane and cruel practices. In the course of history, Jirga has victimized incalculable number of people. Being unsatisfied and unhappy with its decisions, the victims of Jirga carry extreme aversion and repugnance for it. In the light of the findings, the author recommends a major overhaul in the institution of Jirga. The Jirga should be only used for the settlement of local-cum-trivial conflicts and its members should be educated. All the practices of compensation and reprisal should be eliminated.

Besides, the findings also entail that Swara — an illegal and inhumane practice of awarding a woman in reprisal for an offence — is closely associated with Jirga. The higher rate of crime, illiteracy and the poor operations of law are the reasons behind the waning practice of Swara. Being on top of its objectives, the paper inquired about the life a Swara and found that they are living wretched lives facing multifarious forms of violence, discrimination, humiliation and other forms of inhumane behaviors. Besides, Swaras are suffering from depression, inferiority complexes, suicidal attempts, malnutrition, verbal abuse, etc. It is recommended that the practice of Swara should be completely extirpated. The judiciary and law enforcing agencies should work in proximity to mitigate the rate of crimes and make sure justice in the area. People should be encouraged to seek the assistance of law. Above all, those found guilty in the practice of Swara, should be trialled and punished.

The findings also entail the reason behind people's reluctance to recourse unto formal judiciary system, instead of Jirga. The distant availability, rather unavailability, of courts and law enforcing agencies has made people reluctant to contact law. Patriarchy has also hindered women's access to courts. It is recommended that people, especially women, should be given easy access to courts. The procedures of courts should be made easy and cheap.

The findings also imply Illiteracy as a major cause behind the practice of Swara. Illiteracy has kept the rate of crime higher hindering prosperity and development in the area. This in turn has made it difficult for government to mitigate crime's rate. As a result of the frequent brawls and murders, people give and take women as Swara in compensation for crimes. In the light of the findings, it is recommended that the government and other humanitarian institutions should promote education, both male and female, in the area. Educational institutions should be built and people should be given an easy access to education. People should be cultured in human rights.

References

- Advocate, B., & Sajid, I. A. (2013). Jirga System in Pakhtun Society: An informal Mechanism for Dispute Resolution. *Pakistan Journal of Criminology*, 5(2), 45.
- Awde, N., & Sarwan, A. (2002). *Pashto: Pashto-English, English-Pashto Dictionary & Phrasebook*. Hippocrene Books.
- Brohi, N. (2016). *Women, violence and jirgas*. Islamabad, Pakistan.
- Clarke, V., Braun, V., & Hayfield, N. (2015). Thematic analysis. *Qualitative psychology: A practical guide to research methods*, 222-248.
- Hualing, F. (1992). Understanding People's mediation in post-Mao China. *J. Chinese L.*, 6,211.
- Jirga System and Plight of Women (2013, March 29), DAWN. Retrieved from <http://www.dawn.com>
- Mahmood, A., Ullah, S., & AShaq, S. (2018). The Evolution of Jirga System: A conflict Resolution Mechanism in Fata. *Liberal Arts and Social Sciences International Journal (LASSIJ)*, 2(1), 21-28.
- Mushtaq, A. Q., YAqoob, U., & Javaid, M. U. (2016). Role of Jirgan in Pakhtoon Society an analysis with special reference to Justice Dispensation. *Journal of the Punjab University Historical Society*, 29(2).
- Pakistan's Jirga System (2017, August 06), DECCAN Chronicle. Retrieved from <http://gulfnews.com>
- Rafi, H. (2002) *Loya Jirga*, Peshawar: Aman Publishing LTD.
- Rajpurohit, G.S., and Anand Prakash. "Khap Panchayat in India: legitimacy, reality and reforms," *IJAPRR International Peer Reviewed Refereed Journal* 2, no. III (2015): 81-90.
- Shah, A. S., & Tariq, S. (2013). Implications of parallel justice system (Panchyat and Jirga) on society. *People*, 2, 200-209.
- Wardak, A. (2002, July). Structures of Authority and Establishing the Rule of Law in Post War Afghanistan. In *Conference on establishing the rule of law and governance in post conflict societies*.
- Wardak, A. (2003). *Jirga—A traditional mechanism of conflict resolution in Afghanistan*. Pontypridd, UK: University of Glamorgan, Centre of Criminology.
- Yousaf , F., & Farrukhzad, S. (2020). Pashtun Jirga and prospects of peace conflict resolution in Pakistan's 'tribal' frontier. *Thirld World Quarterly*, 1-18.
- Yousufai, H. M., & Gohar, A. (2005). *Towards Understanding of Pukhtoon Jirga: An indigenous Way of Peacebuilding and More...* Just Peace International, 2005.