

**PREVELANCE AND FUNCTIONING OF PARALLEL  
SYSTEMS OF JUSTICE IN PAKISTAN**

**(A case study Karikot South Waziristan)**



**By**

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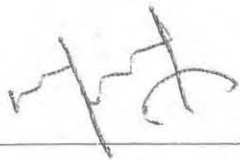
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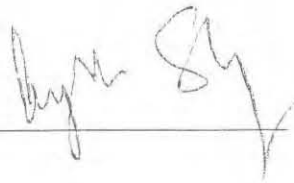
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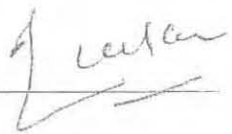
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**Abid Noor**

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First, I want to thank almighty Allah for giving me enough strength and patience for completing my thesis, indeed all the praise goes to him only.

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## **DEDICATION**

This work is dedicated to my Parents and Teachers and Specially to my supervisor.

## **ABSTRACT**

This study aims to explore the experiences of people who resolve and settle their disputes through formal and informal justice in Federally Administered Tribal Areas (FATA) of Pakistan. Conflict is a common issue in every society, but the resolving bodies exist in every society which are working according to their socio-cultural set-up. The Jirga system is a conflict resolution body in semi-governed tribal areas of Pakistan in parallel formal legal and justice system. This study highlights the evolution or historical background and concept of the Jirga system as well as the kinds of Jirga system and extension of formal justice system to newly merged district of South Waziristan. The study further evaluates the procedures and experiences of people through their account to understand their experiences in formal judicial and Jirga systems that how Jirga and formal justice systems proceed and resolve a conflict between the two disputant parties? A formal justice system on the pattern of settled districts are not in practice in FATA but the issues and disputes in FATA are taken to nearby district courts. Jirga is an informal mechanism in Pashtun society for the resolution of civil and criminal disputes. This study analysis the legal and constitutional status of jirga system in the light of case laws in Pakistan after merger of the FATA into Khyber-Pakhtunkhwa. The findings of the research show that people are not optimistic about fairness of judicial system as it costs them in terms of time, money and uncertainty of their case as they are not familiar with judicial system, but they are more inclined towards taking their disputes to customary jirga system which is consist of the people of their choice and culture. This study was conducted in Wana, South Waziristan. Sixteen in-depth interviews and two focus group discussions were conducted with people who have been to jirga system as well to formal justice system of Pakistan for settlement and resolution of conflict.

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# CHAPTER 1

## 1. Introduction

The informal justice system, *Jirga*, remained prevalent, though known with different names, in all the regions of Pakistan. In the contemporary legal environment, it has its own significance and therefore it is still in practice. However, it seems that recently it remained under heated debate in the legal and social corridors. This form of dispute settlement mechanism is an essential ingredient of the communal life of the citizens of FATA. *Jirga* system is not new in the tribal belt of Pakistan. In a society raven by cultural, social, political, and economic stratification, disputes are natural to arise. In this socio-economic milieu, the justice system must be quick, responsive, timely, and cost effective. In *Pukhtoon* culture, the *Jirga* system is the oldest and well-established institution (Yousaf & Farrokhzad, 2020). Till date, its history, constitution, and actions mostly remain verbal. In fact, this is one of the institutions that works as an energetic force behind the entire lives of the individual. *Jirga* system is practiced as the best tool for conflict resolution and satisfies the aspirations of the people. Since its inception, its use is limited not only to trials of major/minor crimes and civil disputes, but also assists in resolving conflicts between groups and tribes. There is a systemized method and basic criteria for the selection of *Jirga* members. Mostly, noble elders of the area are chosen who are known for their honesty, intelligence and a sound understanding and knowledge of *Pashtunwali*, and even Islamic law. When a question of Islamic law is involved, the religious scholars (*Ulema*) take part in the *Jirga* (Khattak, Khattak & Zaheer, 2017; Yousafzai & Gohar, 2012).

Afghanistan is bordered to the northwest of Federally Administered Tribal Areas while the east Durand Line separates Pakistan and Afghanistan. To the east of

Durand line province of Khyber Pakhtunkhwa, and Baluchistan is present to the south of Khyber Pakhtunkhwa. The Tribal region also known as FATA is the region that shares a border with Khyber Pakhtunkhwa and Baluchistan. FATA comprises of seven tribal agencies (districts), Khyber, Bajaur, Mohmand, Orakzai, North Waziristan, Kurram, and South Waziristan, and six frontiers reg (FRS), FR Peshawar, FR Kohat, FR Banu, FR Tank, FR Lakki, and FR D I Khan. Every agency is headed by a political agent while the KP governor heads the entire region of FATA(Alam, 2021).

The tribal region is mainly populated by the Pashtuns, who also live in the neighboring provinces of KPK and Baluchistan. After the merger of FATA into Khyber Pakhtunkhwa the tribal area is no more federally administrated but is considered to be permanent part of Khyber Pakhtunkhwa province. Literacy rate of Ex-Fata is below the national rate which is fine below the national rate of 56%. According to a report on literacy rate the FATA region literacy rate is 22 %. About 35% of men and only 7.5% of women receive education, compared to a national 44% of women. FATA was directly governed by Pakistan's federal government through a special set of laws called Frontier Crime Regulations (FCR) (Firdous, 2022).

Along the Durand line in 1901, Lord Curzon created a new North-West Frontier Province (NWFP) out of the old Punjab Province consisting of the tribal buffer region. This bordered province was named after the division between British-India and the kingdom of Afghanistan. The administrative approach was adopted through indirect rules placing the tribal residents of the NWFP under the new legal framework of the Frontier Crimes Regulation (FCR). The social order was maintained by recognizing the authority of the tribe elder known as Malak (elder). The tribe elder implemented the rules and regulations. This maintained the internal autonomy and

customs of Pashtun tribe. The role of tribe head is very important to be discussed here. The code of honor known as Pashtunwali (the way of the Pashtun) which emphasized honor, revenge, and hospitality as a means of maintaining social order. The division followed the new way of administration which categorized the elders of the existing society. This categorization was under the amount of authority with the elder of the tribe. The types of *Malak's* were like two *paisay Malak*, twenty *paisay Malak*, *lungi Malak's* and five cent *Malak*. These *Malak's* had different sets of authorities and people use to refer their problems to the *Malak's*. The problem was first referred to the political agents of the region and then afterward the problem would be referred to the *Malak's* of the tribe by political and agency administration. For these services, *Malak's* were paid directly by the political agent of the agency (Lhussier et al., 2016).

The society of tribal areas is largely operated through three pillars of authority: the authority of the malak operating through the council of elders (jirga), the legal-based authority of the Political Agent and the religious-based authority of the mullah. This structure of administration prevailed in the region. The society of region promoted the idea of different authority structure. These different sorts of administration worked hand in hand was often a fluid relationship between these three pillars of authority that kept a balance within society burden with rivalries (Mahmood et al., 2018).

*Malakisim* (system of *malaks*) is a popular concept in the tribal areas of Pashtuns. The *Malak's*, in tribal districts are exercising a dominant status in social, political and economic spheres. The concept of *Malak* and *Malakism* can be best explained in terms of theory of elitism. This theory asserts that there are fewer people or families in the society who have the power and social influence. These elites control the society and use its influence for gaining political power. They are called political

elites. These political elites play an important role in influencing the electoral preferences (Advocate & Sajid, 2013).

In Pukhtoon society '*Malak*' (the tribal chief) exercises a dominant role in all social and political activities. The *Malak's* in tribal districts of Pakistan are the local elders with land power in acres. They are patronizing agricultural activities which are mostly done by the peasants or tenants, who live at a subsistence level. In Pakistan, the proprietors are known by different names according to their geographical distribution such as these people are called *Malak's* in Pakhtun society, *Chaudhry* in the Punjab society, *Wadera* in Sindh and *Saii* and *Sardar* in Baloch society. Mostly, the *Malak's* in tribal districts keep the tenants for their own purposes such as for agricultural production, serving the guests in Hujra and also to help them fight against their opponents. Economically, they are strong enough having more land and access to all the resources. Mostly, the educational institutions (schools and colleges) are located in these *Malak's'* land; so they have full control over these institutions. They don't want the children of their tenants to be educated because they consider these children a threat to their (*Malak's*) future. Before 1996, the *Malak's* were so strong because only they were entrusted with the right to vote, and the local people had no power to exercise this basic human right in the form of casting vote. Prior to 1996, the tribal districts parliamentarians were to be selected for the National Assembly seats through a limited number of Lungi holders/*Malak's*. However, in 1996, the government of Pakistan gave the rights to the people of tribal districts to elect candidates of their own choice for the National Assembly (Ahmed, Ishaq, & Shoaib, 2021).

*Malaki's* is a type of feudalism. The term feudalism is used worldwide while *Malakism* is limited to the tribal districts only. *Malakism* is a local term used instead of feudalism in the tribal districts of Pakistan. They are the feudal who dominate the

Pashtun society. Feudalism is a worldwide system that is prevailing in different forms in the world. In the tribal areas of Pakistan, the term *Malakism* is used for feudalism. Feudalism (*Malakism*) was a system of government, whose outstanding feature was the possession and centralization of political authority among a landed aristocracy with a pattern of land holding in which power was shared by the feudal lord (Sammon, 2008).. Karl Marx has referred to feudalism in the form of capitalism. Marx has defined feudalism, “as the power of ruling class rested on their control of arable land leading to a class society based upon the exploitation of peasants who farm these lands, typically under serfdom. Marx thus considered feudalism within a purely economic model. In an industrialized society, the individuals are divided between the capitalist (bourgeois) and working-class (proletariat). The bourgeois exploits the proletariat class. Pashtun’s society has two famous traditions, tribal chiefs (*Malaks*) and code of honor (Pashtunwali). These two traditions are un-written but in practice, they are seen. These two codes of honor differentiate the Pashtun society from the other societies. Pashtunwali is a traditional code of Pashtuns’ society that covers all aspects of Pashtuns life. After the annexation of the frontier region in 1849, the British got control of the area. The British introduced Frontier Crimes Regulation (FCR) in 1901, wherein enough powers were exercised by the Political Agent and *Malak’s*. After the creation of Pakistan, the FCR was retained hence retaining *Malakism*. *Malak’s* were instrumental in keeping the border and they are called *Nang*(honor) because they resisted and include to govern through their customs. All societies which were controlled indirectly are called acephalous society which is controlled through appointment of indigenous leadership known as *Malak’s* (Farmanullah & Jamal-ud-Din, 2018).



When every or any problem arises in the region, *Malak's* were responsible to approach the aggressor and to hand over to PA (Political agent). After these *Malak's* resolve it on customary laws known as *jirga*. On hearing the word "Jirga", the first question that comes to mind is what is Jirga? There are many different views on the nature and scope of the term Jirga. Most would describe it as an indigenous institution for dispute resolution in the Pashtun communities. Yes, it is, but is it more than this as well. Frozen in the history as the Pashtun nation froze, Jirga is an old custom with unmatched potentials for conflict resolution in the Pashtun belt of Pakistan and Afghanistan. It is a name given to the model, in which a Pashtun society operates, to undertake issues between individuals and between communities, to address concerns, and look for solutions acceptable to all stakeholders. As a blueprint of Pashtun life, Jirga is best summarized as a strategic exchange between two or more people to address an issue through verbal communication. The exchange may or may not result in an agreement on the issue, but the process itself leads the parties, including the interveners, to maintain a certain level of formal communication, thus ensuring peace (Yousaf, 2021b). To a common person, Jirga is a body comprised of local, elderly, and influential men in Pashtun communities who undertake dispute resolution, primarily through the process of arbitration. Compared to the judicial system of the present-day governments, Jirga ensures a fast and cheap justice to the people. Indigenous to Pashtun tribes. The Jirga system ensures maximum participation of the participants during the deliberation of a specific issue as everyone has a right to speak. An issue is examined from point to point till all aspects of the issue are fairly deliberated upon, all concerns heard, and a transparent and uniform understanding of the issue is agreed upon all the while the Jirga members may keep playing

mysteriously with sets of small stones lying before them like a chessboard (Wasai et al., 2020).

Jirga did not enjoy sovereignty as sole power of the *Malak's* in FATA including South Waziristan. Parliament of Pakistan through a presential decree to handover tribal regions to Prime Minister and Parliament to amend laws that govern the FATA from the presidential office to parliament. In 2018, both national assembly of Pakistan and senate of Pakistan passed an amendment “Twenty-fifth Amendment to the Constitution of Pakistan” to merge FATA into Khyber-Pakhtunkhwa. After merger of FATA, the constitution of Pakistan and its laws were extended to tribal regions and now two parallel legal systems for resolution and keeping of order work differently in the regions. Formal judicial system operates in nearby districts to hear the petitions of civil cases as well criminal cases registered in the former agencies. This study evaluates and documents the experiences of residents of district South Waziristan to understand the point of view and experiences of the people who have been to both customary courts, juridical customary court as well formal judicial system operating in nearby districts for settlement and resolution of the disputes, and conflict.

## **1.2 Objectives**

The disruption and unresolved existence of problems remained as same as before. Though, the state said that the court system is prevailing but in reality, it not there. The disguised work of justice lacking and disturbing the lives of people, the land quarrels, family disputes and other miseries of people. This research is objectified to such problems, from collecting data to writing all the outcomes of data the objectives are clearly dealt and met.

- To find out the perception of people about the status of jirga in comparison to formal judicial system
- To know about the future of jirga system with changing status of FATA after 25<sup>th</sup> constitutional amendment in constitution of Pakistan
- To understand the experience of people who have been to jirga and formal justice system in Pakistan for resolution and settlement of their disputes and conflict

### **1.3 Statement of the Problem**

The existing literature on Pashtun society especially on FATA including South Waziristan has focused on the importance of jirga system in resolving and reconciling the disputant parties. The huge bulk of literature presented the jirga as a single or monolithic dispute resolution mechanism in South Waziristan. As it was the only institution available to people to adjudicate their disputes and conflict but with 25<sup>th</sup> amendment, the formal legal system of Pakistan has been extended to these areas and now jirga is not enjoying the dominance, but it has been removed from the power of adjudicating the dispute between the people. This study problematizes the experience of jirga system (juridical jirga or *Saraki* jirga) and customary jirga in the light of legal pluralism. Legal pluralism is an analytical approach which helps to analyze the existing of two or more than one legal system existing in society and people approach one of them for resolution of their dispute. In Pakistan, there are two legal systems that exist in society; one is formal justice system run by state and other normative legal system or cultural institutions (jirga) opted by people to settle and resolve their disputes without intimating formal justice system and state machinery to resolve their disputes.

Since the merger of FATA into Khyber Pakhtunkhwa, many people have experienced both jirga system and formal justice system for resolving their disputes, this study approaches their experience to understand the choice of people and their preference in the existing of legal plurality to them. Legal pluralism is crucial to understanding what people disagree on, how disagreements arise in social interactions, what decisions are made about how to handle them, how they develop, what happens to them in the end, and how the resolution of a particular disagreement influences how other people approach related issues. The existence of non-legal norms, practices, and institutions strongly affects what occurs at all phases of a (possibly) "legal" conflict. As Jirga system is under heated debated in academic and social circles due to its manipulation by colonial and post-colonial state, it is up to the people of the area to say about their experience in the customary court of jirga (olasi jirgah) which is convened and congregated by disputants by their choice to decide and settle the dispute and conflict through the facilitation of the jirga.

#### **1.4 Significance of the study**

As there is debate in legal anthropology about the existing and practice of legal pluralism across the globe and its significance in different issues, disputes and conflicts. As sovereign states are cooperating with each other in the absence of legal framework, but they are bound to follow loose and weak laws of international relations and international framework where one can not violate the international law. On the same pattern within the modern state there are different legal systems that are working for the resolution of disputes and conflicts among the people to decide the settlement. Waziristan has experienced the system of informal governance and people were left to decide their issues and settlements through juridical customary law and customary law of *jirga*. This study provides base to academic circles and policy

makers to make justice system more easily accessible and provide choice to people to take their issues to any of the justice and alternative justice system of their choice.

## CHAPTER 2

### LITERATURE REVIEW

#### **2.1 Introduction**

In this section, we will look at what has been written about South Waziristan's judicial system. Throughout its past, South Waziristan has been a part of Afghanistan, a colony of the British, and then annexed by Pakistan.

#### **2.2 Authority and Pluralism: The Foundational Elements**

The malik, exercising his power via the jirga, the Political Agent, using his legal authority, and the mullah, exercising his religious authority, are the three pillars of authority upon which tribal society rests. This administrative framework was typical in the area. Local culture pushed for a decentralized system of government. All these forms of management cooperated well. Often, it was the ebb and flow of power between these three institutions that helped keep society from tipping over from all the rivalries.

In Pashtun rural and rural regions, Malakism is widely held. The Malaks are a powerful and influential group in the tribal areas. Malak and Malakism are best understood in the context of elitism theory. According to this view, society's elite are concentrated among a small number of families. The elites in this society have tremendous power because of their ability to manipulate the masses. Elites in politics are a recognized group. They have a significant impact on voters' decisions because of their position in the political establishment.

Pashtun civilization is dominated by the Malak (Tribal Chief). When it comes to landholdings and authority in Pakistan's tribal areas, the Malak's are the undisputed leaders. They are sponsoring agricultural operations which are largely done by the

peasants or tenants, who live at a subsistence level. Landlords in Pakistan go by several titles depending on the region: Malak's in Pashtun society, Chaudhry in Punjab culture, Wadera in Sindh, and Saii in Baloch society, to mention a few. Malak's in tribal domains often retain tenants for their personal benefit, whether it agricultural productivity, service of visitors at Hujra, or assistance in combat against enemies. Since they control more territory and have access to more resources, their economy is robust enough. Since most schools and universities are situated on property owned by the Malak's, the Malak's enjoy complete authority over the educational system. Malak's don't want their tenants' kids educated because they see them as competition for jobs and resources in the future. Before 1996, the Malak's were so powerful because they were the only ones given the opportunity to vote. The local population had no say in the matter. Before 1996, a select group of Lungi holders/Malak's were supposed to choose lawmakers from tribal regions to fill National Assembly seats. However, the government of Pakistan granted the people in tribal areas the opportunity to vote for National Assembly members of their choosing in 1996. (Farmanullah & Jamal-ud-Din, 2018).

Malak's were tasked for confronting aggressors and turning them over to PA if any kind of trouble arose in the area. When these Malak's have reached a verdict based on local tradition, Also called a jirga When one hears the term "Jirga," the first thing that springs to mind is, "What is Jirga?" The meaning and application of the word "Jirga" may be taken in a variety of ways. The majority see it as a traditional Pashtun institution for settling local disputes. Yes, but is there more to it than this as well? A centuries-old practice with unrivalled potentials for conflict settlement, the Jirga has been frozen in time along with the Pashtun nation in the Pashtun belt of Pakistan and Afghanistan. This framework is what a Pashtun culture uses to deal with conflicts

inside and across groups, voice concerns, and seek mutually agreeable resolutions. Jirga, the Pashtun way of life, may be summed up as a conversation in which two or more individuals deliberate on how to solve a problem via dialogue. There's no guarantee that anybody will alter their minds, but at least everyone involved in the discussion will be on the same page. Jirga, as understood by the general public, is a Pashtun conflict settlement body made up of respected senior males from the community. Jirga provides the people with justice at a fraction of the cost and time of the modern government's legal system. Originating with the Pashtun people. With the Jirga method, everyone has a voice in the discussion of a given topic, guaranteeing an important level of engagement from all parties involved. An issue is examined from point to point till all aspects of the issue are fairly deliberated upon, all concerns heard, and a transparent and uniform understanding of the issue is agreed upon—all the while the Jirga members may keep playing mysteriously with sets of small stones lying before them like a chessboard (Ibrahimic, 2018). (Ibrahimic, 2018).

The foundation of the Jirga constitution are a set of norms and regulations. Everyone must adhere to the code of conduct and the regulations. The Jirga often consists of two sides that are committed to talking things out. The issue is settled by mutual agreement between the parties involved in it, who then choose an arbitrator to settle the case. The Jirga system is set up to ensure that everyone is treated fairly. The demise of the jirga system may be traced back in large part to the United States' war on terror. Numerous deaths have occurred in the past in Pakistan as a direct result of the actions of some other country. The ideals at the heart of Pashtun culture and tradition are being profoundly challenged by events like the War on Terror. People resorted to self-defense as a result of the war on terror because the rule of law, Pashtunwali, and the legal system were all shaken to their foundations. Jirga was



formerly employed as the legal system in Wana Waziristan. Pashtun culture in the tribal regions has been severely disrupted by the ongoing fighting (militancy). Traditional Pashtun cultural norms, which form the basis of Pashtun standards of behavior (Pashtunwali), have been substantially eroded by the continuing war on terror (Brain, 2010).

The war's evolving terrorist threat began to rattle the foundations of governments at home and abroad. Attacks by rebel organizations resulted in the deaths of several prominent political figures and Maliks (tribal elders). This event significantly shook-up regional politics. The Frontier Crimes Regulation (FCR) grants a political agent limited authority in certain regions; however, in the wake of September 11, 2001, much of this authority has been transferred to military commandants. In a same vein, Jirga is the only legal system or process for resolving conflicts between and among tribes. As violence increased and key tribal elders were killed, the Taliban took control of the Jirgas and made their own decisions (Ibrahim, 2016). Militancy has diminished the influence of political parties in tribal regions. FATA is a tribal region of Pakistan where women are not allowed to vote or take part in politics. However, it is important to note that after the militant elements were eradicated through the successful use of government military power against the banned TTP in various parts of FATA, political activities once again flourished (Khan, 2011). According to observers, Madrassas under Zia's reign had a significant role in fostering extremism and militancy. These ancient religious institutions were employed by Pakistani and American intelligence organizations, spawning sectarianism in Pakistan. Additionally, some violent organizations received international aid (Yousafzai, 2011). Because of the absence of justice and the illogical allocation of power, militancy is increasing. Unemployment is one of the most significant threats, fostering militancy and

extremism. In addition, it is simple to entice jobless folks to extremism by offering or awarding them money. The Pakistani government could take advantage of this void and incorporate FATA into the neighboring province KP. Changed political agent to DC, deputy commissioner. After President Mamnoon Hussain's approval of the 25th Amendment on May 31, 2018, FATA was formally integrated into Khyber Pakhtunkhwa (Nawaz, 2016 ).

The Pakistani government has decided to combine the Federally Administered Triable Areas with Khyber Pakhtunkhwa. This union is not, however, ceremonial. It would result in the marriage of two lives that are parallel, if not conflicting. The Indigenous people are proud of their ancient customs and organizations. Among these, the Jirga system has persisted and provided a place for people to settle their disputes as an alternative to Pakistan's official legal system. With the entrance of the new period after the merger, the legal structure of the Jirga would lose its hue. The current research studies the transition and views of the Jirga System. Now the debate and discussion focuses on the FCR and jirga, namely why people favor jirga over the official judicial system. Of judiciary People are content with the informal Justice system, which is traditional jirga, following the union with the KP. These studies also analyze and look for the primary factors that attract individuals to jirgas in the presence of the law and judicial system. These distortions are used to examine the local or emic preference of the population towards one legal system vs another. It investigates deeper the relationship between statutory law and customary law in terms of what holds the dominant position and has the most effect. to reply to and answer this sort of query The participants of the research are people of the Wana Karikot hamlet in southern Waziristan, and the objective is to comprehend the reasons of jirga

preference. This research focuses on the future of the Jirga system in tribal areas and the extent of people's interest in this ancient dispute resolution method (Sethna, 2015).

The Jirga is a traditional system of justice, yet at important junctures it has been open to controversy. The most serious accusation against the Jirga system has been its prejudice against women during decision-making and the enforcement of its norms. People's perspectives on the conventional method of dispute resolution and their emphasis on the formal judicial system have shifted in tandem with the evolution of their way of life. Because the people would have access to the official Judicial system when the FATA is merged into Khyber Pakhtunkhwa, the Jirga will continue to play a crucial role despite the changes in lifestyle and the desire to merge FATA with Khyber Pakhtunkhwa. This research analyses locals' impressions of the Jirga during this moment of change. In addition, the research seeks to determine the significance and currency of Jirga in relation to the conventional legal system. It also indicates the potential for conflict between the two regimes' popular peals. The research is based on the culturally relevant conflict viewpoint, which proposes a localized dispute resolution system that is acceptable to the local population. Any system that jeopardizes a society's indigenous character by imposing an alien or foreign process will fail in the long term (Lal, Khan, & Naz, 2018).

What Constitutes Customary Law? Customary law is a collection of norms, practices, and beliefs that indigenous peoples and small communities recognize as mandatory standards of behavior. Customary law is an integral component of their social and economic structures, as well as their way of life.

Statutory laws are written laws enacted by the legislature and government of a nation, as well as those recognized by society.

Legal pluralism is the notion that several legal systems may coexist within the same social space (Merry 1988: 870). Legal pluralism often becomes bogged down in discussions about whether forms of custom should be referred to be legal systems. Our focus is on investigating the inductive impacts of new kinds of legal hybridity, not the issue in question. In legal pluralism, the hybridity in emphasis is special since it is equally concerned with the police function and the lawyerly role. The emphasis of the study is on the impact of legal hybrids on the life of democracy and on reducing violent cycles in regions of high violence. When a Jirga is convened, it is often a vast, circular gathering of many people. While there have been locations and times when famous female leaders have participated in Jirgas, this is uncommon. Men from the whole community may take part. The ultimate choice is made by a group of elders with a reputation for exceptional respect. At the Pashtun belt, Jirgas are often held in the Hujra, which is a kind of village clubhouse. Volunteerism is a fundamental value, yet in the worst cases, the Jirga is dominated by strong individuals who demand extortionate fees from disputants. However, the Jirga ideal consists of leaders who serve the society and are God's guests. Therefore, to disregard the verdict of a Jirga is to incur God's wrath.

The culturally related conflict views that Karl Marx (1818-1883) and his disciple C.W. Mill (1806-1873) developed (1956). According to this viewpoint, conflicts in human civilizations are a universal, unavoidable, and endless process. The history of human development and change is the history of class conflict, and individuals, groups, sects, and even greater disagreements have occurred over the means of production, such as property, land, money, and power battles. One side must govern and defeat the other to gain control of economic resources. However, in accordance with the dialectical process employed by the conflict school of thought, there is

always a resolution of conflict in the form of synthesis, which evolves the society into another phase of development (but have the seeds of conflict as well). Similarly, the system for resolving conflicts may vary from group to group and civilization to society, including procedural components that differ.

Literature confirms that strategies for conflict resolution are woven into the relative cultural structure of each and every civilization in the globe (Wardak, 2003). The (1992), Olsen (1995), and Glatzer 1(998) have explored the significance of the Jirga system in Pashtun-dominated regions of Afghanistan, Baluchistan, and present-day Khyber Pakhtunkhwa. This system is an essential informal tool for resolving conflicts, and it follows the old normative orders. In the framework of the present research, the culturally-approved relative-approved theoretical method has been selected, which also supports the aforementioned philosophical stance of the experts. According to Harris (1968), both the study of social phenomena and the settlement of disputes must follow a culturally accepted pattern in order to be acceptable to the indigenous. However, as a result of modernity and globalization, the nature of conflict and the process for resolving them have undergone significant changes, and the Jirga's function has been subjected to several modifications.

### **2.3 Jirga or Other Informal Dispute Resolution Systems**

In rural communities, there are a considerable number of individuals who have never heard of formal courts and other institutions, although they are well aware of informal conflict resolution procedures in their local regions.

Police Department (s)

In Khyber Pakhtunkhwa, the Police Act of 1861 established the administrative structure and powers of the police. Frontier Police is under Pakistan's Police Service.

The 1898 Criminal Procedure Code is the source of the police's arrest, investigation, and search powers. In addition, under the Government of India Act of 1935, Pakistani authorities accepted pre-independence statutes. The police receive reports of crimes and then file a First Information Report (FIR). The responsibility of the police is to protect public order, investigate crimes, and apprehend criminals. The Provincial Police system in KP is comprised of 73,000 personnel. Baluchistan's police force is known as the Baluchistan Police and was established in 1946. The Provincial Police includes of 46,018 personnel and has its headquarters in Quetta. The Police Act of 1861 and the Criminal Procedure Code of 1898 were not extended to FATA. In the protected regions of FATA, the Khasadar and Levies force handles internal security and police duties. Given that the police have a network of stations in urban and rural parts of Pakistan and have attempted to cover practically the whole nation with the exception of FATA, it was apparent that the vast majority would be aware of it. 96.5 percent of respondents were aware of the police agency. Additionally, patrols by the police makes them noticeable (Barfield, 2006).

#### 4.2 Authority and Conflict Resolution

The FATA is home to an estimated four million people, the majority of whom are Pashtun. FATA is Pakistan's most rural region, with fewer than 5 percent of its population residing in urban areas. Due to the hilly nature of the country, where only 10% of the land is arable, and the tribal structure of the culture, its economy is mostly pastoral. The bulk of the population relies on agriculture, cattle, and forestry, resulting in an annual per capita income of around 250 USD, which is much less than half the national average. Transport is also essential to the economy. A shadow economy centered on the manufacture and distribution of opium generates more earnings. Nevertheless, over sixty percent of the population lives below the poverty level. Socioeconomic deficiency is merely one component of FATA's underdevelopment.

The rate of illiteracy is very high, with just around 40% of males and 3% of women capable of reading and writing. Even in crucial areas like as education, health, energy, agriculture, transportation, and finance, the development of public infrastructures is gradual. In FATA, very minor economic shocks may result in large rises in poverty and desperation. Large-scale occurrences, such as floods or the abrupt development of armed conflict, may result in widespread socioeconomic devastation or forced migration (Matthias, 2015).

FATA's fragility and volatility are partially the outcome of its unique political position and governance structure. In 1947, when the Islamic Republic of Pakistan reached independence and full sovereignty, it was divided into five provinces: Sindh, East Bengal, West Punjab, Baluchistan, and the North-West Frontier Province. FATA was never integrated into any of these provinces and retained its semi-autonomous status (Fair, 2014).

#### **2.4 Jirga System**

Jirga, the informal court system, remained prominent in all parts of Pakistan, but under new names.

1 It has its own meaning in the present legal context and is thus still in use. However, it seems to have remained a topic of passionate controversy in legal and social circles in recent times. This kind of conflict resolution is fundamental to the community life of FATA's residents (Khattak, 2017). The Jirga system is not new to Pakistan's tribal area. Disputes are inevitable in a society ravaged by cultural, social, political, and economic inequality. In this socioeconomic environment, the judicial system must be prompt, responsive, timely, and cost efficient. The Jirga system is the oldest and most established institution in Pashtun culture (Yousaf, 2021a). Its history, constitution,

and acts are mostly verbal to this day. In reality, this is one of the organizations that serves as the driving force behind an individual's whole life. The Jirga system is the most effective method for resolving conflicts and fulfils the desires of the people. Since its beginnings, its usage has been restricted to trials of major/minor crimes and civil disputes, but it has also been used to resolve conflicts between groups and tribes (F. Alam et al., 2020). Members of the Jirga are selected according to a systematized approach and fundamental criteria. Most of the time, noble elders of the region who are recognized for their integrity, intellect, and solid comprehension and knowledge of Pashtunwali and even Islamic law are selected. When Islamic law is at issue, the religious experts (Ulema) participate in the Jirga (Khattak, Khattak & Zaheer, 2017; Yousafzai & Gohar, 2012). Jirga is an assembly, party consultation gathering, and a kind of democratic council. According to the Pashto Descriptive Dictionary, jirga is an indigenous Pashto term that, in its usual sense, refers to a meeting of a few or a big number of people; according to this source, it also denotes consultation. The term jirga seems to be linked to the word 'circle,' but is usually used to refer to a meeting of people in Persian, Turkish, and Mongolian languages. Regardless of the origin of the term, jirga refers to the "Pashtun traditional tribal jirga, a local/tribal institution of decision-making and dispute resolution that incorporates the prevalent local customary law, institutionalized rituals, and a body of village elders whose collective decision regarding the resolution of a dispute (or a local problem) is binding on the parties involved.

Jirga is known as Majlis in Persian and Panchayat in Punjabi and Hindi. On the basis of tribal norms, traditions, and principles of justice, the Jirga exercises both judicial and executive functions to decide all issues relating to the division of land, properties, blood feuds, blood money, and other significant inter-tribal matters. There are no



strict guidelines for selecting Jirga members. All trustworthy seniors, or Speen Geeri (white-beards), are eligible for membership. However, for efficient implementation of the Jirga's decision, Jirga members must have a high social standing, a solid economic position, and adequate personnel at home. Typically, Jirgas are conducted in a hujra, a small mosque, or an open field outside of the hamlet. Members of the Jirga often sit in a circle without a leader. This meeting's lack of a chair, like the round-table conference, symbolizes their commitment to democracy and the concept of equality (Johnson & Barnhart, 2020).

In Pashtun tradition, tribal Jirgas rather than laws or police handle the majority of criminal matters. Typically, the jirga is comprised of two or more family elders or their representatives. The authority and expertise of a jirga member is contingent on the nature of the issues the jirga must address.

Whenever there is a conflict between two families, two people, two villages, or two tribes, the Jirga is often used to reach a peaceful resolution.

A Jirga is made up of the most esteemed members of both sides, and a third man (or party) is chosen by both parties to serve as arbiter. The role of the arbitrator is to listen to both sides' problems and then propose a peaceful resolution. In order for the Jirga to be concluded, both sides must agree on the solution. If any of the parties are not in agreement, the Jirga must seek alternate alternatives. However, after both sides have agreed to the Jirga's judgement, neither may stray from it in the future. If they do so, they lose Nung (respect) in the community.

## **2.5 Development of The Jirga System**

Jirga is an old Pashto term that refers to the meeting of a small or big group of individuals. Jirga derives from the root word Jirga, which meaning "circle" or "loop" (Ghyathul-Lughat, 1871). It refers to a throng or mob of people in Persian. According to linguists, the term Jirga originated in Turkish with the same meaning as in Pashto (Sherzaman, 2007). A jirga is a forum where people may freely discuss their thoughts and emotions without fear of reprisal. Jar indicates open tone in Pashto, while gah signifies location or position. The Arabic word Jahar translates as loud (Iqbal, 2014). The Jirga system's origins may be traced back to the Aryan tribes. They moved from Central Asia to Afghanistan before settling in India (Sherzaman, 2007). The Jirga was used by the Aryan race to resolve disagreements and disputes. Occasionally, the king also attended meetings and presided over Jirga. Jirga was comparable to a rural council (Wardak, 2004). The decision was made in accordance with prevalent norms. Sultan Bahlol Lodhi ruled India from 1451 and 1489. He assembled the Jirga of elders to settle the difficulties of the people. The Sultan also sat among jirga members, who sat in a circle around him. He also established an administrative structure that served as a model for following kings (Glatzer, 2002).

Another Indian emperor, Sikander, gave the majority of his territory to Afghan followers. He strongly supported the tribal independence of Afghanistan and created local Jirgas. Sher Shah Suri adopted a similar strategy in India. He employed an elders' Jirga for the same reason. He would sit in the circle with them. When their successors attempted to repress the tribes, the tribes often received assistance from their rulers to the Mughals (Sherzaman, 2007). In 1747, the Abdali tribe of Afghanistan gathered in Qandahar for a Loya Jirga (Grand Jirga). The challenge was to choose a leader. After nine days of deliberation, Sabir Shah declared the Jirga's judgement that Ahmad Shah Abdali is the best candidate for this job (Sherzaman,

2007). Grand assembly of tribal chiefs and elders in Afghanistan, who convene in an organized setting to debate significant national problems and make common decisions (Badakhshani, 2004). During the reign of Amir Habibullah Khan, the 1916 Loya Jirga recommended a resolution that went against Amir's wishes. They issued a proclamation of jihad against the British in support of the German-aligned Turkish Caliphate. The Amir, however, overturned the judgement in favor of British India. A similar Jirga attacked Amanullah Khan's Nizam-Nama [constitution] in 1924. (Faiz-zad, 1989). The current security situation necessitated the formation of a Jirga outside of Afghanistan, which convened its inaugural session in Peshawar, Pakistan, on 11-12 May 1980. (Badakhshani, 2004). Through the media, the world community became aware of the jirga system in the current conditions. Especially in the aftermath of 9/11, when the US handed the Taliban administration an ultimatum to deliver up Osama on Thursday, September 20, 2001, the Taliban convened a Loya Jirga (Grand Jirga). However, in the most recent situation, a few jirga judgements regarding violence against women garnered global attention. As a consequence, this institution generated considerable scepticism.

Generally, tribal communities are hesitant to absorb common laws and formal judicial institutions. The causes are many. In Pakistan, the Pashtun and Baloch tribes opposed British colonial control for for a century, and as a result, the then-dominant power conceded to their requests of incorporating Shariah and their local traditions into their legal system. In 1901, the Pashtun Tribal Area, often known as FATA, implemented the Frontier Crime Regulations. Since that time, the tribal lands of Pakistan have been governed by a complicated political and judicial structure.

This article's primary objective is to examine the legal status of Jirga. Despite certain excellent characteristics of the institution, courts of regular authority are often unwilling to recognize Jirga rulings.

The Jirga system is founded upon tradition. It is not the only situation in which the established legal procedure for the settlement of conflicts has origins in customary law. It is important to note that custom and use are one of the fundamental sources of English law. Jirga is a tradition that has been practiced since the dawn of time, when there were no written rules. The Jirga is the closest thing to Athenian democracy that has existed since the original, according to Quddus.

## **2.6 Conceptualization of the Jirga System**

The Jirga performs both executive and judicial functions, resolving all issues on the allocation of land, property, blood feuds, blood money, and other significant intertribal matters based on tribal customs, traditions, and principles of justice. In Jirga processes, the judicial and executive duties are also carried out with the tribal traditions and customs of Pakistani citizens in mind (Yousafzai & Gohar, 2012). In the provinces of Khyber Pakhtunkhwa and Baluchistan, Jirga serves as a process and technique for resolving difficulties, conflicts, challenges, and disagreements. Jirga is sometimes used to resolve business matters. It also addresses the people's land, civil, and criminal concerns. In this scenario, Jirga plays an important role in democracy since everyone has the right to participate in its procedures. Parties are inspected and questioned in front of the general public. It is a safe and secure approach for informing individuals about the local regulations.

Members of the Jirga often sit in a circle. It stands for Pashtun culture and human equality. It resembles a round table meeting with a single chairman. The primary

requirements for participation in a Jirga are proficiency in Pashtunwali, sagacity, and problem-solving ability. The tribal Jirga operates according to tribal custom and tradition to preserve peace via dispute settlement (Iqbal, 2014). A Jirga serves both horizontal and vertical functions. Horizontally, its primary function is to adjudicate crimes and violations like a jury, resolving disputes. Jirgas are active in establishing upward and downward connections to and from the government, engagement with other tribes, diplomatic, legislative, peace building, development, and arbitration duties. Jirga reflects the global Pashtun culture. It supplies a unique approach to handling people's problems and disputes (Wardak, 2004).

Jirga's objective is to settle disagreements, conflicts, and problems of both people and society as a whole. It addresses the major consensuses of the tribal people and reflects and outcomes in the form of a binding decision for all parties involved. Consequently, it has both a tactical and a strategic function. In contrast to the country's court system, which is complicated, time-consuming, expensive, and elusive, this approach guarantees swift, inexpensive, and certain justice. The Jirga is adaptable and functions in close touch with the parties (Atayee, 1272). Jirga creates agreement and safeguards individual rights. At the conclusion, the Jirga reaches a unanimous decision. Through Jirga, the daily backlog of the common courts may also be managed. A crucial aspect of Jirga procedures is the assessment of culpability. The elders of the community adhere to historical customs and incorporate them into their choices. Throughout history, Jirga has caught the attention of people from all over the globe due to its quickness and simplicity. Jirga operates in the absence of official power, and the parties' permission is the most key factor in choosing members. Historically, the head of state or a government official chooses Jirga members to resolve the grievances of the people. Their ideas and suggestions are considered when resolving problems

affecting the populace. The majority of topics are publicly discussed, listened to, and consulted by Jirga members, who are local experts.

The public employees are also required to attend and observe the proceedings of the Jirga. The Jirga members do extensive research and analysis on the topic at hand. To comprehend the situation, they may seek assistance from any other specialist. Jirga contains a committee and council for enforcing the parties' binding decision. Members of the Jirga, who are respected members of society, make the decision, which makes implementation straightforward. Consequently, it is an institution and a method of conflict resolution that satisfies the requirement for resolving and determining common, communal, tribe and inter-tribal problems, issues, and disputes, etc., as well as personal, domestic, antagonistic family matters, etc.

#### 4.6 Varieties of Jirga in FATA-Particular WANNA South Waziristan

- Tribal Jirga.
- Local Jirga.
- Majlis or Shura.
- Sarkari Jirga.
- Quami or Ulasi Jirga.
- Shakhsi Jirga.
- Loya Jirga (Grand Jirga).

#### **2.7 Local Jirga**

Local Jirga analyses and resolves village-level problems (Sherzaman, 2007).

Typically, most tribe members own an agricultural farm. The lumber, forests, fire,

channel, route, inland waterway, water-spring, and crops are the primary means by which their revenue is generated. They are economically and socially well-established and structured. Members of the local Jirga are drawn from influential, influential elder households. They originate from several tribes and khels. The 2 Jirga settles conflicts well, and its members are selected from powerful tribes and khel (sub-tribes) (Glatzer, 1998). The local Jirga often begins with the reciting of Holy Qur'anic verses and concludes with du'a. Depending on the geography of the area where a Jirga is conducted, elders in a local Jirga may be excluded from the meeting inside the Jirga's circle. Ordinary members are from other communities. Although outsiders have the choice to attend Jirga sessions, they are not allowed to influence the members' judgements and conclusions (Smith Institute, 2007).

A tribal elder convenes the local Jirga or shura for the purpose of resolving local matters within the family, clan, subtribe, and tribe. This phrase was used in the special and local legislation of many indigenous communities.

Normal participants are prohibited from engaging in investigation and inquiry procedures. However, they observe the whole of the Jirga's proceedings. Their presence serves as a reminder to the Jirgamaran (Jirga members) that the villagers are the system's watchdogs. Thus, the local Jirga is a multidimensional communication process amongst the many stakeholders involved. Not only is it a means of communication between the disputants, but it is also a type of contact among all of these parties, as well as a silent village (Wardak, 2004). This synthesis of express and direct communication plays an important function. This also represents the oneness of the village's inhabitants. It demonstrates that the village has a variety of cultural and social customs and values, whose violation is unacceptable on any level. As a kind of punishment, those who violate the rules are required to pay restitution. The severity of

the punishment varies on the circumstances and kind of infraction. By imposing such sanctions, harm may be caused (FCR, 2011). If the disputants and khel consider a prikra (decision) to be unjust, they may reject it. This often occurs when the incorrect narkh (precedents and rules) is applied. This is known as kog-narkh (incorrect rules), which refers to the application of an incorrect narkh or the incorrect application of the popular narkh. To appeal to another Jirga in this scenario, the disgruntled party must obtain the backing of the khel. If the second Jirga reveals that kog-narkh (incorrect rules) were implemented, the marakachian (Jirga participants) lose their reputation and the privilege to participate in future Jirgas (Sherzaman, 2007). The processes and composition of the Local Jirga are determined by the gravity of the matter. It adheres to the customary law and morals standards. For example, the character of a criminal case is distinct from civil cases and disputes. Local Jirga is mostly concerned with civic problems (Wardak, 2004).

However, family disagreements and minor crimes are also settled. The local Jirga focuses on property rights, agricultural rights bordering the land, and minor bodily damage. The local Jirga, on the other hand, is often convened in a specifically designated open and public space or the village mosque. It is evident from the previous discussion that the local Jirga process and its results are beneficial and helpful to the community. It is the finest method for resolving problems amongst individuals. People follow it because its processes are structured and legal. Local Jirga is also used to settle disagreements amongst groups (Khan, 2013).

## **2.8 Quami Jirga**

Qaim denotes society or group of individuals. Quami Jirga is a gathering of knowledgeable and skilled individuals. They live in distinct communities and houses. Section 5 of the Frontier Crimes (Amendment) Regulation 2011 acknowledged the



Jirga, which is comprised of respected elders and tribal leaders. This sort of Jirga has a far broader scope of authority than any other type of Jirga. The qawmi Jirga may address any matter of national or local significance (Shahzada, 2013). In the case of the Quami Jirga, the most significant and delicate matters are handled, such as murder, assault, harm to another person, serious attack on the goodwill and character of a person, dispute over immovable property, theft, and robbery. Members of the Jirga analyze such matters with great care and then administer punishments by the cultural customs of the tribal people. Offenders who commit such crimes get severe sentences, which serve as guidelines for the rest of the general population (FCR, 2011).

Ulasi Jirga is a gathering of the elders from every family in a certain village or community. It is assembled to debate community property, rights, and distribution of irrigation water, as well as shared problems such as school site selection, etc.

The Jirga system varies from case to case, although the customs and traditions of many Pashtun tribes are generally similar. For instance, the parties are interrogated in their own language, Pashto. There is no linguistic barrier amongst tribal individuals (Miakhel, 2005). In a murder case, for instance, Jirga members weigh the advantages and disadvantages of penalties like Badal (direct punishment) and khoonbaha (blood money). The purpose of harsh penalties is to prevent the unjustified and merciless murder of innocent persons. Revenge is also forbidden once a verdict has been rendered (Bangash, 2004). Therefore, in murder instances, vengeance is done to maintain social equilibrium. It is the most effective method for preventing avoidable murders. At the moment revenge is taken, the victims' representatives or heirs are also present. They have the option of reaching a resolution or leaving the offender on the basis of a razi-nama (contract) or an apology. They may forgive the wrongdoer in

accordance with Islamic law's norms and procedures (Sindh Judicial Academy, 2008). This part of Jirga dispute settlement is directly based on Islamic law. It also puts Jirga concepts and processes into conformity with Islamic law. Typically, the female legal heirs of a deceased individual do not participate in the Jirga for resolving a murder case.

The concept of nanawate (forgiveness) is used in cases of murder or serious assault. This is the most important factor that addressed the case in qawmi. Nanawate members get authorization from Jirga members to visit the home of the victims. Then, they grant clemency in the house or in public. If victims believe that pardons should be granted publicly, then members of nanawate are obligated to do so in front of the general public (Jahan, 2013). Here, a nanawate Bajaur Agency example from thirty years ago is shown. In Bajaur Agency Tehsil Mamond, two households quarreled with each other. During the dispute, one individual was slain. According to local tradition, the elders of the region decreed that the murderer's house must be burned and his family must be exiled from the hamlet. The murderer's family requested sanctuary from the Malak of another town, who granted their request. After a number of years, an elderly member of the slain family passed away. The relatives of the murderer convened a Jirga of reputable elders for nanawate. The Jirga negotiated with the murder victim's relatives and demanded their forgiveness. They granted amnesty to all members of the murderer's family with the exception of the murderer, who was labelled a kashunda (the murdered family will kill him everywhere he is found). After about fifteen years, another member of the slain family passed away. The other family once again convened a Jirga of reputable elders to forgive the murderer. The members of Jirga (nanawate) and the local elders pleaded with the murderer's family for forgiveness. They complied with the Jirga's decision that the murderer's family be

compensated with blood money after accepting nanawate. Consequently, both families are reconciled, which is known as rogha (reconciliation) (Jahan, 2013).

Every participant is permitted to speak, subject to certain circumstances. Typically, the bulk of attendees just watch and listen to Jirga members. Members of the Jirga listen to each party in turn, and then a decision is made. Parties are permitted to discuss the incident or dispute's facts freely and without constraint. They submit the case's key facts and debate before the Jirga members. After the presentation of both sides' evidence, the Jirga members assemble in a circle and examine the facts of the case. They examine it in light of applicable laws and customs. Finally, they make a decision and declare a judgement that is final and binding on all parties.

## **2.9 Sarkari Jirga**

It is sometimes referred to as a Sarkari Jirga. The roots of the FCR, 2011 lie in regulations issued by British kings. Originating in the northwest region of India These leaders organized and trained the populace to combat Pashtun resistance. In reality, they wanted to suppress the Pashtun uprising in order to safeguard the British-assigned privileges. Since its adoption in 1901, the legislation remains unchanged for FATA citizens and is enforced by the Pakistani government. The Sarkari Jirga is established under Section 48 of the FCR, and the Political Agent appoints it to settle disputes (FCR, 2011). British control in FATA reached an accord with Pashtun tribes. They reached a settlement with the people and let them to settle disputes amongst tribes. They resolved disagreements between a group of people and the government by forming a local Jirga. The "Frontier Crimes Regulation of 1901" implemented this agreement. In accordance with this law, one delegate was nominated to manage and direct the Jirga (Chaudhry, 2011).

This form of jirga is convened in accordance with the Frontier Crimes Regulation (FCR) of 1901. A political agent, his assistant, or any political administration official with the authority of a magistrate may appoint a committee of elders to hear a criminal or civil matter.

The FCR empowers the Jirga to decide civil and criminal issues arising from blood feuds involving Zan, zar, and zamin (women, riches, and land), as well as any other matters harming the Pukhtoon dignity and way of life. This Jirga may impose a maximum sentence of fourteen years in jail.

In accordance with FCR 1901 section 5(2)(b) council of elders, as revised in 2011, the Jirga is composed of three or more reputable elders nominated by the Political Agent or District Coordination Officer and led by an Assistant Political Agent. In small situations, the government often appoints Jirga members, however in significant cases, the disputing parties generally reach an agreement on the Jirga members' names (Yousafzai & Gohar, 2012). Members of the Jirga determine the Jirga's meeting time, location, and date. A tribunal has also been established to examine and deal with Jirga decisions at the appeal level (Wardak, 2004). In accordance with subsection (1) of section 55-A, any judgement may be appealed to the FATA tribunal within ninety days if challenged.

Here, the selection of Jirga members is crucial because Jirga members must be knowledgeable and skilled. If one side picks a person who is ineligible or incompetent to be a Jirga member, the issue's decision or outcome may become inadmissible and hence illegitimate. There are no established criteria for Jirga member selection. However, they must be aware of the location, customs, traditions, and regulations of Jirga. The prominent Malak's and Khans of the region cannot corrupt the proceedings of the Jirga. They are also required to consider the Jirga's conclusion and are

prohibited from causing disruptions. Parties may determine and suggest the number of Jirga members if disagreements emerge in the selection of Jirga members. If a party cannot participate in Jirga sessions, it is expected and obligated to appoint a representative (s). In case of dispute, the Jury or number of experts may be reconstituted for the continuation of Jirga procedures.

### **2.10 Majlis or Shura**

Both the Persian term Majlis and the Arabic word Shura have similar connotations to Jirga. Since 1978, in Pakistan, the word Shura has been used primarily to councils of different levels among the mujahideen and muhajireen in order to give anti-communist activities an Islamic flavor.

### **2.11 Case Law Studies of Jirgas in Pakistan and the Opinions of Pakistan's High Courts and Supreme Court**

In PATA and FATA, i.e., Provincially Administered Tribal Area and Federally Administered Tribal Area, all jirgas convened with the court's approval are acceptable to the courts and have binding force. All disputes are addressed by jirga with the agreement of all parties, and all parties choose jirga members. After a jirga decision has been made, it is up to the Political Agent (PA) to either ratify the decision or convene a second jirga. The whole procedure is governed by the Frontier Crimes Regulation of 1901. Similarly, under another legislation, the Arbitration Act of 1940, the parties must obtain court approval to resolve their issue outside of court. An arbitrator is selected for this purpose, who then provides a report. His report is subject to court confirmation, and if the court approves it, it becomes an award. It is crucial to note that section 89-A of the Code of Civil Procedure of 1908 also allows for expedited justice via Alternative Dispute Resolution in which the parties resolve disputes outside of court.

4.12 Jirga Punishment Is Not an Honor

On the opposite side of the customary jirga in the judgement of formal courts, it is said that the jirga does not have the authority to impose punishment on litigants or criminals, and that only formal courts have the authority to figure out and impose punishment on criminals. Before the matter of Maj. (Ret.) Mian Badshah vs. Maj. (Ret.) Bahadur Shah in Pakistan's Supreme Court. Justices Nasim Hasan Shah, Acting Chief Justice, Muhammad Afzal Lone, and Sajjad Ali Shah, JJ, ruled that

"Award parties sending their dispute for determination to Jirga in line with prevalent social tradition, and Jirga's judgement did not qualify as an award within the meaning of Section 2(b) of the 1940 Arbitration Act." As the penal code of Pakistan article S.2 (b) does not consider the award of punishment according to the definition of the constitution of Pakistan and the Pakistan penal code, this court decision has prevented the customary court of jirga from awarding a punishment to any person. Therefore, in criminal and civil disputes, the court decisions have marginalized the local indigenous law awarding punishments to them (Bahadur & Khan, 2013).

### **2.13 Jirga in Contravention to the Constitutional Provisions**

Similarly, it was declared in a landmark judgement by the Sindh High Court that declared the jirga system in Sindh to be unlawful, illegal, and contrary to the provisions of the Constitution and the law of the land in a cited case 2004 P Cr. L J 1523 [Karachi] in a title case involving Mst. Shazia versus Station House Officer and others. In addition, Justice Rahmat Hussain Jafferri declared that the Jirga system is neither a creature of the Constitution or legislation. Jirga is not a parliament and cannot declare a legitimate marriage conducted in accordance with the norms of the applicable law to be invalid or unlawful." Whereas it was further determined that jirga is "not protected by any law functions, which are exclusively to be performed by the Courts of law are being performed by the Jirgas usurping the power of the Courts —

Jirgas as such are a parallel judicial system that are unlawful and illegal and are not protected by any law. As Jirgas decisions are final, no appeals are lodged against them, which violates the notion of natural justice (Mehmood & Mobeen, 2019).

#### 4.14 Jirga Decisions under the FCR and High Court Review

It was held in the other cited case P. L. D. 1950 Lahore 126 by Justice Muhammad Jan in the case titled "Langar Khan vs. the Crown" in the Criminal Miscellaneous petition No. 1287 of 1946, decided on 1st May 1947, under sections 491, 498 and 561-A. Criminal Procedure Code, praying that the petitioner be set free and the legal proceedings be quashed. He concluded that the Order of referral to Jirga by the Deputy Commissioner-Order is an executive act that cannot be reviewed by the High Court. In areas where the Frontier Crimes Regulation applies, the Deputy Commissioner's order to send a case to a Jirga is an executive act that is not subject to review by the High Court. Further, it was noted that a person held under Section 491 of the Criminal Procedure Code (V of 1898) may be invoked. Under Section 491, clause (b) of the Criminal Procedure Code, the High Court may only release a person free if he or she is unlawfully or wrongly held. Since an order of reference to a Jirga under the Frontier Crimes Regulation is not subject to review by the High Court, the High Court is unable to determine whether the reference to Jirga was lawful or not; consequently, it cannot be determined that the detention resulting from the Jirga's decision was unlawful or improper.

Justice Muhammad Ishaq Khan and Nazir Ahmad Bhatti, in the cited case PLD 1989 Peshawar 2011"Moambar, the petitioner versus Additional Secretary Home for Government of the N.W.F.P (Now Khyber Pakhtunkhwa), unanimously held that the Deputy Commissioner must accept the majority or unanimous findings of the Jirga. Similarly, the Commissioner would not have the authority to reject the unanimous or

majority decisions of the Jirga while resolving an appeal unless he was of the view that the processes were flawed. This shows the binding effects and significance of jirga (Cheema, 2021).



## CHAPTER 3

### METHODOLOGY

#### **3.1 Introduction**

This chapter describes the exhaustive method used to conduct a thorough research of people's experiences with official and informal legal systems in South Waziristan.

The next chapter covers the methodological methods and techniques used for the study of legal plurality in practice in Pakistan: a case study of South Waziristan.

#### **3.2 Data Collection Techniques**

Two methodologies were used for data gathering and analysis of the informal judicial system. These two methods were content analysis and creating rapport. The use of these two tools is described in the lines that follow.

#### **3.3 Relationship Building**

As a new system of justice came into effect in the region in 2018, it is much more difficult to locate families and individuals who have filed petitions and FIRs against their opponents with the courts and Thana police. I initially went to the local police Thana to get acquainted with the individuals who attended the site for case registration and to inquire about the procedure and arrival of people for their cases. Very few FIRs were filed and registered by individuals against their disputants at the police station, but it was difficult to get information about the case since so many people attempted to file FIRs and petitions in DI Khan and Tank for the settlement of their issues. So, by snowballing, I was able to learn from individuals who shared their tales through another individual that a person had filed a lawsuit in thana and is now in court pursuing their case, but this was very unusual in a tiny group. Through

networking and asking individuals who frequent courts for their cases, I was able to gain people's trust and learn about their courtroom experiences.

### **3.4 Data Tools**

This section describes the qualitative research methods used in the study.

### **3.5 Sample**

The goals of informal social justice are intentional and well-defined. Due of this, they attract people from many backgrounds and races. Differential Justice In this context, jirga is comparable to other kinds of informal justice across the globe. It has generated much criticism and raised eyebrows. I chose a sample that might offer a clear image of the jirga and formal court justice for those who are familiar with it in order to comprehend it and go into the specifics of the jirga. This is an intentional sample, since it allowed me to contact individuals who were aware of the operation from its inception. In this context, sampling on purpose might be characterized as follows: People were approached via purposeful or multi-stage sampling. It targeted just a small part of the populace who had handled their conflicts via Pakistan's traditional jirgas and official court system. This sampling method involves the purposeful or deliberate selection of a particular sample to represent the entire population who participated in the jirga and were well-informed about the social, political, and economic structure of the area, as the nature of the topic did not permit me to include those who were unfamiliar with Pashtun culture. They participated in a total of sixteen (16) interviews and two (2) focus group discussions. As a sample population, I have chosen respondents who have used both jirgas and formal courts for the settlement of their conflicts.

The second problem was that many interviewees mistaken the interviewer for a journalist or a member of the media. As a consequence, I was able to conduct in-depth personal interviews as well as in-depth conversations concerning the organization of jirgas and the contemporary legal system in districts that had been amalgamated.

### **3.6 Collection Of Data**

I gathered data for the study using the following anthropological methods and techniques:

### **3.7 Participant observation**

During my interviews with several of my study participants, they were asked by some disputants to arbitrate their disagreements (detail cases of the arbitration have been given in the data analysis section). They would inform them that he will call them after completing the interview with me. After completing the interview, I wanted to participate in a jirga to see the proceedings, discussions, and events firsthand. I was able to engage in jirga procedures thanks to jirgamars. After participating in a jirga, I would record the circumstances of the disagreement, the number of participants, the location of the adjudication, and information about the disputants and their testimony. This rigorous manner assisted in comprehending the real occurrences of jirga and its framework.

As the majority of participants were not educated nor acquainted with the court system, I was able to conduct interviews with them during their official court appearances. They just visit their attorneys and pay legal fees at attorneys' offices. When I questioned them about their experiences, they would answer, "You see us here, we don't know how the case is progressing, and the ultimate verdict will determine our destiny." When questioned about their jirga experience, everyone could

predict the outcome of their argument since jirga proceedings took place in front of the participants. Participation in the actual event thus offered more information than interviews.

### **3.8 Interviews with individuals and focus groups**

Sixteen and two focus group conversations were conducted with individuals chosen based on their knowledge in both legal systems functioning in the region, and they discussed their experiences and replies to my extensive interview guide in detail.

### **3.9 Interview Guide**

A comprehensive examination of the issue enabled me to design an interview guide that kept me on topic throughout focus group and individual interviews. I investigated the topic from every angle in order to offer a thorough analysis. This allowed respondents and informants sufficient time to answer to each question in a germane, substantial, and meaningful way. For me, a solid interview guide was vital for gaining a deeper understanding of the situation and fostering a stronger relationship between the interviewer and interviewee. My interview guide consisted of pertinent questions pertinent to my study subject.

## CHAPTER 4

### LOCALE

#### 1.1 Wana Karikot on google map.



Google Map: Wana Karikot:

WA or Wana is the major city in the South Waziristan District of Pakistan's Khyber Pakhtunkhwa province. It is the summer headquarters for the Agency's administration, with the winter headquarters being in the adjoining Tank District of Khyber Pakhtunkhwa province. Wana is one of the three subdistricts of South Waziristan, alongside Ladha and Sarwakai. The Wana subdivision is subdivided into three tehsils: Wana, Toi Khwla, and Bramall

During the reign of the British Empire, commencing in the late 19th century, the British erected a cantonment on the Wana Plain that served as the headquarters for British soldiers in South Waziristan until they left India in 1947 after the partition. During their administration, the fierce Pashtun tribes of Waziristan, who were a

component of the Karlanri Tribal Confederation, caused the British considerable trouble. In the 1930s, the British, who were referred to as "foreigners" at the time, faced a full-scale insurrection in Waziristan. The British had up to 18,000 soldiers in and surrounding Waziristan throughout the 1930s, with Wana serving as the advance headquarters and airstrip (Gaddy, 2015).

Afghanistan is bordered to the northwest by Federally Administered Tribal Areas, while Pakistan is separated from Afghanistan to the east by the Durand Line. Baluchistan is present to the south of Khyber Pakhtunkhwa, which is located to the east of the Durand Line. The territory that shares a border with Khyber Pakhtunkhwa and Baluchistan and is also known as FATA. FATA consists of seven tribal agencies (districts) and six frontiers reg (FRS): FR Peshawar, FR Kohat, FR Banu, FR Tank, FR Lakki, and FR DI Khan. Each agency is led by a political agent, whilst the KP governor oversees the whole FATA territory.

The tribal territory is mostly inhabited by Pashtuns, who also reside in the adjacent provinces of KPK and Baluchistan. After the merger of FATA and Khyber Pakhtunkhwa, tribal territories are no longer administered by the federal government and are now regarded a permanent part of Khyber Pakhtunkhwa province. Ex-literacy Fata's rate is much lower than the national average, which is acceptable given that the national average is 56%. According to a literacy rate study, the territory of FATA has a literacy rate of 22%. About 35% of males and 7.5% of women are educated, compared to 44% of women nationally. FATA was directly administered by the federal government of Pakistan under the Frontier Crime Regulations (FCR) (Jan, Xie, Qazi, Javid, & Haq, 2022).

Along the Durand line in 1901, Lord Curzon established the North-West Frontier Province (NWFP) from the tribal buffer zone of the ancient Punjab Province. This

border was called after the dividing line between British India and Afghanistan's monarchy. The administrative strategy was implemented via indirect laws that placed tribal members of the NWFP inside the new legal framework of the Frontier Crimes Regulation (FCR). The social order was preserved by acknowledging the authority of Malak, an elder of the tribe (elder). The elder of the tribe enforced the laws and regulations. This preserved the sovereignty and traditions of the Pashtun tribe. The function of tribal leader is a crucial topic of discussion here. Pashtunwali (the Pashtun way) was a code of honor that stressed honor, vengeance, and hospitality as a method of upholding social order. The division followed the new method of administration, which classified the existing society's seniors. This classification was subject to the authority of the tribe's elder. Malak's included the two paisay Malak, the twenty paisay Malak, the lungi Malak, and the five cent Malak. People would bring their troubles to these Malak's, which had distinct sets of authority. The matter was first submitted to the governmental agents of the area, and subsequently it would be referred to the tribal Malak's.

#### **4.1 Description of the Field Site and Village Karikot**

This anthropological ethnographic research was undertaken in the South Waziristan locality of Kori Kot Wana. Tehsil Wana in South Waziristan has the village of Kari Kot. The village is five kilometers from Wana Bazar and five kilometers from the Pakistani military installation in Wana. The location is southwest of the Wana camp. In the settlement to the south of Karikot, a seasonal watercourse runs. As it is connected to Wana city, which is connected to Karikot and Ghwakhwa (name of place) by a mini-highway connecting Wana Bazar and Karikot, the hamlet has a vital location in the region. Mini highways are single-lane roads used for local transportation.

The current study was done at Karikot, which is located in Tahsil Wana, South Waziristan Agency FATA. Waziristan is very significant due to its strategic position. It is found at Afghanistan's border. It is a tribal region administered by the federal government, and its name reflects its administrative structure. Consequently, the region is known as tribal regions of FATA (Federally Administrated Areas), or FATA. The area's inhabitants are Pashtun, who share a shared culture and language, Pashto, and are separated by their lineage. Division by tribe but unity in language; they call themselves Pashtuns or Pashtuns or Pathans in literature. Due to differences in dialects, locals pronounce Pashtuns as Pashteen. Mehsud's, Ghilizai, Sulman Khail, and Wazir are the principal Pashtun tribes of the South Waziristan agency; they are also the most populous tribes in the South Waziristan region. According to historical chronicles and oral history of the agency, Arvan, Wazir, Battani, Marwat, Sheikhs, Povanda, and Suleiman Khail settled in the agency for the first time, and it is thought that the Marwat tribe, presently established in Lakki Marwat, came in the agency before the Wazirs.

FATA and particularly the South Waziristan district (formerly the South Waziristan agency) remained under the hands of several administrations and empires. Due to its position on the border between South Asia and central Asia, the region was historically disputed between several contending powers. To reach south Asia or central Asia, the connection and routes connecting these areas cross via these rugged and inhospitable terrains. It remained under the jurisdiction of the Persian and Mughal empires. Waziristan was a part of the Mughal Empire, and Bahadur Shah Zafar, the son of Aurangzeb, visited the region in person and accepted tribute from the Wazir and Dewars. No kingdom has ever been able to subdue the tribes of Waziristan.



During the First World War, the British were compelled to redeploy India's soldiers abroad. The deployment of Indian battalions in British colonial overseas territories produced a vacuum and a lack of authority over tribal and Indian lands. Local tribesmen were given the opportunity to evict British military and administrative personnel from their region. They assaulted the forts and outposts within range. During 1918-19, they systematically assaulted every important position. Including Spin wan, Kajurai, Bova, Totnarai, Shpana Pasra Wana, Sorwekie, Tanani, Moghuel Kot and Toikhola. Their reluctance and revolt opened the way for their involvement in liberating Afghanistan and determining the border between Afghanistan and British India. Wazirs and Mehsuds collaborated to assault British forces at Mughal Kot, Tank, and Apozai in the same year. Apozai settlement once known as Fort Sandamon is now called as Zhob (now part of Baluchistan). In which the British forces suffered severe shocks and substantial officer losses (Anwar, 2013).

During British administration, it was a significant Mujahidin stronghold; here, Maula Povanda and Mehsud Ghazis murdered a British officer. Kariko's name is a mixture of the terms Kari and Kot. Kari signifies seasonal watercourse, whereas Kot indicates home. The region's climate is arid. The winter is chilly and the summer is sweltering. It gets average precipitation. In winter, icy winds blow from the south near Zhob (The District of Baluchistan). It was administered according to the F.C.R. (Frontier Crime Regulation). The head of local governments is a Political Agent, however with the 25th constitutional amendment, the legal framework and administration of Pakistan have been extended to the region.

#### **4.2 Historical Context of the Area**

The study site Kari Kot is further subdivided into many sections. This segmentation is based on tribes and subtribes. In the hamlet, there are members of the subtribes Maly khet, Masti Khel, Shamshi Khel, and Dotani, who together belong to the Wazir tribe.

Kari Kot is located five kilometres southwest of Wana city and the army camp. Kari Kot is situated on the main route between Wana and Ghwakahwa. The region is mostly Muslim; about all of the population is Muslim. Historically, both Hindus and Muslims lived in the area. At the time of the subcontinent's split and the formation of Pakistan, the Hindus went to India. This left the region with solely Muslims, who belong to the Pashtun/Pashtun ethnic group.

Population of Karikot is roughly 5000 people. According to Pakistan's Election Commission, there are 3,200 registered voters in Kari Kot. 1945 males and 1255 women comprise the total population of 3200. Malikhel and Shamshikhel make up Karikot's population. Mastikhel and Dotani tribesmen (The Local Government, Elections and Rural Development Department, 2022).

**4.5 Climate** The climate in the hamlet of Kari Kot is dry, with very cold winters and mild summers. From November through February, it is chilly, and in December and January, powerful cold winds blow from the Zhob side (the district of Balochistan), disrupting the daily lives of the residents. As springtime, March and April are extremely nice months. From May through September, the temperature increases somewhat. This region gets monsoon precipitation in July and August.

#### **4.3 Dress Patters**

Shalwar kameez is the predominant attire; men wear a traditional hat, kameez, and Patiala shalwar, as well as a chadar draped over one shoulder. Thus, the region's elders also wear turbans. They wrap their body with a burya shawl when they leave

their houses and wear long kameez with long laces and shalwar. Additionally, little girls wear frocks and shalwar's. Dresses (Ghanr Khat) are worn by elderly ladies both inside and outside their houses. People who wear pants and a shirt are seen as cowards.



Researcher Photography: Cultural Dress of Men in Waziristan

#### **4.4 Food Practices**

The region's eating habits are particularly simple and consistent. They consume an unreasonable amount of wheat in their daily diet. The breakfast consists of tea (milk tea) and Paratha, a wheat bread. The typical meal consists of vegetables with "naan" Naghan or Postai. Four or five times a day, the inhabitants of the study area consume tea. The dinner consists of vegetables, pork, and "Naan." Surprisingly, rice is not a staple in their diet, despite being one of the country's most popular foods. Every supper is freshly prepared. Typically, the family eats together while seated on a mat on the ground; all family members eat together. The majority of their diet consists of beef and potatoes. Children drink milk and consume the same nutrients as their

parents. Wealthy and affluent persons routinely consume beef. There are several delectable meals that are prevalent in Pashtun culture. Some of them are widely utilized and well-liked by everybody, such as "Soobath." Literally meaning "Friend's kitchen," "soobath" is prepared by friends, and it is a dish that all Pashtuns like immensely. On bowls or plates containing little slices of wheat bread, beef soup with various additional components is served. This is known as a "soobath." There are more unique ingredients used in everyday cuisine, such as maize bread locally known as "doday" or "coke," which is also eaten with "Tharwaipay" lassi. The maize bread doday is often consumed throughout the day.

#### **4.5 Languages**

The whole population of the area speaks Pashto with minor dialect differences; each caste has its own unique dialect.

#### **4.6 Settlement Patterns**

There are a number of settlement patterns in the town. In addition to economic considerations, the number of male family members influences the home layout. Typically, a family with more male members has a well-built and kept home. Male members are supposed to construct the dwelling and offer a safe location for their female members. Typically, dwellings have high exterior limits that may reach heights of 15 feet (5 metres) and widths of 3 feet. The majority of dwellings are single-story structures with rooms on both sides. On the basis of building materials, dwellings in the region might be classified as Kacha or Kacha-Pakka.

#### **4.7 Kacha Residences**

The Kacha homes are mostly constructed from mud. There are four or five rooms with an open courtyard, depending on the size of the family. The rooms are occupied

by family members. A large space on top of a small nation's yard is designed for livestock. Most often, the kitchen is separated from the rest of the home. On one side of the yard, distant from the family rooms, a toilet is built. Individuals have constructed Kacha homes since they are unable to erect block and concrete structures.

#### **4.8 Kacha-Pakka Houses**

These dwellings are constructed from mud, blocks, concrete, and iron. The partitions are composed of mud, and the exterior wall might be one metre wide and five metres tall. The chambers are constructed from concrete blocks and level concrete blocks, with a T. Iron roof. The aforementioned homes have between four and five rooms. The single couple shares a single room. The majority of semi-Pakka homes include a spacious open courtyard. This is the main point of the day's activities. In one area of the courtyard, nourishment is prepared. In the early summer morning, sofas (Khattona) are placed in the courtyard, and whenever time permits, they are used there. In the winter, the couches (Khattona) are placed in the courtyard during the day to enjoy the warm sun, and at night during the summer. There is a designated area for male visitors known as the Bethak or Hujra.



Researcher's photography: *Soobath*

#### **4.9 Economic Organization**

Small bazaars Village Kari Kot features a tiny mart with fifteen to twenty-five stores.

Some of these establishments are constructed using bricks and cement. These stores sell the essentials for everyday living. People often engage in idle chatter at the market during their free time. There are two tea hotels where the locals spend their time playing cards.

#### **4.9.2 Occupation**

Most villagers are illiterate; thus, their skill level is low. The majority of inhabitants are involved in commerce and agriculture, which are mostly subsistence-based. Agriculture and remittances from Overseas Pakistanis residing in this region are the primary sources of income. People are involved in agricultural operations and do work that does not demand a great deal of ability. There are various vocations that are preferred by the majority of individuals in addition to driving. Transportation is a field associated with Pashtun/Pukhtoon across the nation, and residents of this region have a particular interest in it.

#### **4.9.3 Watering**

The only irrigation supply in the region is a tube-well. The communities have created committees responsible for the upkeep and distribution of water for agricultural and domestic usage. For permanent maintenance, each clan is responsible for contributing manpower; if a clan member is out from the village and unable to provide manpower, his family must pay nagha (daily salary to another person to pay duty on his and his family's behalf) to have the broken tube wells fixed.

#### **4.10 Religion**

The whole population is Deobandi Muslim. There is no other set in our region.

#### **4.11 Mosques**

There is one large Jamia Masjid (Mosque) in the hamlet of Karikot where five daily prayers and special prayers such as Eid prayers, prayers for the rain, and Jumma prayers are offered. The locals perform their prayers at the mosque with Jamaat on a fairly consistent basis. Each hamlet is inhabited by people of close extended families. Every extended family attempts to establish a mosque independent from other households. Every home in the neighborhood has a mosque and an Imam to lead the five daily prayers and guide the community in religious rites. There are a number of mosques in Karikot, but all significant religious events take place in the principal Jamia Masjid (Mosque).

#### **4.12 Political Organizations**

##### **4.12.1 Political parties**

All parties are allowed to run for office. PPPP (Pakistan People's Party-Parliament), ANP (Awami National Party), Muslim League (N) and JUI (Jamiat-e-Ulma Islam), and PTI (Pakistan Tehreek-e-Insaf. Village Karikot is within the jurisdiction of three national assembly seats; in the 2018 election, the JUI candidate Maulana Abdul Malik and two independent political workers from South and North Waziristan won seats following a fierce struggle.

Karikot is a Pashtun-populated location where several folk games are played. Some of these sports are seasonal, played during a certain season, while others, such as cricket, football, and volleyball, are played throughout the year. Given that the region has a male-dominated culture, is it any wonder that the majority of outdoor sports are

played by boys and the majority of indoor activities are played by girls? In addition to the hundreds of diverse folk games, national and international sports like as cricket and football are also played in the study region. Some are listed below: Khsaey is a game resembling Kabaddi. The majority of players of this game are young children. It is contested by two teams. Each squad has six to eight members. Prior to the commencement of the game, a certain patch of mud is appointed for a member of the defensive team to successfully touch. All participants are required to utilize just one foot for running and playing in this game. The foot is firmly grasped in the opposing hand's claw. Throughout the game, one player must touch the location. This player is protected by his teammate so that he may reach the destination safely. If, before to striking the designated location, the player is compelled to release his grasp on his foot, the turn ends.

#### **4.12.2 KalaKankia (Gulli Danda)**

The scarcity of playgrounds and amusement parks for youngsters provides local games, which need basic and readily accessible materials, greater significance. The local game Kala Kanika is favoured by young people and is often played throughout the winter. Technically, two wooden sticks are required; one stick is longer than the other. The size of the hockey sticks varies on the age and height of the players; younger children utilize smaller, more manageable sticks. Typically, the shorter stick is around 9 inches long and the larger stick is approximately 2 feet long. There is no limit on the amount of players.

According to the rules of the game, each team gets a turn. One member of the team attempts to pull the bigger stick into the air and strike the smaller stick (which is laying on the ground) with a single blow. As the little stick rises into the air, the player attempts to strike it simultaneously before it returns to its original shape. Each



participant gets three opportunities to hit and toss the little stick as far as possible. The objective is to toss the little stick as far as possible, preventing the opponent from returning it to the designated location and ending their round. Before the game begins, either the inning is determined by a coin toss or both captains are requested to hit the short stick as many times as possible in the air before it falls to the ground. The team that hits the short stick the most times before it lands gets the first turn.

#### **4.12.3 Chandrai**

This game is only played by women and is regarded as the feminine game. Chandrai is the name of the diagram that resembles a parallelogram or rectangle and is made with chalk or stone on the ground or floor. Six distinct boxes or cell cases are constructed in two columns and six rows. In addition, a circular striker made of baked clay or stone is used. If the striker touches the line, it is a foul and the player's turn ends. The remaining members then begin playing with their feet. This game is played by two teams of females, each consisting of three to four players.

#### **4.12.4 Ghoty**

This is also a feminine game that is played by girls of all ages. In this game, five adjusting stones are grabbed and played by either four different players or two players in turn. One of the stones is launched with a whirling motion, while the other is quickly grabbed in one hand before falling to the ground. The thrown stone is then retrieved with the same hand. Assuming the get is dropped at the end of the round, this game is played entirely with one hand.

#### **4.13.5 Ghaliawenke (hides and seek) (hides and seek)**

"Ghaliawenke" is a game of hide and seek. One of the boys tasked with capturing the other boys closes his eyes for a bit, the other boys hide in the area, and then the kid opens his eyes and begins hunting for the other boys. However, he maintains a close watch on his peers as they attempt to touch the place where he had previously closed his eyes. Any boy apprehended before reaching the post inherits responsibility for apprehending others, while the first kid is relieved of duty.

#### **4.12.6 Modern Amenities**

5.1 Education There are two forms of education Both professional and casual. Religious education is a component of formal education. The village's older generation is almost illiterate; the majority of villagers get just an elementary education. There are now three high schools, one middle school, and one elementary school in the study area. There are other intermediate schools for females in the vicinity, while all three high schools are for guys. Children in the community get religious instruction from the Imam of the Masjid in the evening since religious education is a priority.

#### **4.13 Medical facilities**

There is a lack of current medical personnel. There is neither a government health facility nor a certified private expert. There are few pharmacies run by untrained technicians who spend two to three months with a specialist before opening their own pharmacy in the community. Individuals transport extremely ill patients to a distant district hospital that takes a long trek. The absence of modern medical facilities promotes the use of traditional therapeutic methods, such as Hakim, Peer, and shrine visits. Villagers also get amulets and Dum for the treatment of diseases. The government does not give free health care to drone-injured persons. They treat their

patients with the same unqualified medical care providers as the villagers, who are responsible for the deaths of several severely wounded patients.

#### **4.13.1 Drinking Water**

The residents of the community consume pure water. They have erected a tube well inside their dwellings. Additionally, they employ tube-wells for irrigation.

#### **4.13.2 Electricity**

The region's primary source of illumination is electricity. 75 percent of the village's inhabitants have access to electricity. Additionally, gas cylinders and oil lights (Lanterns) are utilized for illumination. Now-a-days solar system is quite renowned in the local region.

Sanitation The majority of households have pit latrines in their dwellings, which are designed primarily for women and children. Men go outdoors, and for this reason, each family unit has a designated space. The sanitation is typically adequate, apart from the previously told clustered residential areas.

Post office Wana camp has just one post office. The post office is housed in a formal structure; there is a letterbox in front of the office and another in Wana market. A proprietor of the store serves as a postal worker.

Communication Village is equipped with latest methods of communication. A communication hub, such as a telephone and cellular network system, is located close to the major city, allowing residents to use all contemporary forms of communication. The service is only accessible throughout the day. People in the community love listening to the radio on a regular basis. The widespread use of radio is enabled by the convenience of radio receivers and their greater accessibility than other modern goods such as television, the Internet, and computers, etc. Almost every home in the

community is equipped with a radio and tape recorder. Since the hamlet is electricity, several residents own televisions and CD players. The majority of people listen to FM96, the local radio station, as well as Pakistan Radio station. The (peezwalaye bazor) is an extremely popular Pashto radio show on FM-96Radio. The government has also given the population with telephone service, and mobile phone service is operational in the region.

## CHAPTER 5

### THE EXPERIENCE OF NON-COURT DISPUTE AND COURT RESOLUTION MECHANISMS

#### 5.1 Introduction

Introduction After the unification of FATA and Khyber-Pakhtunkhwa, this chapter focuses on the experiences of individuals in both legal and informal judicial systems.

#### 5.2 Alternative Dispute Resolution Procedures

Pakistan, like other postcolonial cultures, has a long history of diverse non-state conflict settlement systems including popular justice. However, "popular justice" cannot be separated as an exclusively post-colonial phenomena or as a peculiarity of emerging nations. Sally Engle Merry has, for instance, defined and recorded a vast array of "popular justice" practices in quite varied locales throughout the globe. She emphasizes the "fundamental temporality" and "historically developed and evolving nature" of popular justice in contrast to the formal legal system's far greater continuity and stability. She also highlights the contradictory character of the "use" of popular justice, which has at times been part of a government policy to make the state more accessible and to promote "law and order" by expanding its power to hitherto uncontrolled territories and sectors. Nonetheless, it has often been a means of protest against the state and its judicial system by "subordinate, disadvantaged, or marginalized groups" as "a counter legal order" or as "more spontaneous acts of communal judgement and violence."

Thus, "popular justice" might be defined as "a judicial institution situated at the border between local order and state law, with unclear and changeable relationships to

both." It is separate from both, but connected to both; nonetheless, in cultural terms, it is "comparable to indigenous law and contrary to state law." The purpose of "popular justice" is to make the legal system more accessible to the average person in terms of understandability, cost (both money and time), and proximity. Therefore, it is used mostly by the more vulnerable and disadvantaged, such as "the urban poor, rural peasants, working class, minorities, and women," as opposed to the elite who favor the official legal system.

My favorite observation from Sally Engle Merry is that "the area of popular justice, between state law and indigenous ordering, is a disputed zone." This contestation and pull between the two orders causes the form and meaning of popular justice to evolve throughout time. Consequently, "while popular justice is often brought under the jurisdiction of state law, new forms of popular justice based on local, non-state modes of ordering constantly emerge and challenge state law." In addition, "the context changes during state law procedures." In all of these traditions, "the development of popular justice is coupled with a political agenda and a vision of some type of social reform, and it is backed by certain class interests," it is crucial to note. Significantly, "popular justice creates a new philosophy of conflict resolution based on nonviolence and hostility to law's brutality" The majority of its forms emphasize "consensual, peaceful dispute settlement." Whether it can shift power relations or not, it is "ideologically potent in its potential to create a peaceful philosophy for regulating conflict."

As an existent reality, a suggested alternative, a component of possibly complex formal-informal hybrids, a criticism of the current quo, and a window into what people truly desire from the judicial system, modalities of "popular justice" in a

society demand thorough consideration. Ignoring "popular justice" neither eliminates it nor eliminates the underlying social unhappiness and discord that the official legal system fails to address. This necessitates a deeper comprehension of whether and how a chasm might emerge between public aspirations and official judicial dispositions. In addition, it is essential to comprehend how modalities of popular justice and alternative conflict resolution strive to bridge the gap between people's real "legal experience" and "legal awareness."

In addition to developing an empirical understanding of the various dimensions of the interactions of the average Pakistani citizen with the formal legal/court system, the Karri Kot ethnographic endeavored to document their experience and perceptions of the available non-court dispute resolution mechanisms and modes of popular justice. It also investigated their motivations for not researching them or for not exploring them initially. However, the same was subsequently abandoned in favor of the courts. The qualitative feedback provided by the Karri Kot ethnography revealed crucial information on the motivations of people, as well as, if they favoured the non-state despite resolution procedures, the reasons for their inability to effectively employ the same. A considerable proportion of respondents stated both a preference for out-of-court conflict resolution processes and a disfavor for the courts, citing the latter's usage for frivolous, coercive, or illegal purposes. According to one responder, "if out-of-court conflict settlement processes were effective, no one would ever go to court" According to a second responder, "genuine issues are addressed outside of court, while the remainder are litigated in court."

In addition, a number of respondents provided a variety of explanations for why they believed the non-judicial conflict resolution systems in South Waziristan community

no longer functioned. The disintegration of conventional social and normative frameworks was commonly cited as the primary contributing factor to these methods' efficacy. According to one responder, "out-of-court processes are ineffective because there is little regard for the elderly." We are entering an era characterized by the disintegration of the social fabric and ethical foundation." Similar sentiments were expressed by a second respondent: "The elders no longer agree to attempt to address the people's conflicts since no one listens to them anymore." In this period of egotism, materialism, and anarchy, people are far less combative. God should preserve us from physicians and lawyers and everyone else."

Another respondent explained why it was so difficult for various non-court institutions in South Waziristan to enforce their decisions: "The times have changed. Tribes and subtribes (clans) may no longer use social exclusion, communal pressure, and public shame against those who violate the rights of others.

According to one respondent, the lack of implementation of decisions was the primary reason why so many people had stopped relying on out-of-court dispute resolution mechanisms; "when someone does not listen to an out-of-court dispute resolution mechanism's decision, there is nothing that can be done." Another responder provided an apparently different argument, but again emphasized the difficulty of compelling disputing parties to comply with the rulings of out-of-court conflict settlement processes. According to him, "where parties are of unequal resourcefulness, out-of-court processes are ineffective since the strong are least concerned by the unfavorable result and may simply disregard it."

While the preceding responses focused on the apparent decline of non-court mechanisms, other interviewees' responses were marked by a strong sense of



nostalgia. These interviewees believed that some of the current dysfunctional non-court dispute resolution mechanisms had provided numerous advantages in the past. One of them said, "the media has portrayed the jirga in a very bad and unjust light." They had several benefits." Alternatively, "out-of-court settlements should be more methodical and binding," was advocated. The Pakistani legal and judicial systems are very complicated, with an excessive number of superfluous procedures and defects that cause delays. Another suggestion was that "young women have come to believe that courts offer them with more protection. They no longer agree to settle their conflicts outside of court for this reason. Instead of having courts, sharia law should be implemented." Nonetheless, quite a few respondents saw the out-of-court conflict settlement procedures, particularly the more conventional ones, with a far more critical eye. According to the opinion of one female responder, Jirgas do not listen to women. Therefore, our presence in court is desirable." Another female responder said, "Child custody conflicts are really delicate matters, and one cannot take the chance of using out-of-court techniques. Female judges are more understating and make kinder rulings." A third set of respondents had the same level of skepticism about the independence and justice of both courts and non-courts methods. According to them, the maxim "might makes right" applied virtually always, regardless of whether the dispute was resolved in or out of court. A female respondent said, "women are constantly repressed, whether in or out of court." Others, after pointing out the deficiencies of the courts, went on to argue, "One cannot even expect for justice outside of the courts. Similarly, there is an instance of "jiss ki laathi, us ki bhains" (a common saying in Urdu which literally means that whoever has a large stick own the cattle).

### **5.3 Land Dispute Resolution Through Mechanisms Other Than Courts**

"Two families of Karikot wanted to split their property, and when the situation became complicated, they sought to settle the issue via the court system," one respondent said in relation to the three conflict resolution procedures under the category of Land Disputes. As the court has no such land or income records, they have instructed their sarkari jirga to decide the dispute. After a few hearings and sessions, the Sarkari jirga (legal customary jirga) likewise concluded the subject without a resolution. Last time the parties attempted to reach a local jirga, unlike the sarkari jirga, the local jirga settled the issue in the first instance. As a result of his experience, the responder has tremendous trust in local jirgas and alternative conflict resolution methods.

There are restrictions on the purchase and sale of real estate, which stipulate that the individual who is geographically closest shall be given preference. On this circumstance, a conflict erupted in Karri Kot, and the seller of property attracted a very wealthy buyer distant from his property. The closer they are near that property's reserve, the greater their condition. On that issue, they proceeded to the Jirga, and the Jirga ruled that neither the first prosperous consumer nor the nearest would be able to purchase at excessive prices.

The conflict between a truck's two shareholders. The experienced transporters gathered a Jirga and decided that if their share is not functioning well, they must rectify the issue instead of squabbling. The Jirga met by commodities and transport holders was an effort at a calm Jirga by those responsible.

Another example included two Karikot villagers who fought on the ground (the boundaries of their property). Both sides engaged in aggressive conduct against one

another. As a first step, they went to the police and then to court, but the pace of court remained very sluggish, but the fight became extremely rapid. Therefore, society pushed them to attend a Jirga, and the resolution was very sluggish. The Jirga's appeal was extraordinarily successful and amicably ended their conflict.

#### **5.4 Social Dispute Resolution Through Mechanisms Other Than Courts**

Another responder from Karikot reported a family conflict involving the appeal of a lady who had been divorced from her husband and had no ties to him. She petitioned the court for a divorce, but her appeal was delayed and not decided on time. She then addressed the local jirga (customary jirga) to get their entitlement to Haq Mehar from the spouse in a timely manner. The defendant further said that the traditional jirga is more in tune with the reality on the ground than the court, and that it resolves our disputes in a timely manner. As the involvement of women in a traditional jirga is not taken into account, this dispute indicates that the customary jirga settled her case in a highly efficient and timely manner.

The third responder described his experience with a criminal case involving the abduction forfeiture of a family whose child was enticed by another individual. The family filed a lawsuit against a person, went to court, and sought for the return of their child since it was shown that person had abducted their child, but the court cannot enforce its ruling as efficiently as local jirgas can. Consequently, the Jirga complied with their ruling.

Another scenario from Karikot, addressed with an interviewee, had a girl who left home for a court marriage or elopement, with both the boy's and girl's family embroiled in an honor conflict. The situation became severe between the two families, prompting the elders and well-wishers of both families to request a Jirga. The Parties

then proceeded to Jirga, and the judgement of Jirga was implemented correctly to the side of the groom and Nikah was conducted joyfully.

One of the elderly men mentioned a dispute between two clans about the road. The first side said that the route should be used for communication and other uses. The landowner of the property from which the road leads denied the presence of the first party. In this arena, they are embroiled in a dispute that might result in a massive bloodbath for both clans. They were invited to a Jirga by other experienced members of the same tribe. The Jirga resolved their problem in such a way that if the owner of the land clan sanctioned the presence of the first clan, it would be properly entertained for two years, and the other resolution would be held after two years.

Another delicate situation was presented by one of the attendees, in which a person was attempting to get ransom or financial assistance from another person by repeatedly setting fires to the second person's property while remaining disguised until the second victim discovered him on his own. The victim went to the police, and the police apprehended the offender, who admitted to all of his unlawful deeds and intentions. The police then instructed them to convene a Jirga. The Jirga convened in agreement and decided that the second individual should get 10 goats. The first person will also beg the second person for due forgiveness.

It is evident from field interviews and studies on the ground that Karikot residents seldom go to court to settle their disputes. The aforementioned situations are very rare and can be counted on one's fingers, yet despite their rarity, they are not appropriately entertained. It covers reasons such as people's lack of familiarity with the Legal System and court processes. It is reasonable for them to petition the jirga for a prompt decision and execution of their concerns. In the last four years, 4% of this Tehsil's

total population has appeared in court, compared to 100% for courts in nearby districts.

#### **5.4 Jirga in PATA Is Similar to a Court**

It was held by Justices Basal Elahi Rhan and Muhammad Azam Khan in cited case PLD 1989 Peshawar 86 titled " Taj Malook vs. E. A. C. I, SWAT " that circumstantial evidence can support a case just as well as direct evidence if it is substantial evidence, and on this analogy setting aside previous award of jirga and directing fresh trial, it was observed that new Jirga would not be required to record fresh All of this demonstrates that the jirga had the authority to judge or acquit the prisoner, and therefore was functioning as a court (Bahadur & Khan, 2013).

5.6 Jirga and Bail Sher Ali Khan, whose case was referred to the council of elders, applied for bail in the interim. However, Justice Jamil Hussain Rizvi ruled in a cited case P L D 1963 (W. P.) Lahore 281 that when the case is referred to the council of elders, even the High court has no jurisdiction to grant bail, and the aggrieved party cannot apply for bail before the district magistrate "Although the Deputy Commissioner is the one who refers the case to the Council of Elders, he does not remove his magisterial functions as if they were a pair of pants. He does not renounce his other abilities. He may employ them as needed. He even issues bail orders while the Jirga considers the matter. When alluding to the prisoner's case, he remains silent. I am holding you as a Deputy Commissioner because I am referring the matter as a Deputy Commissioner."

The learned counsel for the petitioners argues that the ratio of the authorities is that the Magistrate continues to execute his magisterial responsibilities and is hence qualified to issue a bail order subject to the High Court's Superintendent. This

argument by the learned counsel is without merit, since section 20 of the FCR provides the Deputy Commissioner the authority to grant or deny bail to the accused. Although the Deputy Commissioner may employ his magisterial powers, the Criminal Procedure Code prohibits him from doing so. He uses these powers according to section 20 of the Federal Rules of Criminal Procedure. The learned counsel for the State cites *Noor Muhammad and others v. Emperor* (A I R 1944 Lah. 896) in which the High Court, while considering the forfeiture of the bonds taken by the Deputy Commissioner from the accused in a trial before his case was referred to a Jirga, held that "the High Court had no power to interfere in the order because the bails were confiscated by the Deputy Commissioner under section 20 of the F. C. R." I respectfully concur with the statements in this authority. This has been noted within this authority. "The Deputy Commissioner has the authority to grant or deny bail to the petitioners according to Section 20 of the Federal Rules of Criminal Procedure." His order is subject to revision by the Commissioner. In these circumstances, I believe that the High Court lacks the authority to issue bail to an accused individual if the District Magistrate has referred the matter to the Council of Elders."

The Sind Crimes Regulation has comparable provisions, and in the case of *Imperator v. Ghulam Kadir Walad Faiz Mahomed* (12 Cr. L J 568), the Chief Court ruled that it lacked the authority to grant bail under section 498 of the Criminal Procedure Code in a matter given to the Council-of-Elders. I would consequently not grant bail in response to these requests. In these petitions, the petitioners may file a bail application. The applicants may ask the District Magistrate for bail."

Once the subject has been sent to the Jirga according to the FCR, the High Court is hesitant to use its authority. It seems that feudal lords, politicians, police, bureaucracy, and MPs are all working together to keep the jirga system alive and thriving, since

there is no rule prohibiting or requiring the conduct of jirgas. Similarly, the informal system's raison d'être may be because it is quick and free for the disputing parties. Some contend that this parallel judicial system has bolstered feudalism, since the elders of the jirga are often the feudal (political or prominent leaders) of their respective region.

People in Pashtun culture have greater faith in the jirga than any other system, despite intense criticism and obvious flaws. Naveed Shiwari discovered in a poll that over 70% of respondents favoured Ulasi Jirga or informal jirgas (non-FCR or Taliban) for conflict settlement. More than 70 percent of respondents who chose Ulasi Jirga over FCR Jirga were educated, which is an astounding figure (Bahadur & Khan, 2013).

### **5.5 Conflicts and Their Resolution: Process**

Multiple replies were permitted when respondents were questioned about the most common decisions made by non-court conflict settlement processes. The answers "settlement of financial claims" and "settlement of other non-financial conflicts" were the most prevalent.

Relatively typical reactions included normative social pressure in the form of "public censure and demand for repentance" and social isolation for a set amount of time.

How are the decisions of alternative dispute resolution methods implemented?

The most common reaction was that non-court conflict settlement options lacked an implementation strategy. The most common answer was that non-court conflict resolution methods lacked a form of implementation, followed by the statement that interviewees were unaware of the manner of implementation of psychological processes. These replies account for three-quarters of the total. "Social/community pressure and disrepute" and "social ostracization" were the most frequent responses

indicating the existence of a mode of implementation for non-court dispute resolution decisions, so while a family-sized number of respondents indicated that non-court dispute resolution mechanisms continued to be used for both financial and non-financial disputes, relatively few respondents pointed out any society- or community-based implementation. This feedback and general interactions with respondents demonstrated that these procedures only functioned so long as the disputing parties were prepared to adhere to their conclusions. As a result of community and societal pressure, their choices lacked both normative backing and persuasive power when it came to real execution, despite the fact that their court judgements lacked legal force.

The respondents were also questioned whether they voluntarily submitted their problems to procedures outside of the legal system. A total of around one-third of respondents said that coercion was a factor most of the time or sometimes. A large proportion of respondents, however, claimed that compulsion did not play a role and that individuals voluntarily submitted their issues to non-court conflict resolution procedures. A substantial proportion of responders said that they did not know the answer. Who, according to the respondents who indicated that compulsion had a role, applied such coercion? The most frequent answer to this question was "one of the contesting parties." Although "Kandan" and "other locally significant persons" were named more often than other choices for the response, social processes or organizations did not feature prominently in the responses as coercive forces.

In order to determine which types of disagreements always ended up in court, respondents were also questioned about the types of issues that were referred to non-court dispute resolution processes, with multiple replies permitted. Agricultural, residential, and commercial property conflicts dominate these replies. Nonetheless, it is noteworthy that the most common answer to this question was "if the parties are



willing, all problems may be handled outside of court." Multiple replies were permitted from respondents about the reasons why specific types of disputes were not referred to out-of-court dispute settlement processes. The most often cited explanation was that "such a process lacks the authority to implement its choices."

It is interesting to see that the most common answer is basically value-free. It has no negative connotation in relation to the real fairness or operational effectiveness of non-court processes. Thus, it is plausible to conclude that if non-court mechanisms were able to execute their judgements more efficiently, people would likely choose them over courts. However, the second and third most frequent comments identified problems with the capacity, efficiency, and integrity of existing non-court mechanisms: "people lack faith in the capacity and effectiveness of such mechanisms" and "these mechanisms are susceptible to private pressure and indifference." The fourth most common occurrence, that "no such feasible judicial processes now exist," is also devoid of significance. However, the fifth most common statement that "powerful individuals are more confident in their ability to control the formal legal/court system" reflects the belief that courts are more susceptible to manipulation by the strong. Nonetheless, almost the same proportion of respondents said that "weaker parties feel empowered by the official legal/court system." In addition, several respondents provided additional positive reasons for using court systems as opposed to non-court alternatives. There were remarks such as "people have higher trust in the judicial system's impartiality" and "the court system is more accessible."

The Lahore Survey then moved its attention to litigants' firsthand experience, if any, with alternative conflict resolution processes. They were questioned if they had considered such possibilities before to appearing in court. Moreover, half of respondents responded positively. Less wealthy respondents disclosed a stronger

predisposition to pursue out-of-court conflict settlement before contacting or going to court, as compared to their wealthier counterparts. Those who disclosed that their out-of-court conflict settlement processes had truly expired were then asked to identify the mechanism and permitted various replies. Kandan (extended family), Mohalla (neighborhood), other powerful local individuals, and local bureaucracy were the most common replies.

Respondents who had investigated out-of-court conflict resolution procedures prior to filing a lawsuit were then questioned about the result of their investigation and were permitted to provide several replies. The most frequent comment was that such processes were "inadequate or malfunctioning." Lack of capacity for execution of outcomes was the second most often given cause, with many respondents stating that the system "came up with a fair conclusion but had none for poor implementation" or "came up with a fair outcome, but their legal opponent ignored it and proceeded to court." These additional explanations support the preceding conclusion that respondents to the Lahore Survey's non-court conflict settlement procedures were most dissatisfied with the absence of implementation mechanisms for their verdicts. However, it should also be noted that a particular section highlighted more substantive issues, such as the fact that the mechanism "was influenced by the legal opponent and produced an unjust result"; it was "biased from the start"; it "produced an unjust result"; or it "followed a flawed or unfair process."

On the other hand, respondents who said that they had not investigated out-of-court conflict resolution alternatives prior to appearing in court were asked why they had not done so and were permitted numerous replies. The petitioners and responders in this subgroup of the sample were asked slightly different-worded questions with various possible answer options, since it was anticipated that the potential reasons for

these two groups would vary. In the case of the petitioners, a number of them said that "such things are usually brought to court as a matter of custom" or that "the law mandates a judicial procedure for obtaining redress in such circumstances." Others, however, expressed a "lack of confidence in the efficacy and efficiency of out-of-court conflict settlement processes." Thus, lack of "efficacy," "efficiency," and "implementation procedures" once again emerged as the most prevalent reasons why such non-court alternatives had not been examined and petitioners had instead turned to the courts. Very few replies showed higher trust and confidence in the timeliness, quality, or superiority of court-based justice, such as "greater faith in the impartiality and efficacy of court" or "the disagreement is too complex or technical for a non-court conflict resolution process to settle."

The responders were also given the opportunity to provide numerous replies to the same question. The most common response was that "the petitioner left the respondent no choice because she/he was unwilling to explore out-of-court dispute resolution mechanisms," followed by "the petitioner has a weak or frivolous case and believed that going to court would be an effective strategy for entangling the petitioner in legal troubles." These replies reflect regret at not having the opportunity to pursue out-of-court conflict settlement and anger at being hauled to court as a result.

Overall, one of the most important insights gleaned from this feedback is that while many respondents pointed out several limitations of non-court dispute resolution mechanisms, a daily large number of respondents also believed that if these mechanisms were mutually acceptable to the disputing parties and/or had an effective method for implementing their decisions, they would prevent many disputes from going to court. In the lack of efficient implementation methods and/or strong

normative frameworks in society to ensure compliance with their judgements, their survival and success depended completely on the goodwill and confidence of the competing parties. This, it turned out, was seldom available. Almost anyone who was dissatisfied with their decisions—regardless of their merit, the rigour of the decision-making process, and broader community/societal support for the fairness of their outcome—could, it appears, disregard these decisions without repercussions or compunction. Neither of the disputing parties even considered the possibility of exploring such mechanisms, knowing that the other party could easily go to court. It was satisfied with the conclusion of the out-of-court conflict settlement, so eliminating any benefit for the side that researched and committed time and effort in a non-court resolution. This significant disadvantage is reflected in the view of one of the respondents: "One of the disagreeing parties invariably resorts to the courts, even if you attempt to address the situation outside of court." Therefore, it seems logical to file a challenge with the court." Thus, a context develops in which going to court nearly makes sense, despite the fact that, in certain circumstances, the underlying intention is to ultimately settle out of court.

There may be various reasons why, after litigation has begun, the opposing parties may not contemplate pursuing an out-of-court resolution. According to one responder, "the reason I continue with this case is because I want to meet my opponent with the falsified papers he has created and speak with him face-to-face." Another explanation given was, "Now that I have spent so much money on litigation, I will only accept a court decision." Initially, when my opponent contacted me to settle out of court, he asked Rs. 300,000 in exchange for leaving my inhabited home. Now he is even willing to do the same for Rs. 20,000, but after all this litigation, why should I settle?" For some, it seemed that a lack of options left them with little choice but to proceed

with the courts, even if they disliked this option. One female responder sobbed, "I hate coming to court." Who would want to go court and sit with so many odd men? I go to Washington from the border region. Why should I be required to go so far? Every time I go in court, I return home in tears." A more senior male responder stated, "No reputable person wants to appear in court. People visit after all other options have failed." Those afflicted with physical incapacity were compelled to carry a greater load. One responder who seemed fragile shared the following: I have several health problems. With my poor health, regular court appearances, and lack of progress in my case, my existence is a living hell.

Jirga is culturally ingrained and near to the hearts of Pashtuns, according to a survey of respondents and an assessment of relevant literature. It has served the community at all levels, from individual to communal disputes, for generations and remains a forum for addressing Pashtuns' issues. Such a structure is required to keep the warring tribes and highland people quiet. It would not be an exaggeration to say that Jirga System is responsible for the general peace among Pashtuns. The rules, procedures, and practices regulating Jirga align with the traditional Pashtun methods of resolving local, tribal, and national problems, and are consequently an integral part of the national identity of Pashtuns. In contrast, people who dismiss Jirga as less contemporary and more primitive should examine its operation and peacemaking method. Elders are enthusiastic about Jirga's future role, while history has a favorable view of the Jirga's results. However, it is a truth that the globe has undergone significant change and that the civilization is in transition from traditionalism to modernity. Moreover, the beginning of the 21st century and the aftermath of September 11 have radically altered the perception of tribal settings in Pakistan and Afghanistan. Changes on a global scale and the global community's focus on

transforming the tribal belt have ramifications for the local population. Therefore, there is an urgent need to provide Jirga an updated perspective and help others understand this. As a foreign notion to many, the West seems less persuaded and more worried about the barbaric practices that have governed Pashtun life. The analysis demonstrates that there are now severe claims on the Jirga system that need immediate elimination. The majority of respondents in the study were dissatisfied with the Jirga system due to corruption, bribery, incompatibility, illiteracy, and the lineage Malik System, which, according to them, destroy the Jirga system. These are the factors that decrease interest in and confidence in the Jirga system. In addition, the study reveals that the majority of participants support the merger of FATA and KP and believe that it will not have any negative impact on the Jirga system, but rather will strengthen it through accountability and transparency. Moreover, the majority of respondents indicate that they will opt for the Jirga system for the resolution of conflicts after the merger of FATA and KP, despite the presence of a formal Judiciary system, because Jirga is less expensive and less time consuming. Others, however, dispute its manipulation by the politically and economically powerful in light of the study's results. In order to gain footing, Pakistan's formal legal system suffers from fundamental weaknesses that must be corrected for it to be universally accepted. It is important that any legal proceeding offer room for all parties to maintain their trust. The government must initiate focused education initiatives to enlighten the tribal populace of the issues connected with the informal system of dispute resolution. The contribution of religious individuals to Jirga cannot be overlooked. They must participate in substantive conversation for the greater interest of indigenous people. Youth and educated individuals should be included in Jirga processes because they will make decisions in accordance with current legislation and time.

## **5.6 Fundamental Perception of Changing Status Experiences After Merger**

### **FATA**

Multiple replies were permitted when respondents were questioned about the most common decisions made by non-court conflict settlement processes. The answers "settlement of financial claims" and "settlement of other non-financial conflicts" were the most prevalent.

Relatively typical reactions included normative social pressure in the form of "public censure and demand for repentance" and social isolation for a set amount of time.

How are the decisions of alternative dispute resolution methods implemented?

The most common reaction was that non-court conflict settlement options lacked an implementation strategy. The most common answer was that non-court conflict resolution methods lacked a form of implementation, followed by the statement that interviewees were unaware of the manner of implementation of psychological processes. These replies account for three-quarters of the total. "Social/community pressure and disrepute" and "social ostracization" were the most frequent responses indicating the existence of a mode of implementation for non-court dispute resolution decisions, so while a family-sized number of respondents indicated that non-court dispute resolution mechanisms continued to be used for both financial and non-financial disputes, relatively few respondents pointed out any society- or community-based implementation. This feedback and general interactions with respondents demonstrated that these procedures only functioned so long as the disputing parties were prepared to adhere to their conclusions. As a result of community and societal pressure, their choices lacked both normative backing and persuasive power when it came to real execution, despite the fact that their court judgements lacked legal force.

Additionally, respondents were asked whether they voluntarily reported their conflicts to court-based dispute resolution methods. A total of around one-third of respondents said that coercion was a factor most of the time or sometimes. A large proportion of respondents, however, claimed that compulsion did not play a role and that individuals voluntarily submitted their issues to judicial conflict resolution methods. A substantial proportion of responders said that they did not know the answer. Who, according to the respondents who indicated that compulsion had a role, applied such coercion? The most frequent answer to this question was "one of the contesting parties." Although "Kandan" and "other local powerful persons" were named more often than other choices for the response, social processes or organizations did emerge heavily in the feedback as coercive forces.

### **5.7 General Perception of Actual Life**

To decide which kind of disagreements inevitably ended up in court, respondents were also questioned about the types of disputes that were referred to court dispute resolution methods, with multiple replies allowed. Agricultural, residential, and commercial property conflicts dominate these replies. Nonetheless, it is noteworthy that the most common answer to this question was "if the parties are willing, all problems may be handled outside of court." Multiple replies were permitted from respondents about the reasons why specific types of disputes were not brought to judicial dispute resolution systems. The most often cited explanation was that "such mechanisms lack the authority to implement their recommendations."

The most common answer is basically value-free. It has no negative connotation in relation to the real fairness or effectiveness of judicial systems. Therefore, it is plausible to conclude that if the court system were able to execute their judgements more efficiently, people would likely prefer utilizing them over courts. However, their



second and third most frequent comments - that "people lack confidence in the capacity and effectiveness of such mechanisms" and that "these mechanisms are susceptible to private pressure and indifference" - identified problems with the capacity, effectiveness, and integrity of existing court mechanisms. The fourth most common occurrence, that "no such feasible judicial processes now exist," is also devoid of significance. However, the fifth most common statement — "powerful individuals are more confident in their ability to control the formal legal/court system" — reflects the belief that courts are more susceptible to manipulation by the strong. Nonetheless, almost the same proportion of respondents said that "weaker parties feel empowered by the official legal/court system." In addition, several respondents cited other favorable aspects of accessing courts as opposed to judicial systems. There were remarks such as "people have higher trust in the judicial system's impartiality" and "the court system is more accessible."

The South Waziristan ethnographic research then moved its attention to the litigants' direct experience with judicial conflict settlement methods, if any. They were questioned if they had considered such possibilities before to appearing in court. Moreover, half of respondents responded positively. Less affluent respondents disclosed a stronger predisposition to pursue judicial conflict settlement before contacting or going to court, compared to their more wealthy counterparts. Those who disclosed that their judicial dispute resolution methods had truly expired were then asked to identify the process and were permitted various replies. The most common replies were Kandan (extended family), Mohalla (neighborhood), other local powerful individuals, baradari (clan), Jirga (village council of elders and urban council of elders), and local administration.

The respondents who had investigated court conflict resolution processes before to coming to court were then questioned about the results of their investigation and were permitted to provide different replies. The most frequent comment was that such processes were "inadequate or malfunctioning." Lack of capacity for execution of outcomes was the second most often given cause, with many respondents stating that the system "came up with a fair conclusion but had none for poor implementation" or "came up with a fair outcome, but their legal opponent ignored it and proceeded to court." These added explanations support the prior conclusion that one of the key complaints expressed by South Waziristan Survey respondents about judicial conflict resolution methods was the absence of tools for implementing their judgements. However, it should also be noted that a particular section highlighted more substantive issues, such as the fact that the mechanism "was influenced by the legal opponent and produced an unjust result"; it was "biased from the start"; it "produced an unjust result"; or it "followed a flawed or unfair process."

On the other hand, respondents who said that they had not researched judicial conflict resolution procedures prior to court appearance were asked why they had not done so and were permitted numerous replies. The petitioners and responders in this subgroup of the sample were asked slightly different-worded questions with various possible answer options, since it was anticipated that the potential reasons for these two groups would vary. In the case of the petitioners, a number of them said that "such things are usually brought to court as a matter of custom" or that "the law mandates a judicial procedure for obtaining redress in such circumstances." Others, however, expressed a "lack of confidence in the efficacy and efficiency of judicial conflict settlement systems." Thus, a lack of "efficacy," "efficiency," and "implementation procedures" once again surfaced as the primary reasons why such judicial methods had not been

examined and petitioners had instead turned to the courts. Very few replies showed higher trust and confidence in the timeliness, quality, or superiority of court-based justice, such as "greater faith in the impartiality and efficacy of court" or "the disagreement is too complex or technical for a court conflict resolution system to handle."

The responders were also given the opportunity to provide numerous replies to the same question. The most common response was that the "petitioner left the respondent with no choice because she/he was unwilling to explore court dispute resolution mechanisms," followed by "the petitioner has a weak or frivolous case and believed that going to court would be an effective strategy for entangling the petitioner in legal troubles." These replies reflect sorrow at not having the opportunity to pursue alternative conflict resolution and frustration at being dragged to court instead.

## CHAPTER 6

### DISCUSSION AND CONCLUSION

#### 6.1 Discussion

- 1 This thesis investigated the importance of Jirga as a justice dispensing institution in the society of the Pashtuns, as well as how Jirga is intimately tied to the values and traditions of the Pashtuns. It also emphasized the distinctive characteristics of Pashtunwali, the Pashtun way of life, and shed focus on the Jirga as its primary pillar. Therefore, the whole society of the Pashtuns revolves on the Jirga, which is not only a judicial institution but also an executive power. This thesis also seeks to explain the issues that have always made the Jirga a contentious institution. Comparing Jirga to the current Pakistani legal system reveals that Jirga is far more effective at dispensing justice and is deeply ingrained in Pashtun culture. Thus, it can be concluded that Jirga functions more efficiently as a judicial institution at the local level since it is based on the local population's intelligence and its decision-making process provides people with quick justice.

2 Additionally, Jirga is less costly and more accessible to residents. Due to the function of the Jirga, residents do not need to visit the courts and spend a great deal of time to resolve small disputes. As a result, the institution of Jirga should be incorporated into the official judicial system of Pakistan, as doing so could prove very fruitful, as the current judicial system of Pakistan is unable to handle a large number of cases, resulting in millions of pending cases that take years to resolve. In conclusion, an amalgamation of Jirga and the judiciary may serve as a source of free, fair, and speedy justice for all of Pakistan's citizens, which would eventually lead to the country's development with a magnificent legal system. Comparing Jirga to the current Pakistani legal system reveals that Jirga is significantly more effective at dispensing justice and is deeply ingrained in Pashtun culture. Thus, it can be concluded that Jirga functions more efficiently as a judicial institution at the local level since it is based on the local population's intelligence and its decision-making process provides people with quick justice. Additionally, Jirga is less costly and more accessible to residents. Due to the function of the Jirga, residents do not need to visit the courts and spend a great deal of time to resolve small disputes. As a result, the institution of Jirga should be incorporated into the official judicial system of Pakistan, as doing so could prove very fruitful, as the current judicial system of Pakistan is unable to handle a large number of cases, resulting in millions of pending cases that take years to resolve. In conclusion, an amalgamation of Jirga and the judiciary may serve as a source of free, fair, and speedy justice for all of Pakistan's citizens, which would eventually lead to the country's development with a magnificent legal system. The fragility and volatility of Wana and the south Waziristan agency are in part due to its unique political position and administration structure. In 1947, when

the Islamic Republic of Pakistan attained independence and full sovereignty, it was divided into five provinces: Sindh, East Bengal, West Punjab, Baluchistan, and the North-West Frontier Province. FATA was never integrated into any of these provinces and retained its semi-autonomous status.

## **6.2 Conclusion**

- 3 Considering the above discussion, we may infer that there are four primary forms of Jirga. The local Jirga arbitrates local and village-based disputes between families and individuals. The Quami Jirga addresses more severe issues. The Quami Jirga handles serious family and tribal disputes. Its members do not hail from a single tribe. They are members of distinct tribes. For conflict settlement, the Political Agent or political administration meets the FCR Jirga. It is known as the elders' council. Typically, the Political Agent picks its members. The Loyal Jirga addresses international and national concerns. In FATA, Jirgas are also met to resolve disputes. In the FATA community of Pashtuns, the Jirga is an established institution for dispute mediation. As it is successful, it should be maintained at both the community and official levels. However, modifications may be made to its rules, procedures, and execution of decisions in order to bring it into conformity with the Constitution and the formal legal system. The constitutional standing of the jirga is unclear. Or we would rather declare that the jirga is unconstitutional since the parties do not have the right to a hearing or an appeal in jirgas (constitutional rights). In addition, it violates Articles 4 and 10 A of the 1973 Pakistani constitution. In the majority of instances, jirga decisions do not represent justice, as in the example of Shazia Bibi of Haripur, who was punished by having to parade nude in front of the audience.

- 4 It is analogous to the judiciary, in which the judges are well-versed in legal theories and jurisprudential issues, etc., and, after recording pro and con evidence, provide proper opportunity to both parties to decide the case on a subject that is subject to appeal, review, revision, etc., meaning that due to this system of checks and balances, judges generally administer proper justice. However, the debate arises as to whether or not they are always more knowledgeable than those seated in the jirga. Are some judges even more crooked than they are incompetent? It requires more investigation. Numerous nations confront the difficulty of national integration, but in certain instances, their leadership can integrate varied populations by assuring social fairness, tolerance, the rule of law, effective administration, and democratic pluralism. Pakistan's pursuit of national unification would remain elusive until a bottom-up strategy is taken in which a feeling of nationalism develops at the grassroots level. Care for the country's resources and a compassionate attitude toward individuals who are different in color, language, class, religion, and sect will go a long way toward developing "Pakistan." Promoting a merit-based culture rather than favoritism and nepotism is also essential to achieving the aim of national integration.
- 5 In addition, no other means of communication can foster national integration as successfully as railroads since people from all provinces and regions travel together and share their language, culture, and way of life. In a nutshell, an insecure state would favor a specific class or ethnic group in order to maintain its grip on power, regardless of the harm this policy will do to the nation.

6 On the other side, there are no checks and balances on the jirga's decisions. The courts should serve as a check on their choices. Reforms to the law might simply provide courts with clearly defined functions; the failure to do so is not a reason for eliminating jirga.

Another element of the jirga, particularly when they find that swara violates Pakistan's constitution, is that swara is illegal. Again, it is the responsibility of the police, prosecutors, and courts to ensure that jirgas comply with the law when this occurs. It is a failing of both the courts and the jirga when this does not occur. And the occasional failure of both courts and jirgas to enforce conformity with the law is not a reason to abolish either courts or jirgas.



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## ANNEXURE

### Interview Guide Questions

- What are the social problems in this area (Karikot)?
- On which grounds these problems are resolved?
- FCR Jirga Or Local Jirga which is more satisfying for the people?
- Which is better Jirga system this current jirga system or past jirga system?
- How much you are aware of FATA courts system?
- Is there any dispute resolved through court system?
- Do you think that people really believe in court system?
- From 4 to 5 years of post-merger of FATA why people do not opt for Court?
- Why do not people believe for Court system?
- If any problem is not solved through Jirga System what will be held next?
- Is there any future of jirga in Post-Merger of FATA?
- Is there any future for legal system?
- What do you think of is there any equal representation of woman will be held in future?