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Transitional Perspective of Traditional Jirga system In NWFP (A Case Study of District Peshawar)



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Dedicated to

My sweet parents and my brother

Rahman Gul

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1. Background

Anthropological research analyzes the socio-cultural system of a society. The concerned research has been under taken on “Transitional perspective of traditional Jirga¹ system, in NWFP”, the locale of study was Dr Arbab Alamgir, *Hujra Tehkal Bala*, district Peshawar. To acquire data, the qualitative and quantitative methods were used during field work. This work is mainly focused on explaining the structure and function of traditional Jirga along with transitional perspective in structure, selection of criteria of Jargamen and their ability and roles.

Historically the concept of conflict over different type of resources, political power, and different ideologies has remained an old traditon. By giving a brief account of conflicts and crimes, Leo Tolsto is of the view that factors of conflict and crimes do not penetrate from outside but evolve from within the society, a group of an individual that not only threatening the whole structure society and challenge the justice system to intervene to thrash out the causes, motives and objectives. The expression of the phenomenon depends upon the availability and utilization in the form of “Power corrupts” the affected ones, and “the needy are not respectable” (Wardak.2002). These are some of the notions used by the weaker and the stronger, to legitimize their actions. Throughout the world each society has an order to keep check on the practices and behavior of the inhabitants to control them from doing the criminal acts that changes its course from time to time, from individual to individual and from society to society. The crimes always reflect the social Shame, customary practices and ego which are the basic elements that lead to crimes in a society. Such elements generate crimes in each the individuals with different excuses. In some cases, the victimization of the offender is dominated by their commitment to crime as compared to others, while weak law provides ample opportunities to the Strongs, to take the matter in their hands and quench thirst. Strong law prevents the criminals from committing crimes, while a weak law can't. some time the religiosity also play his role to prevent a person from committing a wrong act. In other case, other laws take place to deal with the situation, one is the criminal justice system enforced

¹ Jirga: jirga as an old traditional judicial institute or gathering of the pushtoon tribal elders for the consensus build up and for the provision of a solution to a problem faced by the concerned society. Usully the Pashtun pronouncing the word j-i-r-g-a, while my external supervisor professor Dr. Amir Zada Chairman of the Department of Social Work University of Peshawar suggested to write down the word j-a-r-g-a, rather than j-i-r-g-a,

by the government institutions, while the other is the traditional justice system that has a strong backing of the people being created by their elders in accordance with their needs its acceptance by the community that has also been exercised. In west it's known by restorative justice systems. In the West known by circle, a Sulah is used in the Middle East, African call it's a ghachachi, and Morie tribe traditional practice in where in New Zealand a traditional practices is used for its. In Pakistan such a traditional system also exist under the umbrella of restorative justice system in form of Jarga and Punchayat, with a little bite of differences. The presence of Jarga and Punchayat system is a symbol of commonality for the four provinces. Initially jarga was practiced in Khyber pukhtoon khwa, but now its sweeps across the country. Punchayat is headed by a 'sar punch', while the jarga have no permanent presidency. The final verdict of a jarga must be acceptable to all of the concerned members.

The prestigious institution has lost its identity with the intervention of external influences. Despite the fact that many of the judicial and non judicial formal and informal institutions existed in the Pakhtoon belt but no one interrupted as Jarga. The British government first brought changes in traditional Jarga system of the Pukhtoons; their initial and foremost goal was to bring the Pukhtoon code of conduct (Pukhtoonwali) accordingly to the will of the state. They wanted to bring the undefeatable, intractable tribe under their control because Pukhtoons always remained a hurdle in the way of the British, therefore the colonial government initiated to bring these people under their control. The British faced with frustration and resultantly they gave autonomy to them in term of their sociopolitical structure along with existence of federal government affairs. As the Pukhtoon were living both sides of Durand lines, it was very important to control them through their elders, for the purpose, the British government introduced the *Malakiay*, *Arbabai*, and *Khana*(various titles used for elite of the area) system in the area. The Malak and Khan were performing the role of mediators between government and the tribal people. Through the strategy they governed these people but after the partition of Pakistan the government of Pakistan wanted to bring these people more under the writ of the government. They started developmental activities in irrigation, health, and education, etc. through this method the government fully intervened in the affairs of the pakhtoon people. The Khans and Malaks were given the status of unelected leaders corresponding with the government on behalf of the local people that also decreased the distance between the people and the government. This intervention brought certain changes in the form and application of Jarga. Malaks, khans and the officials played a pivotal role in this change.

1.1 Selection of the Topic

The topic chosen for the research study with the consent of the supervisor was 'Transitional perspective of traditional Jirga system, in NWFP'-A case study of the Dr Arbab Alamgir, *Hujra Tehkal Bala*, district Peshawar.

Many scholars like, Barth (1981), Ahmad (1976) and Landholm (1982) Mukulika (2001) Spain (1961) have also focused mainly on the Pukhtun, socio-political organization. In the study, the researcher has explored the transitional aspects of the Jarga that how the changes and modifications were incorporated into the traditional judicial system of the Pukhtun society for the resolution of their disputes. To study the process of Jarga in disputes resolution comes under the domain of the political anthropology, so the study has covered both the social and political aspect of the Pakhtun. Finally the study was focused to study the behavior and cognition of the people, where conflicts were embedded in their culture. Thus the researcher conducted in-depth study to understand the conflict resolution mechanism of Jarga, by solving the conflict of the people according to the traditional system. The study made it clear that mostly the issues are arising from the patrilineal cousin relations (*Tarboorwali*) to inter tribe level and then deal at international level. As the Jarga comprise of the members of different status who have importance in their respective lineage or tribe.

The study was also focused on the elder decision makers. They were the enforcement entities and also analyzing the changes and development taking place in the Pukhtoon society being observed in functioning of the Jarga, and implementation of its decisions. Therefore the socio-political organization of the Pukhtun can be studied from the Jarga perspective.

1.2 Statement of the problem

Traditionally the Pukhtoon is a cephalous tribe, by virtue of living in traditional society; social factors like Puktoonwali, Jarga, and kinship etc affect socio-judicial behavior of the society. Puktoonwali is a set of Pukhtoon laws and rule which Pukhtoon people follow in their lives. The social structure of pukhtoon community is mainly governed by the conventional wisdom in form of a traditional code of honor is known by "Puktoonwali".

All the Pukhtoon's social structure is based upon the unwritten code of life and Jarga is formulated under this Pukhtoon code of life. Jarga affects every aspect of their lives, whether it is social, judicial, economical, religious or political and also affects the structure of family, kinship and other relations.

Traditional Jarga has ruled upon this cephalous society for centuries. Traditional Jarga emerged as a declarative body to avoid the Pukhtoons from further bloodshed between the rival factions. From the very beginning, traditional Jarga has played a role of a traditional judicial system for the provision of a solution to an existing problem in Pukhtoon society both directly and indirectly.

Structurally the Jarga is very simple and straight forward in its manner, despite of the fact that there are other judicial institutions. Contemporary judicial institute like *Thana*, court, mosque (regulated by a clergy), have to some extent disturb traditional setup of Jarga but still it's working for the uplift of Pukhtoon society. Pukhtoon society is regulating its external and internal affairs through this traditional Jarga system.

The Pukhtoons are living in such a place which is geographically and traditionally very significant to the out world. Pukhtoon society has been largely affected by the external influential factor on behalf of imperative status. From the inception of the Pukhtoon tribe, such a hierarchal change has been observed in the Pukhtoon traditional Jarga system that leads the traditional Jarga to the modern institution. The study was focused on the transitional perspectives of the traditional Pukhtoon Jarga in KPK (Khyber Pakhtunkhwa). The main aim of the study was to highlight that Jarga has been changed from every aspect like, structure, process, and selection of *Jargamen*, decision announcement. The structure of power was regulated by a traditional elder that has been replaced by the government allies. The responsible factors underlying the transition process are interpreted in local judicial context.

1.3 Selection of the locale

The locale for the research study was Dr Arbab Alamgir (the present federal minister of the PPP led government) *Hujra Tehkal Bala* falls under *Tehkal* union council district Peshawar.

The locale for undertaking the research work was selected for two reasons; (i) The researcher was familiar with the Pushtoo language spoken in the locale (ii) the *Hujra Tehkal Bala* was the place known for conflict resolution through Jarga in the urban setting. The area had some major conflict between the rival groups resulted in heavy bloodshed but the serious nature of conflicts were resolved by convening the Jarga through the intervention of responsible elders of the area. The Jarga is convened for the land related conflicts, theft of water, cutting of trees, criminal cases, family issues, household affairs, fighting over different issues.

As the selected locale of study was the integral part of Peshawar city and related to the study, therefore the study of its social, cultural and geographical aspects was also the main concern of the

researcher in order to correlate the commonalities of both the settlements.

The Peshawar city was one of the oldest cities among the historical cities, and being the capital of the province, every basic facility like hospitals; educational institutions, water sanitation, etc were available there. The utilization of the facilities were enjoyed by the people within an area of eight hundred meters (800 meters) approximately from the main city road to the lower Tehkal (koz tehkal).while the inhabitants of the upper Tehkal (ber tehkal) do not have access to such type of facilities. Mostly the people of ber tehkal were literate but the level of awareness regarding their rights was very low, therefore the people frequently face violation against their basic rights by some of the government officials, perhaps that was the reason they usually have to choose the traditional judicial system “Jarga” as an alternative to the prevailing formal system of adjudication. Despite of the fact, that they lived within the jurisdiction of the city, but preferred the traditional informal judicial system for the solution of their problems rather than the formal system. The changes which have been incorporated with the passage of time in the traditional setup were an important aspect of research study.

1.4 Significance of the study

Due to the structural limitations in the Pakistani judicial system and particularly in provincial judicial system, victims have to suffer a lot. What are these limitations, what are possible alternatives and how many strategic choices are available to the Pukhtoons?

The research has an anthropological importance as it is first effort of its nature to find out local perception and importance of traditional judicial system that would highlight the process of judiciary system and its drawbacks.

The objectives of the field research were drawn well before undertaking the research work in order to achieve the research goals in minimum available time and to restrict the study within the legitimate boundaries drawn by its topic.

The study was to examine the consequences of changes in any traditional set up to provide useful data for the cross comparison of other tribal institutions anywhere in the world.

Being influenced by the anthropological approaches, the research study will contribute towards the knowledge regarding the informal judiciary system and will provide a guideline for both the governmental and nongovernmental organization working on the issue of rural judicial system specifically and prevailing of traditional judicial system in urban areas. It will also be helpful for the policy makers to implement the laws acceptable to a common man.

1.5 Objectives of the study

Justly the objectives for anthropological studies are designed keeping in view the scope of study to rationalize the unwanted details that could hamper the foundations and motives of the research.

The following were the objectives of the research:

- (i) To explain the structure and function of traditional Jarga;
- (ii) To identify the transitional perspective of traditional Jarga system;
- (iii) To document the structure and functions of modified Jarga;
- (iv) To record the selection, criteria, ability and role of the traditional and modified Jargamen;

1.6 Methodology

Methodology is the combination of tools and techniques used for data collection. Anthropological data could be collected by using many primary and secondary tools and techniques, key informants descriptions, Participant observation, interviews, focus group discussions and census survey are of primary nature while the secondary source of data collection are the research works of other anthropologists, print and electronic media, Books and journals, relevant print material, Newspapers, Magazines and articles.

All methods are not suitable for every research. There are always combinations of few of these techniques for particular researches. Because Social research is for knowing how people actually behave in a certain social environment. Selection of appropriate methodologies for the anthropological research is an important task. The researcher had applied number of anthropological research method at different steps. The usage of the methods in a proper way helped the researcher in the collection of qualitative and quantitative data and to analyze the data collected in a systematic way. According to Glen and Pelto;

"Methodology denotes 'the-logician use' involved in selecting particular observational techniques, assessing their yield of data and relating these data to theoretical prepositions." (Glen and Pelto 1992)

According to Russell Bernard:

"The word method itself has at least three meanings. At the most general level, it means the study of how we know things. At a still pretty general-level, it is about strategic choices like whether to do participant observation, field work, a library

discussion or an experiment. At the specific level, it's about what kind of sample you select, whether you do face-to-face interviews or use the telephone, whether you use and interpreter or learns the local language well enough to do your own interviewing and so on." (Russell Bernard 1988)

1.6.1 Establishment of rapport

Establishment of a good rapport was even more necessary in a locale of study. Rapport building is a technique used to get familiarized with the people and develop mutual trust. During the report building the researcher has to live properly as a member of that society by adopting the same way of living, dress pattern and general appearance like those of the area inhabitants. The researcher stayed in *Tehkal Bala* for 6 months and established good relation with the people and explained the purpose of arrival there. After taking them into confidence the researcher started research in a proper way and some of the important members of local committee who were representatives of the area who could be the best source of information about the area, its people, its culture and living pattern, those were also very well known by the people because of their key role they were playing for the developments of the area and were regularly in touch with the government and non-governmental officials. They were chosen by the people to work for the interest of local people at government and non-governmental levels. The researcher discussed the details of Jarga with them to get their view point.

1.6.2 Key informants

Key informant is a reliable person of the locale, from whom researcher can gain information, they can be one or more because they plays a key role in anthropological research as a source of information about their culture. A key informant is a person who has valuable Knowledge about the people of the community.

According to Pelto and Pelto:

"Key informants interviewing is an integral part of research. Informants are people who can talk easily, who understand the information you need, and who are glad to give it to you or to get it for you." (Pelto & Pelto 1978)

The selection of key informants was though a difficult process but with the help of some of the local elders, the researcher selected Ziarat khan as a key informant who was working in NADRA office; he spent most of his time with the researcher and facilitated him in relation building with the

people of Tehkal Bala. He also assisted the researcher to meet the local elders, Jargamen and many of the conflicted parties.

1.6.3 Participant Observation

Participant observation is not a casual observation; it is a scientific way of observation. Participant observation, which is used in informal setting, is an important method in anthropological research. Through participant observation the researcher have an opportunity to collect qualitative data of descriptive nature. Whenever the local barrier against outsiders is lowered the researcher can get more valid and reliable data.

The researcher carried his fieldwork in union council "Tehkal". During which the researchers stayed in the community for six months and attended Jarga proceeding in various disputed situations. The researcher also mixed up with the people of the society and participated in various activities like marriages, death rituals and birth events in addition to going to mosques, markets, and bus-stops in order to study the society's actual way of livings and social and political behavior.

Participant observation was also necessary for the use of other techniques as deliberated by Peltor:

"The relative un-systematized scanning of information through participant observation is basic to all there other, more refined, research techniques. Preliminary data from participant observations provide the fieldworker with insights and clues necessary for developing interview questions, psychological tests, or other more specialized research tools." (Pelto and Pelto 1978)

Participant observation also helps in evaluating and crosschecking of data gathered by other techniques. The adoption of participant's observation during the research study provided a considerable chance to observe the phenomenon of Jarga and its related features.

1.6.4 Key Informant

Key informants method is another major source of information collection, especially regarding various institutions of the society. No man has equal abilities to analyze and interpret even his/or her own culture. Key informants are the people who are better aware of the culture they are living in and they are willing to share their experiences.

According to Pelto and Pelto:

"More than someone who controlled a lot of information about a culture and willing to talk to you." (Pelto and Pelto 1978)

Key informants are persons who are capable for verbally expressing cultural information. Key informants were chosen carefully for the job and I took a little time for choosing some of the key informants. The researcher selected four key informants from among the Jargamars that were ziarat khan, who was working in NADRA office, Nasib khan khattak, a school teacher, Saidu Allah, a candidate of Jarga, Farid a candidate for Jargamar. The researcher explained the objectives of the study to the key informants to take them into confidence enabling them to help the researcher in obtaining reliable and valid data. The selection of key informants was both from the society members and from the candidates of Jarga to know about the role of both the society and candidates in Jarga, and about local social and political organizations.

1.6.5 Case study

The case study method is another tool which helps the researcher in collecting in-depth and detail data about an individual, action or phenomena. Few case studies were arranged by the researcher by including the individuals of conflicting parties.

The researcher adopted the method of case study during the research work because of its importance as it lay in the richness of its description and detail nature and there was an opportunity to get reliable data. The researcher arranged few case studies from among the community members.

1.6.6 Interview

The interviews are conducted with the help of an interview schedule, prepared by the researcher with utmost care keeping in mind the research requirements. The importance of the interview schedule has been highlighted by Alam Watts:

"A schedule is a set of questions with structure answers to glade an investigator, observer, interviewer and researcher; it is a plan and guide line for investigation."

(Alam Watts 1982)

The application of interview schedule helped the researcher not only for extracting useful data but also for understanding the behavioral attitudes of the people that further helped in formulating the cultural and traditions norms.

For conducting the interviews, the researcher adopted the strategy to put open ended questions

to have their multiple response according to the interview guide prepared well before time, while all of the respondents were the part of interviews in order to get a diverse and comprehensive picture of differentiation of people regarding Jarga as an institution for disputes resolution, its functioning, formation and the will of decision making.

The researcher conducted both formal and informal interviews to know about their point of views about various social events that causes a Jarga session and personal perceptions of the people about the traditional Jarga system and the modified judicial system. The Interviewees not only provided in-depth information but also facilitated the researcher to contact more informative people of the community for the purpose of interviews.

1.6.7 Informal group discussion

The group discussion on a particular topic could be called focus group discussion. The technique is adopted by the anthropologists in field work, for crosschecking the data collected through interviews and other tools.

The researcher frequently used the technique during the entire period of research and interacted with different people at shops, playgrounds, and in social gatherings during Jarga days. Most of the focus group discussions were made on the Jarga arrangement and announcement its final verdict.

Through the focus group discussions, the researcher composed variety of details data about the people's perceptions relating to the role of kinship and other determinants that influence the Jarga in dispute resolution. The researcher had the opportunity for arranging focus group discussion with the candidates of tehkal union council twice.

1.6.8 Secondary data

The secondary data tool was used by the researcher for making the study more authentic and trustworthy, the method was used for receiving data from electronic media and print media, Radio, Judicial record for understanding the formal and informal judicial structure particularly existed in *Tehkal Bala*, in the district and the country in general. For more details, already existing literature was also consulted.

1.6.9 Interview guide

The interview guide is build for informal and structural interviews in order to collect specific data from the participants in a friendly environment without forcing them to act according to the

desires of the researcher. During my research tenure, participation in Jarga meetings was a burning issue because of severe threats to the entity taking part in the proceedings. It was impossible to conduct formal interviews with the persons who were directly related with the Jarga. In the confusing situation, the researcher chose interview guide as a research tool not to put at risk the lives of anyone at stake keeping in mind the questions in a sequence to be asked from the respondents.

1.6.10 Sampling

Sampling was a useful technique remained in use by the anthropologists while in locale of study. The same methodology was applied by the researcher to have a sample size to carry further research proceedings. With utmost care and with the assistance of some of the elders, a sample size consisting of forthy household elders who have contacts with the Jarga members as the researcher's respondents. With the help of respondents, the socio-economic background of the Jarga Masharan who was twelves was thoroughly studied to add credibility to the data and portray a clearer picture of the Jarga structure.

For the academic research it is very important to study all the perspective views, but some time it's become difficult for a researcher to study all aspects. The easiest method to observe and interview all the society members in a short time is sampling.

According to Bernard:

"You are better off with the sample than with the whole population."

(Bernard 1994)

Again with a remarkable statement Bernard said:

"Samples are used to estimate the true values or parameters of statistics in a population and to do so with a calculable probability of errors."(Bernard 1988)

Table No 1: Sample Size

Techniques	Sample taken
In-depth interview	40
Interview from Jarga Masharan	12
Total interviews	52
Case study	6

The selected respondents were taken on the basis of age, gender, education, and occupation. They were the main source of informants where direct meeting were impossible like in the case of elders (Jargamar).

1.7 Literature review

According to Goode and Hatt (1952), review and consultation of the relevant literature helps in providing background information on the problem under investigation.

The smooth function ability of a society either traditional or modern is largely dependent on the level of obedience of rules and regulation; these rules and regulations are the self created by the society, whenever a person violates the prevailing rules and regulations that lead to conflict occurrence.

For the arising of such a law and order situation, the society has rules and mechanism to control the societal disorder and restore a peaceful situation, moreover the society also has a heavy weight informal traditional dispute resolution institution Jarga. These dispute resolving bodies always consist of authority-wielding elders and have own line of attack for resolving the conflicts. Therefore there are no prevailing one-size-fit-all models in the societies. The main objective of these bodies is to resolve disputes in existing cultural context. According to Evans Pritchard:

"A step towards the establishment of a judicial system taken in some societies by the recognition of certain person as having authority to act as arbitrators to gave judgment on the right and wrong of a dispute submitted to them".

(Evans Pritchard 1975)

The above statement has described the traditional judicial system and authority of the arbitrators. The traditional judicial system is consisting of the authoritarian and powerful leaders capable of sorting out the problems and decision making while the stability and integrity of the society is only possible through the traditional judicial system. What sort of the ability they have for the judgment of circumstances.

According to Snyder and Paul's:

"It is assumed that there is a single homogenous good, utility, that is present in all actually desired ends". (Snyder and Paul 1942)

Snyder and Paul have authentically described the only single objective of the traditional judicial system. The aim of the arbitrator will be the harmony and integrity of the society within the

framework of an informal conflict resolving body. As Baxi and Gallanter have described:

"They are in many important ways having an informal system for the conflict resolution existing in the form of punchiest". (Baxi and Gallanter 1979)

The above statement has clarified the similarities of contemporary societies. Tribal societies have an informal setup of traditional judicial system, similar to Punchayet system. According to Hariss and Spiro:

"These comparative social facts would seem to support the philosophical position of cultural relativists who have long argued that the nature of all social phenomena, including conflicts and their resolution, are relative and culturally specific." (Harris & Spiro 1986)

In the above statement Harris and Spiro described the cultural relativity of each society and mentioned that all societies have their indigenous cultural oriented system. Every traditional society has a cultural based traditional system for the survival of the society. In The view of Dupree:

"Economy and society of the pushtoon of Afghanistan who estimated constitute around half of the Jarga is a traditional institution that is more strongly bound up with the tribal total Afghan population." (Dupree 1980)

The traditional justice system Jarga has a strong support of the pahtoon masses right from its establishment to its decision making and are attached to it socially, morally and economically.

Basically Jarga is a pushto word meant for "gathering" for a particular objective. The Jarga represent the public opinion, its members are from all the domains and strata of the society and is not the instrument of any particular stratum. As describe by Saghir Ahmad:

"In the history as the Pukhtoon Nation, Jarga is an old custom with un-method potentials for the conflict resolution in the Pukhtoon belt of the Pakistan and Afghanistan. It is a name given to the models, in which the Pukhtoon society operates to undertake issues between individuals and between communities, to address concerns and look for the resolution acceptable to all state holders."

(Ahmad 1977)

The Jarga as an old custom has worked for the provision of justice within the jurisdiction of pukhtoon nation as a whole. Structurally jarga is very simple and everyone knows about its way of working while final verdict is acceptable to everyone. According to syed abdul qadoos:

"the Jarga, by which most society business, both public and private is settled in

the Khyber Pukhtoonkhwa (and also Baluchistan), is probably the closest approach of Athenian democracy that has existed since time immemorial the Jarga the essence of democracy in operation under which every individual has in shaping the course of things around him practiced this way democracy as a spiritual and moral instead of becoming an automation of votes." (Khan 1947)

Jarga is an informal institution. This informal institute has very formal structure of justice for the pukhtoon society. Through jarga pukhtoons regulate their economy, their politics and other social activities, in a formal way. The Jarga is similar to the concept of democracy that immemorially flourished; same is the case with jarga too. Everyone have the right to speak, to demand, and has equal access to the resources. According to Spain:

"The assembly of elders which are called to decide specific issues and whose decisions are binding on parties in conflicts, the Jarga has been called the closest thing to Athenian democracy that was existed since the original." (Spain 1963)

Similarly Spain also compared the traditional Pukhtoon Jarga with the concept of democracy where seniors selected traditionally for leading the Pukhtoon society must have an experiences, seniority and authority.

The elders "spingiris" or white bearded elder men act as judges and observers like jurists. The leader is traditionally authorized person according to Marx Weber (1964):

"The traditional authority is the semi –political decision made by chief of the societies where formal process of governance does not exist, or not full institutionalized." (Weber 1964)

In accordance with the Weber views, the traditional authority is semi political in its nature. Traditional authority is indirect proportional to the government existence. Jarga is also one of the traditional authorities through which pukhtoons resolve their disputes, conflicts and other existing problems.

To what extent these people (pukhtoons) are satisfied with their traditional judicial system of Jarga. The Pukhtoon code of conduct is the Pukhtoonwali and all the decision of the Jarga are made with agreement of their code of conduct as Pukhtoonwali as a code of the conduct is practiced in Jarga, as Ahmad said about the Pukhtoon code of conduct:

"Pukhtoon society not only adhere to general Islamic law but also its own, the Pukhtoon code of the conduct with its institution of Jarga, the decision of the Jarga

is final and the tribe's men face severe punishment." (Ahmad 1980)

There exists no difference between religion and Pukhtoonwali (code of the conduct) for a common Pukhtoon for shaping the behaviors accordingly to the normative structure. The Pakhtoons are spending their lives on their code of the conduct (Pukhtoonwali) in accordance with Islamic laws as explained by one of the western expert on Afghanistan Newell and Newell:

"In addition to the basic requirement of Islam, Pashton observe the code of Pukhtoonwali it is simple but demanding. Group survival is its primary imperative. It demand vengeance against injury or insult to ones kin, chivalry and hospitality toward the helpless and unarmed, strangers, bravery in battle, and openness and integrity in individual behaviors. Much honor is given to Pukhtoons who can successfully arbitrate the feuds that are endemic among them. Fines and blood money are devices frequently used to limit violence among rival families. Pukhtoonwali is a code that limits anarchy among a fractious but vital people."

(Newell and Newell 1981)

Newell has argued about the practices of Islamic law that shaped a traditional judicial system (Jarga). The pukhtoons realized the importance of the traditional judicial system Jarga that intensifies the group survival. The group survival is the first imperative for the Pukhtoons who are bound to obey the decisions of Jarga for the integrity and harmony of the society. Through this obedience, they can maintain their unity also. Hassan and M Yousufzai have authentically discussed the process of jarga:

"Jarga is a body comprised of local, elderly, and influential men in Pukhtoon communities who undertake dispute resolution, primarily through the process of arbitration." (Hassan and M. Yousufzai 1999)

According to the spirit of the statement given by Hassan and M. Yousufzai, the manority of Pakhtoons are influenced by the Jarga functioning, therefore they are inclined to decide all their cases through the traditional judicial system. The influential men or enforcement entities are selected on the basis of their wisdom, seniority, and experience. They are recognized from their family status as contemporary tribal traditional system has been described by Gluckman:

"Probably the simplest type of authority is that of the elders, a patriarch the most senior and also the kinsman in interrelated band." (Gluckman 1965)

The above description of chief selection is on the basis of his role making him the eminent person and of higher status to implement his decision and bring integrity and maintain peace in the

society. Traditional Jarga system is very simple and straightforward. In Gluckman words a jargamar usually must be a senior male person with a vast experience having close ties of kinship, band, and tribe etc. Benerge has explained the selection of a chief or a member of a Jarga:

"The Jarga is a political body, had its post filled by the election, and in practice they tended to be filled by Khans and other senior men." (Benerge 1994)

Structurally, jarga is a political body functioning in simple and improved mechanism. Any vacant position is traditionally filled by a local leader, khan or any other senior person with consensus building, but some time the appointment is made by inherited qualities.

But with the political interference, the process of selection has been changed, the selection of a traditional jirgamar is totally depend on the mercy of a manipulated khan, malik or a political agent, the traditional jirgamar's unreceptive behavior with the higher authorities can show him the way out because the Jirgamars have to fulfill the obligation of the society, otherwise he has to lose his prestigious status and lineage too.

Many a cholars, classical as well as modern social scientist and political viewer have discussed the traditional justice system of tribal societies specifically to the local context. The type of authority that also regulate this system has been explained by Max Webers (1964):

- (a) Traditional;
- (b) Rational-legal (the state or governmental authority);
- (c) Charismatic (a kind of exceptional or divine) authority.

The traditional authority has been argued by Austin Cline:

"Traditional authority is one which relies heavily upon traditions, customs, habits, and routines in order to regulate human behavior, to distinguish right from wrong, and to assure sufficient stability to allow the group to survive." (Austin cline 1977)

Traditional authority must be according to the willingness of society custom and tradition. Usually a jargamar must know about the normative structure of Pukhtoons, he must also be aware about right and wrong and follow the Pukhtoon code of conducts (pukhtoonwali), in other case he will lose his acceptability by the Jarga. The structural description of Jarga has been discussed by Olaf Careo:

"The tribal system is still working its instrument is the malik and elders sitting in conclave, surrounded by as many of the younger warriors as many have to be preserved and personality among to be admitted without question in major matters as in conclave many represent as whole tribe, when lesser issue are at stake, it will

represent a class or subsection, small or large, this is the Jarga Unwritten law in the end over bears opposition and as an accepted as unanimous." (Caroe 1965)

The Caroe's argument also emphasized that the Pukhtoon society is a male dominant or patrilineal society as explained by Ahmad:

"The three key and prestige conforming symbols of tribal society the male guest house (hujra) the gun (topak) and counseling of the elders(Jarga) are exclusively the deserve of Pukhtoon males in the most profound sense it is a man's world." (Ahmad 1980)

Ahmad has called the pukhtoon society is a patrilineal society; all the obligations of Jarga are fulfilled by the male entities. The leader hosting the Jarga must have the abilities of a gunner and a leader having the support of the masses. The reason for male dominance is the external and internal affairs associated to the Pukhtoon society. Traditionally and ethnically, Pukhtoon neither wants to involve their female in decision making nor in the proceedings. The internal functions of Jarga are of three types (i) dispute resolution (ii) society's wide spread issues and (iii) intra family disputes as discussed by Hassan M Yousafzai:

"There are three main functions of Jarga at society level dispute resolution, society-wide issues – driven Jarga, and inter family Jarga."

(Hassan M Yousafzai 2005)

The Jarga is performing three types of functions, firstly the dispute resolution (Whenever a dispute occurs between society members), secondly society's widespread issues (solution for issues like school, water sanitation, hospital etc) and thirdly the intra family level disputes (divorce, dispute between brothers, etc) by changing its strategies in different situations of issues but the main structure and function remain the same. At the lower level, Jarga in Pukhtoon society is emphasizing on the dispute between two individuals or families by nominating the neutral persons from both the parties to listen to them impartially, while the decisions of Jarga are final and acceptable for both the parties and shakhsi Jarga or third party as mentioned by Hassan M Yousafzai:

"This Jarga is formulated in the case of a dispute that arises between two Individuals or two families. The Jarga members are chosen from both of the Parties or both parties agree to the nomination of neutral members. Balance and neutrality are important in order for the members to arrive at a just settlement that is acceptable to both sides." (Hassan M Yousafzai 1999)

But in case if any dispute at the society level, the case is referred to the second type of Jarga, the Qaumi/Ulusi. The members of ulusi Jarga consists of every household who discusses the issue for arriving at the conclusion.

According to Hassan M Yousafzai:

"Thus, Ulasi Jarga is an assembly of the elders comprising each household of a certain village or society. It is convened to discuss matters such as collective property, rights and distribution of irrigation water, or common concerns, like the selection of a site for a school, etc." (Hassan M Yousafzai 2005)

The second type of Jarga Ulasi is consisting of the society elders who resolve issues of collective interest, while for resolving an issue relating to the government or government functionaries, there is third type of Jarga called sarkari Jarga. According to Hassan M Yousafzai:

"Sarkari Jarga refers to a Jarga sponsored by the government. In the tribal areas of Khyber Pukhtoonkhwa, the British established a contract with the locals allowing them to settle all issues between themselves and the government through a local Jarga. This contract was pronounced through the "Frontier Crimes Regulation of 1901 Act" allowing a Representative of the government to regulate the formation and reformation of Jarga." (Hassan M Yousafzai 1999)

The third type of Jara is usually sponsored by the government that has internal and external relation with the tribes and also with the government institutions. The sarkar Jara was initiated by the British government interrupted in traditional judicial system through frontier crime regulation (FCR). The Jarga is also performing on international level with a varied title of 'Loya Jarga.

Loya Jarga is also one of the modified forms of Jarga. Members of Loya jarga are the local representative. They represent their concerned area and their participation is very sensitive matters. If a Loya jarga handles in an effective way then it's fruitful otherwise it will lose its statues. According to Ahmad:

"In a society where there is no written or formal law, the importance of assembly is crucial in ordering society and preventing it from collapsing in to anarchy. The Jarga regulate life through decision ranging from the location of mosque with in

subsection to larger issues such as regulating foreign relations with others tribes and even conveying decision of the tribe to government." (Ahmad 1980)

The internal formal setups of societies vary from society to society and traditional setup doesn't need a formal law, it has the cultural oriented traditional system for the societal harmony, Jarga is one of the setups, its decisions are binding from a local mosque to international affairs level.

With the changes in traditional judicial system of Pukhtoons, the single largest ethnic group of Phaktoons has been affected by the changes while some other societies have also undergone with certain changes and problems due to changes. In such a scenario, Firth has described the African society:

"There is no African culture has not been affected in some way by the European contact and there is more which has entirely given way before it the culture of the Africa has been modified by contact with Europeans and near east." (Firth 1959)

The changes have been inducted in traditional un-written form for the traditional societies as an impact of culturally advance societies as the British society affected the Asian traditional setup and specifically the Jarga system that was the foremost judicial institution of Pakhtoons.

During the colonial period, people recognized the governance system that was designed for the colonizers inherited by the newly emerged independent third world states. In spite of the fact that the newly emerged states are mostly democratic in nature which distributed the people in different categories on the basis of their choices. The change in the governance system has been argued by Hassan M Yousafzai:

"Forget about the past practices and embrace the new system despite the Fact that it was designed by alien people. It is now the most viable way of Developing into a responsible nation-state. Forget about the new system given by the colonizers, and let us get back to our old traditional system. Merge the good traditional practices with the modern times and develop Systems best suited for our needs as a responsible nation-state." (Hassan M Yousafzai 1999)

The first category of people accepted the modern governance system despite the fact its alien nature for them, the second category disliked the colonial system, while the third category was in favor of amalgamating both the systems for better governance. By winning the favors of the people, the intervention of foreign influences increase and affected the whole structure of traditional Jarga with certain changing in its governance and selection process, but with all external interferences and internal support, the ideal model of Jarga remained intact but not in totality. Ideal means the traditional structure

of the Pukhtoon Jarga system which has been modified through the governmental interventions.

The ideal model of Jarga survived only in the remote areas where it could not be reached in its complete form while for the British government it was not possible to interact with the people to motivate them about the changes. The government's initial interests in traditional Jarga gradually changed and a decentralized process penetrated into the centralized system as Ahmad explained:

"The functions of the Jarga become redundant with the presence of formal law courts in SAM (Encapsulated Pukhtoon) its loss of prestige and power as a result of its limitation in having its orders carried out." (Ahmad 1980)

According to the viewpoint of Ahmad, that in the settled area the "Pukhtoon Jarga system is in existence in spite of massive level interventions. There is prevailing a formal law court system in the areas where the government could not interfere and Jarga is still in traditional form and under the control of the local elders. But the government of Pakistan is trying to control these areas through the influential entities like the Jargamars of Jarga (Malik, khans and Nawab etc.) as modification and changes in the traditional jarga were the only way to control the people. As Ahmad stated:

"Malik the only symbol of exploitation in the tribal area and his position as that of a bridge between his section and government may soon make it a rudiment."
(Ahmad 1980)

The gradual shift of power from traditional to governmental sphere has proven that maliks are just a symbol of exploitation. Maliks are ordinary men in the sense that they have no power or authority to decide any case in the traditional spheres.

Violation of prevailing rules and regulation leads to a conflict occurrence in a society. For the resolution of a conflict in every society a traditional judicial system must exist. All societies have conflict resolving bodies that consist of authority-wielding elders. They must be selected on the basis of their wisdom, seniority, and experience. But some time the post is filled-out by inherited qualities. The main objective of these bodies is to resolve disputes in the customary cultural context. Such a system is prevailing in the pukhtoon belt is known by the word "JARGA. Jarga stands for the provision of justice. The Jarga have a very formal effect on the pukhtoons in the jurisdiction of pukhtoonwali in regulating internal and external relations.

The change has been inducted in the traditional informal set up of the traditional societies. Basically it's the effect of culturally advanced societies. That was the British government has affected Asian traditional setup. Specifically jarga was the foremost judicial institute has been affected through

frontier crime regulation (FCR). After the British colonialism, the government of Pakistan structurally modified the traditional jarga. In recent days Selection of a traditional jirgamar is totally on the mercy of a manipulated khan, malik, or a political agent.

The supremacy that once was intensified in the traditional Jarga has shifted to the modified or governmental Jarga. Now it has become an exploitative imported part of the socio- political structure of the Pukhtoon society.

2. Introduction

The area profile is divided into two broad categories, macro and micro. First the researcher viewed the district profile to grasp the macro picture of the geographical area with some description of the district. At macro level, the researcher has relied upon the secondary data taken from various sources. In the micro profile the researcher elaborated the Tehkal union council in the local cultural perspective.

2.1 Historical background of Peshawar district and population

The Peshawar district lies between $33^{\circ}44$ and $34^{\circ}15$, north latitudes and $71^{\circ}22$ and $71^{\circ}42$ east longitudes. North side of Peshawar has been covered by District Charsadda, where the east has been covered by Nowshera, the remaining south by FATA, with a juncture by Kohat district, on the west Mohmmand and Khyber agencies are situated. The total area of Peshawar district was 1,257 square kilometers.

The total population of Peshawar district was 20.5 million, while the population density was 1725 per square kilometer. The growth rate was 3.17 percent (1998 Census report). Females form 47.64 percent and males constitute 52.35 percent of the total population.

Peshawar the capital of Khyber Pukhtoonkhwa was also known "frontier town". One of the famous entrances Khyber Pass is also lead to Peshawar. It holds the key to gateway of the subcontinent. Four hundreds years back different historians have used different names for this city. The word Peshawar derives from a Sanskrit word "Pushpapura" the city of flowers². The Chinese traveler Fa-Hien, who visited the area in 400 A.D., gave it the name of Fo-Lu-Sha. Near to Attock an oldest Kharoshti record has been found. One of the oldest originator of Peshawar that dated 119 A.D; they spell as "Pushpapura" a Sanskrit name meant for the city of flowers. The flowers of Peshawar were also mentioned in Mughals Emperor Babar's memoir³. Some of the historien are of the view that Peshawar is 2,000 years in the era

² Provincial Census Report of KHYBER PUKHTOONKHWA 1998. Population Census Organization Statistics of Pakistan Islamabad October 2000. p-14

³ Emperor Babar took special interest in the beatification of this city. He built various historical buildings and gardens in Peshawar city.

of the Kushans Ashoka in the 2nd century B.C. has been discussed. Peshawar, under Ashoka rule Buddhism spread in the region. During the period, the flourishing of the great Ghandhara civilization was witnessed. Buddhism was dominant in the region for several centuries after Ashoka. When Afghan or Pukhtun appeared in the valley and succeeding in wresting a part of it from the ruler of Lahore who was defeated by Sultan Sabuktigin of Ghazni and the valley came under the control of Ghaznavis⁴.

Sultan Mehmud of Ghazni was son of Sabuktigin. He is also one of the essential figures making this area a battle field for different interior to India. This was the 15th century, the Pukhtun of Ghor over through the Ghaznavis and ruled the area up 1505 AD. Babar invaded Peshawar through the Khyber Pass. He subdued the Pukhtuns of Bajaur and Swat. The Mughals thought it was vital to keep the route from Delhi to Kabul open and for this purpose he attempted to keep the Pukhtun tribes under control but total goals were neither achieved nor perhaps aimed. Sher Shah Suri, the successor, has also contribution in form of a shahi road through Khyber from Delhi to Kabul.

After the death of Nadir Shah, the Sadozai Durrani's dynasty was established under Ahmad Shah Abdali, during his rule the Peshawar valley was brought under his control. After many vicissitudes, the area fell into the hands of Sikh rulers. In 1818, Ranjit Singh captured Peshawar for his Sikh Empire. He burned a large part of the city and filled the trees shading of many gardens for the fire wood. The following 30 years of the Sikh rule saw the destruction of Shalimar Gardens and of Babar's magnificent fort, not to mention the civilian city's population by almost half. In 1849, after the defeat of Sikh at the hands of the British, Peshawar valley was annexed by the British, and from that date Peshawar became an administrative district of the Punjab government. When Khyber Pukhtoonkhwa was constituted in 1901, Peshawar becomes the seat of the new province.

Peshawar may be divided into two parts. The old city consists of Qissa Khwani bazaar, Chowk Yadgar, Andarsher bazaar, Mochi, lara bazaar, Ghr Gathri, Lal Kharti, Mohabat Khan mosque, Bala Hissar fort, Sethi Houses, and the new Peshawar consists of Peshawar Saddar, Cantonment, the Deans Trade Centre, *Tehkal*, City Towers, Army Stadium, Tatara Park, Baghi Naraan.

Commercially Tehkal is the backbone of Peshawar city. Not only educational institute have occupied a vast area of Peshawar in general and for the lower Tehkal in particular. Tehkal was also consisting upon two parts one was Tehkal bala and the other was Tehkal payan. Tehkal bala was mostly an urban area, while Tehkal zereen was rural to some extent.

⁴ Ibid. p-16

As the research was concerned with the specific location of Tehkal bala, (upper Tehkal) therefore the collection data would be limited to Tehkal. Despite the fact that throughout the Peshawar district same Pukhtoon culture was prevailing.

2.2 Profile of Tehkal

Tehkal is situated on Jamrod road at west north of the old peshwar city, while the Tehkal union council was lying between 33° 60 and 34° 230, north latitudes and 71° 22 and 71° 42 east longitudes. It was bounded on the north by Darmandia and Mullah zai, on the east old Peshawar city, Gora Qabristan, and Sadar, on the south the Pawaky village, on the west Palosai and Peshawar University. Tehkal has covered 36 square kilometers of total area of Peshawar district. Tehkal was the main union council of Peshawar district. Basically Tehkal was divided in two parts, one was Tehkal payan, and the other was Tehkal bala.

The table below elaborates the major tribes, shown in horizontal columns and the digits in the table shows the number of respondents:

Table No 2: Ethnicities and Tribes

SR.No	1	2	3	4	5	6	7
Major	Khalil	Safi	Mohmand	Khattak	Yousafzai	Others	Total
Frequency	33	7	6	3	2	1	52
Percentage	63.461	13.461	11.538	5.769	3.849	1.923	100%

Source: Field Census Survey

According to the table, the majority of the respondents were from Khalil tribe, 33 out of 52 respondents being 63.461 percent were from Khalil tribe. Reason behind the fact was their hierarchal presidency in the area. Khalil tribe has much more experience regarding the local dispute settlement through their traditional society base dispute resolution mechanism (Jarga). Mostly Khalils were presiding the Jarga, the remaining tribes migrated from the nearby areas of Khyber Pukhtoonkhwa. The table further shows that 7 out of 52 respondents being 13 percent were from Safi tribe, 6 out of 52 respondents being 11.538 percent were from Mohmand tribe, 3 out of 52 respondents being 5.769 percent were from Khattak tribe, 2 out of 52 respondents being 3.849 percent were from Yousafzai tribe, and 1 out of 52 respondents being 1.923 percent were from Others.

from Khattak tribe and the remaining 2 out of 52 respondents being 3 percent were from Yousafzai tribe.

The amalgamation of different tribes in Peshawar was basically because of invasion and inhabited by a number of invaders from the west like Aryans, Mughals, Afghans, Sikhs and British, almost every race has left a mark on its ethnic composition. Afridis, Khalil, Khattaks, Mohmand, Orakzai, Wazirs, Mehsude, Yousafzai, Arbabs, Hinko speaking and Punjabis have inhabited in Peshawar. As the locale of my research was Tehkal, which was concerned occupied by Khalil, Arbabs, Yousafzai, Khattak and Safi, Mohmand and other small tribes Dawoodzai and Hindkayan etc.

Arbab and Khalil were two dominant families in Tehkal, other tribes were also available but small in numbers as Khattaks, Yousafzai, Safi, Mohmand. The four father of Khalil tribe has much more contributions in the field of politics and judicial reform especially for the society uplift through informal judicial system of Jarga, the family was known as respectable and influential in the area.

2.2.1 People and Culture

Tehkal as a union council has turned into a modern city, linking with the Peshawar city that compelled the rural-urban area people to migrate to the city. The values have changed; the people were becoming more individualistic and professional in their attitudes. Modern technologies, growing business and increasing literacy and foreign exposure have played a significant role of change agents in molding the society on western style. The introduction of new technologies has provided an opportunity to the youth of the region to grow and keep pace with the changing world. The provision of professional education was another key factor in the socio-cultural transformation of the society in western lines. The place which was once famous for robbery, thefts, killing has turned into a peaceful area; one could rarely witness the people carrying guns wearing the big traditional turbans. People wear shirts and trousers, youngsters speak English to depict their educational and social-cultural background in Tehkal, while the language has also an impact over the traditional terminology (Pushto word that was be used in traditional judicial Jarga). Many of the English words used during the Jarga proceeding.

2.2.2 Death and Birth

The birth of a male child, as per the century old traditions, celebrated with pomp and show and receipt of more gifts from relatives and friends while the arrival of female child generally passes unnoticed. The village Maulvi intones Azaan into the ears of the new born. The first ceremony after the

child's birth was Sar-kalai⁵. In case of a male child the circumcision ceremony followed on which relatives and closed friend were served with refreshments. Guest bestowed the child with cash and gifts.

In case of death, relatives, neighbors and friends go to the deceased home and mourn over the dead body. After funeral prayer, the dead body was taken to the graveyard. The Fatiha Khwani⁶ for deceased was held, while the cooking in deceased's house was suspended for three days, the relatives of deceased serve food to the grieved family and guests.

2.2.3 Dress Pattern

Usually Shalwar Qameez, Peshawari Chappel and white cap were used as traditional dress by the male in general as worn both in urban and rural area. The women at home wear Shalwar Qameez and Dupata, while going out of house; they use Burqa and Chardar for observing Purdah.

The Jarga Jargamar wear white cloths and black shoes usually, the dress was the symbol of their expertise in the prevailing society. Nevertheless the advent of modern means of communication, education and dress patterns, both men and women were in transition, young put on paint coat and girls wear Shalwar Qameez and Dupatta at home and outside. Women use golden jewelry usually at various ceremonial occasions.

2.2.4 Languages

In the old rural side of the Tehkal all of them were pushtoo speakers. Rarely speak Urdu or Hindko, especially while talking to the visitors and people coming from Punjab province. But during Jarga process, Pushtoo language was commonly used. According to the local perception, the logic behind the Pushtoo language was the level of understanding of commoners.

2.2.5 Food Pattern / Habits

The people of Tehkal use ordinary traditional food in their normal life, Nan and Salan. The average people take three meals in a day, breakfast in the early morning that consist of Nan and tea, at the lunch people usually take Nan, vegetables, beef, mutton and rice while at the dinner time, the same foods with varied with varieties. The people of the area were very fond of meat; therefore, the city was popular for Tikka Karahi, seik Kabab and Chapli Kabab and Qahwa was the specialty of the city usually

⁵ A ritual in which the new born baby's hair is shaved and food is served among the relatives and friends.

⁶ Consoling the family of deceased and pray for the forgiveness of the deceased

taken after the lunch and dinner. The use of cigarettes has been replaced with the traditional chillum⁷. Naswar⁸ was also very common among the majority of the people. With the arrival of Afghan refugees, new specialties have been introduced to foods, especially in rice such as Kabuli Pullao (rice). Fast food restaurants like KFC, Pizza and Chief were becoming popular among the youngsters.

2.2.6 Religion

The religion of the majority was Islam, almost 98% of the population was Sunni Muslims and 2% were Shiite Muslims. The people observe their religion with great sanctity and punctuality. The religious dogmas always follow the Arabic or Afghani in fasting and celebrating Eid-ul-Fiter that always clashes with the Federal Government announcement of Ramadan as the Peshawar stop observing their fast one day earlier than the other population of the country.

Fair-haired decision of Jarga between a Shiite and Sunni was also the reason for the existing of centuries old judicial institute. Mullahs from the concern societies were also the integral part of Jarga.

The table below elaborates the occupations listed in the table in vertical column and the types of families are shown in horizontal columns, while the digit shows the number of respondents.

Table No 3: Occupations

Occupations	Type of family			Total
	Nuclear	Joint	Extended	
Agriculture	4	15	8	27
Shopkeeper	0	8	3	11
Industries	2	5	0	7
Wages	1	5	1	7
Total	7	33	12	52

Table show the family structure from the occupation perspective in the context of Jarga. Occupation has been selected on the basis of the Pukhtoon society where most of the dispute and problems were emerging from the occupation. Majority of the respondent were living in joint family system dependent on agriculture, most of the cases resolved by the Jarga were relating to land and irrigation of land, shopkeepers were also the justice seekers by the Jarga, while two classes were free to

⁷ A traditional curve pot of tobacco and is smoke tobacco through a long pipe (hubble-bubble)

⁸ Chewing tobacco or sniff.

some extent one was the industrialist and other were daily wages laborers because the industrialists have no competitive rival and daily wages were free because of being powerless to indulge in dispute with anyone.

2.2.7 Occupations

The agriculture was the main source of livelihood for the rural population of Tehkal union council because Tehkal was very rich in agriculture wealth. Mainly the inhabitants Arbabs and Khalil of Tehkal were the leading people of the area, while the industries also absorbed a large proportion of the population whereas a large section of population was in government services, banks, autonomous, semi-autonomous organization and business.

2.2.8 Health facilities

The health facilities in the area were available to the common man within the city, as there were government and private hospitals, clinics, Hakeems and Homo doctors running their clinics in each and every locality. Health facilities for a commoner were much more expensive to avail but for a Jargamar it was not. The main hospitals of the city was leady Reading Hospital and Khyber Teaching Hospital, while around Tehkal and Hayat there were Abad medical complex, Combine military hospital and scores of private's hospitals and clinic especially in Dabgari area.

2.2.9 Educational facilities

Peshawar city was the centre of education in the province, inner to the city of Peshawar institutions laying within the jurisdiction of Tehkal with a little distance of one kilometer as Multiple educational institutions like Peshawar University, Engineering University, Agriculture University, Khyber medical university, Islamia College University, Jinnah College, Khyber Law College, Edwards College and many private universities, colleges and schools providing services at higher level. But in the tehkal union council there were two high schools, a boy's collage, a college for girls, and eight primary schools. According to the local view whenever a need for an educational institute has been occurred, the native went to the government allies under the presidency of their local elders in a form of Jarga to officially sign a contract with the government that how much they can participate in the infra structure build up.

2.2.10 Physical Feature / Topography

The major part of the area consists of fertile land. The central part of the union council had assets of fine alluvial deposits. mostly the area is cultivatable.

2.2.11 Climate

The climate of Tehkal was the same as of the neighboring city of Peshawar districts, extreme summer season starts very early (mid of April) and persists till the end of September. The month of June was extremely hot and dry. In summer maximum temperature was recorded over 40° C and minimum over 25° C⁹. The period from July to September was of monsoon seasons; however, months of July and August were hot and humid. September is the turning point for season, until to the mid of November, would be a cool and pleasant. From December to mid February it was cold. The mean maximum temperature for January, the coldest month was recorded as low as 18.35 C and 4.00 C respectively.

2.2.12 Rainfall

The Rainfall was a common factor both in winter and summer; the winter rainfall due to western disturbance, showing high recordings in the months of February to April. The highest winter rainfall was recorded in the month of March while summer rainfall in the month of August. The Average winter rainfall was higher than that of summer.

2.2.13 Flora and fauna

The common trees in the area were mesquite, Ber, and Jhand. The common shrubs were Spynda, small red poppy, Sepra, camel thorn, Paighambari gul and drab grass. All kind of roses, jasmine, gule dawoodi, rambile chamible guluna, nargise, kashmalo, ganderi, mori and other seasonal were planted and sown in the area.

2.2.14 Wildlife

With the exception of non availability of parks for the entertainment of the local inhabitant,

⁹ Provincial Census Report of KHYBER PUKHTOONKHWA 1998. Population Census Organization Statistics of Pakistan Islamabad October 2000. p-14

the Wild life department of Khyber Pukhtoonkhwa, Peshawar was working for the protection and preservation of wild life in other areas, through declaring the protected wildlife sanctuaries and national parks.

3.1 Introduction

Social organizations are the hallmark of every human Society. In this chapter the social organizations of the society are discussed, with special reference to Pukhtoon culture and traditions. The chapter is mainly divided into two parts one part comprises of traditional political organization and other consists of social organization in the Pukhtoon society. It has been discussed that what is kinship, family, marriage systems in the area and how they influence the social set up in general and participation in Jarga in particular.

The cultural traditions of Pukhtoonwali have been discussed, and how it influences the social life of the Pukhtoons? Various elements of Pukhtoonwali like Hujra, Jarga as well as Mailmastia and their role in the local judicial system has also been discussed in this chapter and detail discussion has been made in the chapter-4. Further the social, political and as well as judicial role of Maliks, Mullahs and Ustaz have been brought under discussion.

For the understanding of any society anthropologically, the understanding of its social and political organizations is very important. Men being social animal live in society, and to run the society they make some sort of organizations. To run the society according to that laws (traditional or formal), and to maintain its peace and stability through its formal or informal judicial system is the necessary mechanism.

3.2 Social organization

The social organizations are necessary for human survival, in anthropology, social organizations refer to those processes that bring order in the activities of the individuals and groups, and in the ongoing decision making by the members of the society. Malinowski has defined the term social organization as:

"Social organization is the process in which humans act upon in order to satisfy their needs." (Malinowski 1948)

"Formation of social organization is the way of the human being to organize their selves to achieve certain goals in the Society. Social organization is like an organism, individuals and groups become the organs of this organism."

(J-Brown 1993)

Basically social organization has been developed for the fulfillment of basic needs. That's why Human being needs a Social organization. Social organization comprises the totality of patterned relations among the members of a society, the sub-groups formed in the course of these relations, and the relations among these groups and their component members. Others use the term social organizations as the arrangements of roles associated with the statuses that constituted the social structure. Social organization also refers to the dynamic, situational, decision making and strategic aspect of social relations. As social organization has its beginning from family so the research will start from kinship and family, it will help us to understand the social structures of my concern Pukhtoon Society.

3.2.1 Kinship

Kinship and family is the basic unit of any society. By studying kinship organization we would be able to understand political, social and economic ideals of the members of the Society. Kinship is defined by the anthropologist.

"The connection or relationship between persons by blood or marriage."

(Podolefsky 1993)

If the kin are related by blood it is called consanguine kinship relation for example father son relationship. Similarly when the kin were related by marriage or affine relationship the kinship is called affinal relationship, for example husband and wife relationship. In human Society the role of kinship must be realized. Kinship and marriage plays an important role in the regulation of behavior and the formation of the social group. Kinship organizational types and their rules are culturally defined.

In the society, where research study was carried out, there was patrilineal/agnatic kinship organization. Patrilineal/agnatic kinship was that kinship organization in which the individual traces his/her ancestry through the male member of the family. The right to have power of control and transfer of property lies in the hands of male members of the family.

If we compare the ethnographic data about the alliances and unity of the kins, it will be cleared that there are more strong relations between blood relatives than affine kins. According to respondents view, by consanguine kin we help each other in various social issues like quarrels, Dushmani (enmity) and other problems and events of happiness. It does not mean that all the blood relations are stronger than affine relations. There are examples of divided blood relatives and united affine relatives. Blood relative mostly divide on the issues of property division, Tarburwali etc.

Due to the vital role of kinship terminology in structuring the human relationships, anthropologists are always interested in the analysis of kinship terms. Kinship terminology, here in this study helps to understand the factors of competition (Siali) and Tarburwali. Who helps each other more and who are against each other in family or Khanadan?.

Table No 4: Kinship terminologies

English	Pashto	English	Pashto
Father	Plar/Baba	Mother Sister's daughter	Tror Lor (troor)
Mother	Mor/Abay	Father Father	Nika
Son	Zoi	Father Mother	Niya/Nana
Daughter	Lor	Mother Father	Nika
Boy	Halak	Mother Mother	Niya/Nana
Girl	Jenai	Father Brother	Trah
Mother Brother	Mama	Father Brother's wife	Chache
Mother Brother's wife	Mami	Father Brother's son	Trahzoa/zoi
Husband	Khawand/meerha	Father Brother's daughter	Trah lor
Wife	Khaza/korwadana	Sister Husband	Okhay(khor
Mother Brother's son	Mamazoa/Zoi	Wife Brother	Okhay (kahzay
Mother Brother's daughter	Mama lor	Wife Father	Sakhar
Father Sister	Tror	Wife Mother	Khuashi/Khuakh
Father Sister's husband	Tror Khawand	Son Wife	Inshore/Ingor
Father Sister's son	Tror zoa/Zoi	Brother Wife	Wandyar/Wrand
Father Sister's daughter	Tror Lor (tarla)	Brother Son	Wiarah/Warah
Mother Sister	Tror/Bibi	Brother Daughter	Wrayra
Sister Son	Khuria	Sister Daughter	Khurza

3.2.2 Level of Kinship recognition

By the level of recognition, I mean how they recognize and identify themselves or what kinds of kin grouping prevail in the area. The village as a unit was recognized for bonds of kinship recognition. There were following bonds of kinship in the village *Khel*, *Khanadan* and *Kor* (family).

3.2.2.1 Khel (Clan)

A mohalla divided into numbers of groups was known as *Khel*, while the locale of

research was located in a Khel, all the members were traced their lineage to the common ancestor. In the Mohalla every individual was recognized by the name of his Khel as it was the unit of participation and identification. In the Mohalla, Khels were the co-operative groups. Members of a Khel, most of the time, work together to solve problems, but there were examples of disunited or divided Khels, like Utmanzai (a Khel) in Mohalla Mirakhel. In Mohallas and Khels people gettogether to solve the common problems. Khel serves as a group for the interests of the Mohalla. Khel was the combination of various Khanadans.

3.2.2.2 Khanadan

Khanadan was the practical level of recognition and participation in the village. It comes first than Khel and second to Kor/family. Most of the time, it was considered till the third or fourth generations. Khanadan name was given by the name of the eldest (father) in the group. In the group the acts of any member were considered as the action from the whole group. The group was the actual tied group, and the members of the group stand together in every field of life. Khanadan consists of families (Kors).

3.2.2.3 Kor/Family

The kor was the subdivision of Khel and the basic socio-economic unit among the village. Kor could be defined as a joint or extended family living on one and same hearth, pooling their economic earnings and spending on their family members. It was the smallest unit of the social organization in the village and consists of all those "individuals" or relatives who were living in a single household. As discussed by Akber S Ahmad:

"Kor (house) lineally related kinfolk occupying a single settlement and joint subjects to the authority of a living male ancestor." (Ahmad 1980)

After marriage the newly married couple lived among or near the parents of the groom. But usually they lived with the parents of the groom till such time when no big problem with the father or with the brothers of the groom arised.

Representation and participation in Khel's ceremonies was the participation of whole of the Kor members but ceremonies of Mohalla and village were attended by one or more members of the Kor, depending on the intensity of relations. As Pukhtoon society was of patrilineal and patriarchal nature, therefoe at all levels of kin grouping (Mohalla, Khel, Khanadan, Kor), the family was represented by the male member.

There were following types of Korsi/families in the village:

3.2.2.4 Nuclear family

It is defined as a unit consisting of man, his wife and their children. According to McMillan dictionary of anthropology, Murdock defines nuclear family as:

"Composed of mother, mother's husband and their children"

(McMillan dictionary of anthropology 1986)

In Peshawar many of the nuclear families were observed, according to the local perception nuclear means that one could not bear his brother due to have many sons while other don't or disliking of parent. In the village most of the people lived in joint families lead by the elder male family member that could be a father or grandfather or eldest brother in case of having no father or grandfather.

3.2.2.5 Joint family

The joint family is such type of family in which two or more than two brothers or sisters lived with their families. In the village, most of the people were living in joint families. According to the local people the joint system could provide a good and satisfied status of living in Tehkal. According to their view the joint family means that brothers living in a house and share their resources of income and make decisions jointly in other affair.

3.2.2.6 Extend family

"The extended family system is a combination of several nuclear, polygamous, or polyandrous types of family, and the relationship between the members is biological and social."

(www.jstor.org/stable/2294884)

The living status of two or more brothers, along with their married children, could be realized as extended family. In the village there were few extended families.

3.3 Territorial recognition

Besides the kinship, territorial affiliations were always remained an important element in group's formation for various purposes like wars, fake witness in Jarga, economic unions, exchanges and for political grouping also people from various caste, color and creed got

together on the basis of territorial unions. The people of the village sometimes unite against other rival villages.

3.3.1 Village

The village being one unit was considered to be the most important factor both socially and politically. Village usually consists of various Mohallas (wards) in the area. Safyano kally consists of five main Mohallas, people introduce themselves by the name of their village outside and on the basis of being from the same village, people help each other in various issues both inside and outside the area. People of same tribe live in one sector of the village and others in other sectors. Khalil was a rich family of the village their houses were mostly Pakka houses made with backed bricks, cement, steel bars and decorated with tiles of different colors but outwards and inward mobility was very low.

3.3.2 Mohalla/Cham (ward)

The mohalla was the unit of identification consisting of Khels, Khanadan and Kor/families. It is not necessary that all the people in a Mohalla have kin relations with each other. In the village Tehkal, most of the Mohalla were consisted of different Khanadan, families. Answering a cross question regarding ' issues in Mohalla , the native replied that member of a Mohalla was identified by the name of the Mohalla in the village although people help each other being member of the village, but Mohalladar (member of Mohalla) were the first who came to help.

Despite the fact that in the concern area Mohalla is heterogeneous but Marriages are preferred inside Mohalla and Mohalladars are given importance over people of other Mohallas. Most of the time members of a Mohalla are relatives/kin, if their genealogy is traced back fifth or sixth generations.

The relation of one Mohalla with others Mohallas was very peaceful and there was no conflict between Mohallas. The members of one Mohalla interact with the members of other Mohallas and any of incidents occur in a Mohalladar, would be considering their personal one and all the Mohalladars try to resolve through Jarga peacefully.

3.3.3 Wada (Marriage)

Marriage is a universal institution in social organization and a social union between

man and woman approved by society and religion. The union which promotes economic sharing and affinity with other Khels, the procreation is known as marriage.

Some of the anthropologists tried to define the marriage keeping in view the core functions of this institution which are usually related to the regulation of sexuality and the reproduction of children.

Leech defined marriage as:

"Marriage is a union between a man and a woman such that children to the woman are the recognized, legitimate offspring of both the parents."

(Leech 1962)

Marriage in the locale was a well define social institution, wherein Tehkal, marriage were thus exempted.

Decision of marriage was made by the parents of the couple; the nogamous marriage pattern was dominant in the village Tehkal; only small numbers of people do second marriages as it was not considered a wise step socially without any solid reason. In the village the women were considered as the honor of the Khanadan or Khel, therefore giving their women for marriage to other khels was not advisable. That is why the ideal marriage pattern was endogamy corresponding to a marriage rules in which it was expected to choose someone from their own Khanadan or Khel. The ideal marriage spouse was the patrilineal parallel cousins.

There were two types of marriages in the village:

- Badal (exchange) marriage;
- Wulver or bride price marriage.

3.4 Badal Wada (exchange marriage)

"Badal" means exchange, in this type of marriage, the sister of one person married to the brother of the other and vice versa. In Tehkal, that type of marriage was common among the same tribe like man and women should be from one tribe, otherwise rarely exists between different tribes. In this type of marriage direct exchange of woman take place. The marriage takes place both inside the Khanadan or Khel and also outside with other people. Such marriages, according to the people of the village give security to the girl in the house of the husband. It was also considering a strong bond of relation, for example, if one treats his wife badly in return there was an equal chance of maltreatment of his sister by his brother in law.

3.4.1 Wulver Wada (Bride price marriage)

In such a marriage, all the marriage expenses are borne by the goom including jewelry for the bride along with other numerous gifts like like furniture and utensils, while waleema expenses were the responsibility of the goom's family.

An agreement was made between the two parties in the presence of some other members of both the families as prevalent in the Phakhoon society. The Wulver Wada marriages were not much common in the village because the people consider it against the Pukhtoon code of conduct (Pukhtoonwali).

3.5 Occasions of social gathering

There are various ceremonies and events of social gathering in every society. In these social gathering the degree of integrity and solidarity of the society could be observed. In the village there also were many events of social gathering different in type and different in degree in terms of participants. Some of the occasions of social gathering in the village are as follows.

3.5.1 Birth

In the society due to its patriarchal nature, the birth of boy was celebrated while the birth of girl was considered as normal. Anyhow, there was a gathering on both the birth of boy and girl but with difference of degree of participation. On the birth of a girl all the members of the Khanadan go to the house where baby was born, while on the boy's birth nearly all the members of the Mohalla and friends outside the Mohalla come to the Hujra of the new born parents and present some money as gift to the newly born baby. The giving of money was considered the sharing of happiness by the loving families, while it was consider unethical, if any relative does not come for congratulate the birth.

3.5.2 Marriage

Marriage was another occasion of social gathering and an event of biggest gathering in the village. Nearly all the village participates in the marriage ceremony. More expenses on marriage were considered as the symbol of social status. In the marriage party all the relative, friends and nearly all other people were invited. All the male partieipants were served with a special feast (Wrijay) in the Hujra, while women were served at the home of the

bride or groom. The entire relatives and Mohalladars help the family in making the arrangements of marriage and in serving the guests. Marriage was a means of strengthen the relations and making new relations with the people.

3.5.3 Death

On the occasion of death of any member of the family all the people go to the family of the deceased for condolence. Village people prepare grave (*Qabar*) for the deceased, and they take cooked meal to the Hujra and home of the deceased for three days but everyone would bring something according to his status. They also come for many days to the family of deceased to share their sorrows and griefs.

3.6 Political Organizations

Politics is a social activity and can be as the exercise of power, authority, and decision making for the allocation of the resources and many more. Politics is linked to the phenomena of cooperation and conflict. There is always in every Society some sort of organizations which help to settle issues regarding politics, no matter whether they are domestic or national level. The organizations which answer or try to answer the questions of society like, who should get what? How should power and other resources be distributed? How should collective decisions be made? As the political parties are running the governments and every government has a vibrant governance, participation in political activities is the direct access to politics and affiliation with the political parties is the utmost need of the day. However, political organizations are established with the interaction of common people, while political parties forms a political organization for a common goal of getting government through elections where general public participate as voters.

Pukhtoon Society was a traditional society, there was too a liking and disliking for politics like other traditional societies, local rules and traditions influence the political people to participation in every ceremonial gathering. In this chapter I have made the affiliation of political organization with the traditional judicial Jarga system.

3.6.1 Pukhtoonwali and Jarga

It is said that "Pukhtoon are not those who speak Pakhto, but those who do Pakhto". The Pukhtoons live under a code of life which is called Pukhtoonwali. Pukhtoonwali is

the sum of all those ideal, meanings and qualities which are required for a Pukhtoon. Pukhtoonwali is unwritten constitution of Pukhtoon Society comprises of many components but here the elements of this code like Ghairat (bravery, defending one ego), Mailmastia (hospitality), Nanawate (someone apologies through mediator), Islam, Purdah (seclusion), Jarga and other Pathan customs like, Hujra, Badal, Tarburwali and Siali etc are discussed.

All the aliments directly affect the internal as well as external relation of the Pukhtoon Society in general and in Tehkal in particular. In Tehkal division was mainly because of Ghairat in form of Siali and Tarburwali, that unit and divides the families in the Pukhtoon Society. Ghairat means the defending one ego by conflicts in the society while various crimes were justified by the name of Ghairat.

Jarga and Hujra were considering compulsory institutions of Pukhtoonwali, those who have Hujra were socially respected. Infrastructure have also manipulated role for the social stratification in the research locale. Those who have cemented Hujra were to be considering for a good social and political position in the society.

3.6.2 Jarga

Jarga can be named as the council of the village elders and respectable institution for disputes resolution. A Jarga in its simplest form was merely an assembly, ideally, all the population is represented by the Jarga residing within its jurisdiction. Jarga is a biggest and strongest political organization of the village in every Pukhtoon Society.

In the village Tehkal Jarga was very active political organization helping the people by resolving all sorts of conflicts and disputes among individuals, groups or villages. Jarga was not only conveyed to resolve disputes, but for the common interest as well. The basic function of the Jarga was to maintain law and stability in the village. It was a traditional judicial as well as political organization, so people first try to solve their problem through the help of Jarga and if Jarga fails to resolve the issue then big Jarga was called or the case was taken to the court of law. Jarga could be private or public, depending on the problem, Jarga called for Inter family matter would be considered as private while Jarga called for a dispute between two tribes would be a public one.

The parties which have any dispute either between the rival groups or within their households select their representative for Jarga that could be a Maliks on the basis of his talent,

experiences, age, knowledge, etc. The other party also selects their Malik to represent them in the process of justice. The Maliks could be from their own Mohalla or from other Mohallas. The place for Jarga was usually the Hujra of a third party or the mosque if there is danger of bloodshed in the Jarga. The size of the Jarga and their composition varies in particular cases. In Jarga there was equality among all the members of Jarga and they sit usually on the carts or on ground in a circle. There was no ranking among the Jarga members. Jarga hear both the parties before announcing a unanimous decision for the sale of justice. After listening to the parties, consultations with Jarga members and hearing to the witnesses, the decision was announced either in the presence of the parties, their representatives or in a separate meeting of the members after arriving at a conclusion. All the members were obliged to use their power and influence to enforce that decision to both the parties that usually accept the decisions of Jarga. Jarga tries to settle the matters peacefully in an existing situation by judging right and wrong, determining the guilt.

3.6.3 Malik

Malik is a person whose name exist on the genealogical chart of the khel and who posses property. Malik is the name given to those elderly people, who are the local heads of their Mohallas. They serve as representatives in the village Jarga. The word "Malik" use in Pukhto for "chief or headman". Malik is the man of importance in the village's social and political matters. Malik is the representative of his Mohallas in village Jarga and speaks for the right of his Mohalla.

In Tehkal malikism is not limited to a specific caste or creed or to a specific community but also for the influential Arbab family, while it was considered more appropriate for a Malik to have consequenual relations with Arbab family. He performs a lot of functions in the Mohalla and responsible for the collection of funds from his Mohalla and also distributes the income of village evenly among the members of his Mohalla. Maliks of the village get together to resolve the issues of the vllage like the issue of the village jungles and Shamilats (communal property). Malik of a Mohalla first tries to solve the conflicts himself otherwise case was referred to the grand Jarga. Maliks also help the members of his Mohalla in the issues of Tana /Kachari.

In the tribal area "Maliki" always stay within the family but not through

inheritance. Maliks serve their position for a certain period of time given in the selection procedure, if persons demonstrate wisdom and skill at arbitrating disputes and to help others, they will gradually become Malik, and they were respected and followed by others. Land, wealth and numbers of male relatives provide added advantages. Maliks were good orators, they speak and clarify the issues and initiate discussions in such a ways that problem were usually solved. The positive traits and ability of convincing people could provide a good position in the society such as Maliki while negative traits can be counted from critical angels.

3.6.4 Hujra and Jumat (mosque)

Hujra, the men-house in the Pukhtoon society is very important as a social and political institution. In Tehkal Hujra serve the society both in the time of happiness and grief. Every one considers Hujra a center of village politics and a field to learn the politics of the village where social and political socialization was usually done. In Hujra all the people get together and discuss the happening in the village. Discussion over politics of local, national and international level was usually very hot and informative for the village people. Another reason was the presence of political parties in the area; people get together with the elders of peer group and learn the ways of village life. In the Hujra, people get an opportunity to know each other closely and to increase their mutual relationship in the village.

The Mosques, though a religious institution, but also have political functions. The mosques were the places for social gathering, so people get together and in most of the cases bring their issues for resolution in the mosques, mostly in Jumma prayer considering it a best time, while some of he Jargas were also convened in the mosques.

3.6.5 Family (Khanadan or Khel) Politics

The politics does not take place in vacuum; there are always cultural values and configuration of social organizations that effect politics. Politics is a struggle between two rivals, and rivals could be two brothers or cousins in Pukhtoon Society. The head of the family (kor) is always the eldest male in the family (kor). All the powers lie with him, who is the "Masher" of the family or the Kor. Masher is responsible to the Khanadan and Khel for all the members of his Kor.

The family bonds were usually strong in Tehkal, most of the competitions were also in the family called "Siali", though Siali was not considered good act but all the relative do

Siali nearly in every field of life that could be done with everyone in the village and the phenomenon of Siali was very common in cousin's lineage (Tarbur) within a family, and sometimes it takes very violent shape as well. As cousins have common property and at the event of its distribution among them the Siali starts. If the division was peacefully carried out without any objection from any family member, the Siali remains at its low level, but if there was any sort of objections in the division of property and land, it takes a worse form and usually the cousins forget their unity and convert into enemies of each others and lose their contacts and join opposite parties. Here Siali changes into *Tarburwali (conflict)*. "Tarburwali" term usually refers to the relation of enmity between cousins (Tarbur) and affect the inter family but the local and in rare case the national politics. In the family leg polling was also due to the factors of Siali and Tarburwali, the factors also be called as the base of will and positive competition in the society.

3.6.7 Mullah and Ustaz (local school teachers)

Mullahs and Ustaz (local school teachers) is the learned people of the village in their respective fields some in the religious affairs and others for the formal education. Mullah's usual responsibility is the village or Mohalla mosque and the primary religious informal education of the children. Mullahs if not the local, he remained in the mosque.

There were five Mullahs in the Tehkal village, two of them have the position of Malik for their Mohalla, while remaining three were retaining the Mullah, being the poor outsider, he was usually not participating in the local ceremonies. Criteria for a mullah participation in the conventional ceremonies was not defined but usually the local people have a keen observation over his characteristics like his good Quranic knowledge, skills of basic formal education, also his religious affiliation (sectarianism like, Sunni, Shia). Some of the Mullahs (local mullah) and teacher even have the post of Malik, the school teachers were considered aware of national and international issues, some of them do attend Jarga in and outside the village.

3.6.8 Political Parties

The political parties in the village were ANP, PPP, and MMA. There were a very small number of people who claim strong membership of any political party, few of the village people were the active member of political parties according to their choice. In the village, there

was equal liking of ANP and PPP, while in the previous elections MMA also got popularity in the village.

4.1 Introduction

This chapter is mainly based on the data collected from the people of locale about their traditions. Traditions deal with structure, operation and function of the traditional Jarga generally in the Pukhtoon society and specifically in Tehkal Bala district Peshawar. The study was also focused on the process of selection of the elders or *Jargamar* for Jarga. The pattern of the Jarga is described in detail to understand the actual form of traditional Jarga system and the changes and modifications came about in its form. Jarga has been discussed in the local context with detail.

There is no written document, fixed date or any relevant exact information available about the traditional judicial system of Pukhtoos. Basically the code of conduct has been derived from customs and traditions of the Pukhtoon culture. It is considered that institution of Jarga is prevailing in the Pukhtoon culture since very long. The origin of the Pukhtoon culture is unclear like that of exact origin of the Pukhtoon as an ethnic group.

Pukhtoon society is considered tribal and egalitarian in nature gradually changing into an unbalanced class society. With the passage of time different classes has ben originated in pukhtoon area. There are four classes in pukhtoon society aristocrats, the nouveau riches, the educated (professional) and the common masses.

4.1.1Aristocrat

Aristocrats are the people of the society who are traditionally landlords and noble persons like, Khan, Malik, Arbab and Nawab considered responsible for the society up lift and to keep the society secure from internal as well as external disturbances. These are the influential entities of the Pukhtoon society economically as well as socially. All the concerned issues relevant to the Pukhtoon society are resolved through Jarga system in the presence of their elders. Any political interference in the issues from the government side through local government institutions and elected entities is considered a direct threat to their traditional leadership. They are highly conservative in political sense.

4.1.2 The Nouveau rich

The nouveau rich comprised of experts belong to different fields like business, architecture, politics etc. These are the people of the Pukhtoon society who have earned a status of Malik and Khan through their personal endeavors. They accumulated their wealth to come forward and to contest elections of parliament and they are also dominant in number as registered contractors and suppliers.

4.1.3 The Educated (Professionals)

This group includes doctors, engineers, teacher, in-service as well as retired members of civil and military bureaucracy, students, political activists and media persons. They are mostly dissatisfied with the existing political and administrative system and can be termed as opinion makers and agents of social change in their societies. They are protesting against the government and making their own parties in Khyber Pukhtoonkhwa.

4.1.4 The Common Masses

This class is comprised of farmers, share-croppers, artisans, and workers in business, transport, as well as service sector. They suffer from ignorance, Illiteracy, poverty, and means of economic scarcity. They have no political and human rights, therefore, they neither are confident of their traditional leaders nor with their existing political and administrative set-up.

Historically, Pukhtoons as an ethnic group have passed through many stages; every stage brought a new change in the Pukhtoon social set-up. With the occurrence of modification, the traditional Pukhtoon elders has been used their clan or society to protect the the common interest. With the passage of time mostly the hypocritically elders lost their credibility by preferring their personal interest over the common interest. The Jarga which is still prevailing in the Pukhtoon society for the dispute resolution or conflict resolution at society level in the traditional form is known by Ulasi Jarga (traditional Jarga).

4.2 Ulasi Jarga (Traditional Jarga)

Ulasi means people and Jarga means gathering of elders. Everywhere in the Pukhtoon society a different version of Jarga can be observed either it's a settled area or a tribal area but it relies upon the Pukhtoonwali (a code of the conduct). Similarly in Tehkal, a conventional pattern of Jarga was existed in the village; the traditional jarga was very straight

forward and simple in its manner. Traditional Jarga comprises of the *spingeries* or white bearded persons of the society. During the process of Jarga majority of members of concerned society has the right to speak and discuss the issues. Participation from majority of the concerned tribes' households is necessary in the proceedings of Jarga for the society uplift. As a socio-judicial institution, everyone's participation is to improve the societal status as discussed by Hashim:

"Jarga is a body of customary rules which fulfill all the requirements for the benefits, developments and prosperity of the tribes and it is the socio-judicial institution for the promotion and enrichment of Pukhtoonwali and conduct of settlement of mutual disputes." (Hashim 1985)

The main objective of the ulasi Jarga in Tehkal was the dispute settlement and provision of solutions to any kind of issues prevailing in the concerned area under the arbitration of Arbab Dost Mohammad Khan descendent of late Nawab Shair Ali Khan.

Arbab was one of the aristocratic classes in the research area, over the time the prestigious Arbab Sher Ali Khan¹⁰. Arbabs were awarded for showing loyalty to the British government with titles and agricultural land, especially in their area of residence Landi Arbab known as "Momands", while their residency in Tehkal was known as "Khalils" tribe and that belongs to the sub-section of Mitha Khel (Ishakzai). The Mitha-Khel holds their ancestral property, including the Garhis, revenue free on payment of the 1/4th of the assessments only. Since the Khyber Afridis have come under direct management, their assistance in external matters being no longer value shifted to grandson Arbab Dost Mohammad Khan in form of a traditional Jargamari in hierarchical order from Nawabzada Arbab Shair Ali Khan through his son colonel Arbab Naiz. Presiding over the local area has been the prime objective for Arbabs from decades. Despite the fact that the formal judicial system (thana, courts system) in Tehkal was on priority but the rivalry and other common issues were resolved through Jarga. It was convened to discuss matters relating to collective property, rights and distribution of water and other common concerns like the selection of a site for a school etc.

4.2.1 Exploring the Structure of traditional Jarga

Customs has remained the great guide of human life for many decades.

¹⁰ Nawab arbab sher ali khan sahib during his life time when ever he contested election in his 32 year political career has never ever defeted.

Traditionally the pukhtoon have developed a conventional institution for the stability of the society in the form of a Jarga, which could be convened for resolving an issue. The judicial system of Tehkal was the amalgamation of different types of decision making institutes. Most of them were formal systems constitutionally formulated for the concerned circumstances. The informal judicial system of Tehkal has a valuable structure. On the basis of field data the structure of traditional Jarga in Tehkal has been observed from a very close participation. The structure of the Jarga comprises of three main components which was the decision makers or *Jargamar*, the classification of Jarga and rules of Jarga.

4.2.2 The decision maker

The structure of Jarga is based upon the main pillar *Jargamar* or the decision makers. In Tehkal a Jarga could be convened for any type of dispute (dispute between individuals, between families, tribes etc). Jarga members were selected by the consent of both rival parties. disagreement of any one of them lead to non proceeding of the jarga. Their objection may be on the jarga composition, structure, etc. Disputing parties select the Jargamar from the society or tribes who were truthful, neutral and know the function of the Jarga and nerkh. Membership of Jargamar in Jarga depends upon his status in the society. The member must have a high status in the society. There was always a constant competition among the people at different levels, that competition was called *siali* (eagerness to be of the same status). As in the traditional Jarga every one has the right to speak and take part in the decision making process.

When a personality has been speaking shrewdly throughout the process of Jarga, the elders judge him for additional participation. Every khel, society and tribe keeps a keen observer to judge the aptitude of a person, when proved worthy to represent a khel, the concerned khel give him the title of Jargamar, the representative of the khel.

4.2.3 Selection criteria

Society members scrutinize the behavior of the individual opening as of his childhood to observe who may come out as a talented expert. In Tehkal most Pukhtoon belong to the educated and professional class and know how to defeat their rival. According to the area leading figures, the concept of Jarga would be revived, which has traditionally played a vital role in resolving disputes. Most of the people were languishing in jails due to petty crimes, which could be avoided through restorative justice.

In the selection of Jargamar for sarkari Jarga, the people were taken from the notable family like Maliks but with the consent of the governmental as well, for shakhsi Jarga a member was selected with the consent of the rival party, in case of ulasi or traditional Jarga the members were usually the elders of notable families of the area. In Tehkal as the ulasi Jarga was prevailing so the disputed side will select the Jargamar from the aristocrat class of the society expected to become the state level Jarga.

The table below elaborates the criteria for the membership of jarga:

Table No 5: Criteria for the membership of Jarga

S.No	Criteria	Total
1	Good character	7
2	Knowledge of Pukhtoonwali	23
3	Family background	3
4	Seniority	7
5	Political affiliation	1
6	Education	5
7	Participation in village matters	6

Table shows criteria for the membership of Jarga in a very clear way and justifies the respondent's views. Pukhtoons have been influenced by an unwritten law in a form of Pukhtoonwali that not only adhere the general law of Pukhtoonwali but also in minor cases it regulates their live. Other essential requirements for the membership of Jarga are good character, his famil background, seniority, participation in village matters, to some extent political affiliation is also important. Detail of the criteria has been mentioned in following lines.

4.2.4 Maintaining Upright Character

The researcher during his research work in the village interviewed the respondents to have their views about characteristics and qualities of a Jargamar. Most of them replied that for the participation in a Jarga, a person must be honest, bold, brave, religious and having belief in God, hospitable, reliable, impartial, good in conversation, maintaining contacts with the society, sacrificing his time, money and energy for the sake of peace-building.

Traditional Jargamar as an influential member of a Jarga must be regularly attending the social events. For a Jargamar it is also necessary that he knows about the history of the Pukhtoon as an ethnic group and also knows about the process of the Jarga and knows about the Jarga resolution keeping in view past conflicts and their resolution by the Jarga. The respondents further described the qualities of the Jargamar representing them in Jarga, the person must have good and friendly contacts with the people of the community. He should know every person of his society by name and lineage and must be skilled with full dispute analysis, inside of the Pukhtoonwali and sketch on their tough conviction in harmony. Jargamar have a skill to analyze the concerned circumstances, while the impartiality is also important for a Jargamar. If a person remains impartial he will know that, *Da Khudia Da Para Faisala Kawy* (he should always be true to God and speak for God).

The Jargamar will not be involved in favoritism, injustice or the bribery in other case he loses his status while his family also gets a bad name and the society remember such an act.

Case study

There was a dispute between two individual Ajmal and Siraj over a plot; both were from the uthman khel lineage. The issue brought to the Jarga for its resolution, both of the parties gave full authority to the Jarga members, one was from Khalil khel and other from uthman khel, his name was Usman Gul. Usman Gul took an amount for the manipulation of the Jarga from Ajmal, when decision was announced by the Jarga in favor of Ajmal, all the villagers came to know that Usman Gul has taken money from Ajmal. They brought the issue once again to the Jarga, by listening to the witnesses; the final verdict was announced in favour of Siraj. After that day Usman gul Jargamar lost his dignity and honor and was called as *bezamira* (traitor).

4.3 Knowledge of Pukhtoonwali

Whenever a respondents interviewed concerning criteria for the membership of a Jarga, whose call themselves as a Pukhtoon and he don't know the Pukhtoon code of the conduct it's not possible. Probably Pukhtoonwali is the closest sense for the Pukhtoon. Pukhtoon societal formation which has ben paying attention by many an intellectual, is basically governed by a code of honor known as "Pukhtoonwali".



All the Pukhtoon social structure is based upon this unwritten code of life, whenever a person belongs to this social structure he must obey this unwritten code of life in the form of four obligations. first of all Nanawatey or repentance over past antagonism ,secondly Teega or a ceasefire stated by Jarga to keep away from bloodshed amid two rivals, thirdly Badal or take revenge by retaliation and fourth one is Melmastiya or an open hearted generosity which is one of the most notable trait of Pukhtoon characters. Excluding the above four mentioned obligation many other commitment exist which should be also encountered. These are others obligation like politeness, truthfulness, respectability, loyalty, love, and attachment for the nation are the necessary skin tone of Pukhtunwali.

The term Pukhtoonwali has mentioned by Lindholm as the point most often mentioned, aside from three pillars (Mialmastiya, badal, Nanawati) are equality, respect, loyalty, pride, bravery, pardah, pursuit of romantic encounter, the worship of Allah and most importantly the unselfish love for the friends.

The above statement describes the structure of the Pukhtoonwali. Pukhtoonwali based upon these three pillars and the remaining one is the TEEGA. Teega is also an essential part of the Pukhtoon social structure. Pukhtoonwali is not simply the aggregation of the above mentioned customs but it is something else as mentioned by Rafi ullah:

"Pukhtoonwali is not simply aggregation of the some customs like Melmastiya (hospitality) nanawaty (begging pardon), Nang (honor and respect), Paighor and Badal (taunt and revenge), and so on. It is on the contrary, the worldview the Pukhtoon hold. Its scope extends to religious, secular, political, economical, social and philanthropically consideration. It provides a space for visual and abstract aesthetics, love affairs, peace and violence and relationship with the aliens."

(The Sunday news 12 September 2009)

On the foundation of the above proclamation shortly discuss the main pallor's of the Pukhtoon social structure which has been verbally recorded from the valuable respondents in the field.

4.4 Nanawatey

The most part important aspect of the Pukhtoonwali is nanawatey ("to go in" or ask

pardon with humility). According to a respondent view (Farmanuallh) that Nanawaty was the vital obsession which keeps harmony in the Pukhtoon society and with the religion, he further argued that the concept of Nanawaty was also prevailing in Islam. By jarga a long standing conflict transform into companionship. In Nanawatey a repentant opponent was forgive and the feud section resumes peaceful and friendly relation. Nanawatey was a source of creating a congenial atmosphere for peaceful coexistence and mutual understanding through eventual reconciliation.

When a person feels that he has done wrong in the past with his hostile attitude towards his society member, he has naturally a want to release a new episode of gracious relation with his opponent. For proceeding further, on his behalf the ulema and other religious divines arrange a meeting with his enemy for the settlement of the dispute. To settle the dispute, the Jarga members sit in a Hujra and dicuss the matter of dispute, thereafter listen to the witnesses and other interested people and decide the matter with mutual consent.

In the tribal area of Pukhtoonkhwa, suppliant are taking a buffalo, cow, and some time they are slaughtering goats in the Hujra of the host. As research is concerned in Tehkal the local people are mostly to feast the neighbors and some amount are also paying. The amount of the cash depends upon the seriousness of the case. But the custom relating to Nanawary is mostly identical throughout the Pukhtoon society.

4.5 Teega (truce)

Teega or kanrey was another custom among the Pukhtoon stand for the ending of the bloodshed between the two opponents in the Pukhtoon society. Teega was functioning like a ceasefire between the two enmities. The ceasefire was on temporary basis announced by the Jarga for facilitating both the parties to attend the Jirga meeting without any fear just for the settlement of the conflict.

The custom of Teega taking place whenever a hostility breakout between two rival faction and firing start from the surrounding, the Jarga is comprise of the pukhtoon elders and the holy experts declares a tegga. Final approval of the disputed parties must be consider for the jarga proceeding.

If any party violates the truce he has to pay the Nagha. The underlying objective of the Tegga was to restore normal condition by transforming the enmity in a cool down tempers

and providing an opportunity to the two sides to prevail justice and fair play. The parties follow the truce rules; otherwise a heavy fine was imposed on the violator.

In case of jarga decision violation, burning houses of the rebel group, their expulsion from the locality or banishment from the tribe with the help and assistance of local lashker consisting of the local young is the ultimate result. By imposing punishments, the decisions of the Jarga were accepted by the people.

4.6 Badal (taking of revenge)

One of the most striking aspects of the Pukhtoon social setup of Pukhtoonwali was Badal. The Pukhtoon social structure was basically depending upon the degree of honor. If a person insults someone he was paid with the same coin because the people were never compromising on honor and prestige. Badal was performing the main role of equality among the Pukhtoon society. According to the custom that if a person commits an insult by burdering someone, in Badal he must be killed while anyone insult verbally, in return he must be disgraced verbally.

A Pukhtoon believes in Islamic teaching. Whenever a Pukhtoon was retaliating he never thought about the consequences of his Badal action, but Badal does not mean that the person taking revenge was as savage, a blood thirsty while they forgive anyone who kills any one of them by mistake but not tolerate intentional killing. Another remarkable word used for revenge was the Paighore (reproach).

4.7 Melmastiya (Hospitality)

"It goes waste if you feed yourself alone; it gives satisfaction to have your meal in company." (Khushal Khan Khattak)

Open hearted generosity or melmastiya is also one of the important characters of the Pukhtoon society. By keeping the Melamastiya in mind the guest was usually entertained in Hujra (village meeting place), while daily routine meetings of the elders also held there, therefore each and every household has a Hujra to keep the Melamastiya alive. The host, if not capable of slaughtering a lamb or goat satisfy his sense of hospitality, he provide a fowl to the guest and other eatables as much as he affords. Guest are not only looked after but also respected. T.L. Penal has described the spirit of Melamatiya in the following words:

"Will be satisfied with nothing less than the slaying of the sheep when he

receives a guest of distinction a poorer man will be satisfied with the slaying of a fowl". (T.L Penal)

Over the coming of a guest, he was welcome by the host in a traditional way by saying "Har Kala Rasha" and "Pa Khair Raghly" and "Starry Ma Shey" means you may often come, welcome and may you not be tired. The above statement identifies the nature of Pakhtoons and especially the Pakhtoons of Tehkalto welcome their guests according to the traditions of Melamastiya, a code of hospitality. Whenever a guest sets off on his flight he was bade goodbye in the words "Pa Makha De Kha" (may your journey be safe and happy) thus the trait of kindness is protected by Pukhtoon on two ground firstly; it was strongly recommended by Islam, secondly it was a traditional and cultural ethos.

4.8 Belonging to a better off and better known family

During the process of Jarga, those were allowed to argue who were from the well known and respectable families of the area having no "black spots on the status of the Jargamar family" (toor dagh pa speena laman). All the matters in Tehkal were dealt with by the sub clans of Khalil khel, while some time the migrated tribes were also allowed to argue in favor of their client, the migrated tribes of the village were Khattaks, Mains and Yousafzai etc. The Jaramar were not getting any financial benefits for their service to the Jirga, according to the respondents, they were well off and working for their political career by willing the hearts and minds of the people.

Arbab was the dominant clan in the village having a honorable status among the community, by nature they were not willing to share their prestigious status with others and prefer to select an Arbab for adjudicating rather than an outsider. Comparatively in the tribal belt and the village Tehkal, the disputes were mostly settled within the lineage through the Jarga where no one from other lineage was allowed to participate. As the Jargamars were working for the well being of the community, the word Jargamar itself was the identity of Jargamars being from the respectable lineage and tribe, so blood ties or kinship was also involved in becoming Jarga member.

Case study

Lineage is one of the most important factors counted for the criteria of the Jarga membership. Hameed uallah Khattak was one of the best known personalities of the village

Tehkal. He as a jargamar, he served as lecturer in government collage Peshawar and by profession he was a mathematician. Besides his professional activities, the the people utilize his expertise in conflict resolution who always provided help not only to the conflicting groups but to the Jarga too. According to the indigenous perceptions, Hameed ul Alah was a remarkable lawyer for the Jarga and was available to provide his assistance to the people of the village.

4.9 Attending the company of elders

Among the other criterias of Jargamer selection, the regular attendance in the elder's company was compulsory for the new comer and was required to maintain his attendance in elder's gathering in Hujra, listen to the others and to talk little. His thoughts must be logical and providing the empirical solution to the problems within the spirit of Pukhtunwali. It was also important for the new comer Jargamar to have a spotless background and containing integrity, uprightness and money sacrifier for others.

Case study

Saeed Khan Son of Habib Zada was a new-comer (jirgmar). He belongs to sub clan of Khalil Azai Khel. For the last three times he has been participating in the process of Jarga. In an informal interview with the researcher, Saeed Khan described his emerging position in the light of local juristic environment. Since school age he was joining elder's gathering. In the start Saeed Khan was participating for listening to the indigenous stories from the leading informal jurists just for the sake of fun. After four to five year back, Saeed Khan started sitting in the Jarga for achieving an objective, to become a local jurist as advised by his Uncle. He succeeded to achieve his goal and after three year he participated in Jarga as a permanent member of the Jarga.

4.10 Religiosity

The importance of religion was an important organ of the Pakhtoon's social structure and the role of mullah was very clear because everywhere in the Pukhtoon society there was a special place for them among the people of Tehkal. A special invitation was given to the mullah when the Jarga was arranged by the elders to participate as a member, but the criteria for a mullah's nomination was different from the other Jargamar to some extent. It was not important for a mullah to be a landowner or a regular participant of social elder's gatherings, while his religiosity was the only qualification for joining the Jarga as member. His function in

the Jarga was to recite the verses from the Holy Quran at the start of the Jarga and offer Dua at the end, while his primary role was as an abitrater.

Case Study

The significance of the mullah or mawlana saib was identified by his role in Jarga. Whenever a Jarga was arranged in Tehkal, a special invitation was sent to the mullah through a spingari Jargamar Izat Khan Kaka to attend the Jarga meeting, but on his non-availability, the Jarga was delayed till his return. Even some time if a mullah is not available the Jarga cannot be proceeding until his coming. Usually in Pukhtoon societies the mullah was living near to the mosque but in Tehkal mullah was residing near to the Arbab house. His eating, drinking and even clothing was the responsibility of Arbab family.

4.11 Contemporary Judicial institution

From the very beginning Tehkal was known for disputes and turbulent situation, the surrounding boundaries of Tehkal were touching the rural area that were already have a pretty contribution in the emergence of crimes. Not only was the session court located in the periphery of Tehkal but three Thanas established by the government for the provision of a safe environment to the local inhabitants.

The Pukhtoon society was basically governed by two main characteristics one was Pukhtoonwali and the other was the religion (Islamic rules and law).Despite the above mentioned characteristics, another element was the clergy or mullah inducted in the mosque for dealing the judicial cases under the Islamic laws. Different type of cases relating to women, land, child etc., were dealt with by the four reliable junctures without challenging their jurisdiction.The table below elaborates the causes of disputes listed in the table in vertical column and the dispute resolving bodies shown in horizontal columns, while the digit in the table shows the number of respondents.

Table No 6: Causes of disputes and dispute resolving bodies

Causes of disputes	Dispute Resolving bodies				Total
	Thana Jarga	Court	mosque		
Land	2	17	2	0	21
Any act against Pukhtoonwali	0	5	0	6	11
Transport	1	6	1	0	8
Honour	0	7	0	5	12
Any other	0	0	0	0	0
Total	3	35	3	11	52

Table shows that Jarga deals usually with land cases, secondly the priority was the issues relevant to Pukhtoonwali confronting the Pukhtoon norms. Despite the ratio of crimes, there were more than one judicial institution like Thana, mosque, and formal system of justice in the village Tehkal.

4.12 Traditional Jarga classification

The Pukhtoons as an ethnic group introduced a mechanism for the provision of justice, in the shape of Jarga that changes its level according to the circumstances, historically, there was no written or oral evidence to prove its establishment but was known as a judicial system through generations.

The classification of the Jarga emerged with the passage of time, functioning at all levels for diverse purposes and dissimilar objectives. The dynamics of the Jarga may be more complicated but a clear understanding existed among Pukhtoons regarding the complexities.

The structure of the Jarga depends upon the nature of problem, its composition was based on two elements, one was the representativeness and another was its role. With the intensity of cases, the level of jirgmar and type of Jarga was changing its dimension. In the village Tahkal, there were different types of terms used by the people:

Terms	Meanings
Jarga kawal	doing a Jarga
Pa Jarga talal	going as a Jarga
Jargay ta khabar warkawal	referring a case to the Jarga

Da Jargay faisala	decision of the Jarga
Jargamar	decision makers
Jarga manz ta ratalal	interference by a Jarga i.e, truce

The above mentioned conditions show the relevancy of the Jarga as an essential organization of to Pukhtoon society. Throughout the Pukhtoon society the same terminology exists for the process of Jarga. A change could be observed in the appearance of the Jarga but the nature of traditional Jarga cannot be changed. In Tehkal from a minor conflict to a village dispute all sort of the problem are handled through Jarga system. In Tehkal, the classification of traditional Jarga was made for the purpose of the conflict solution on the basis of the variation in the problem and these four types were functioning in a very progressive manner. Tehkal was a heterogeneous society of the tribe and clan, the Jarga can be classified in a descending order as under:

- Koranai jarga (familial jarga)
- Qaumi / tribal jarga.
- Sarkari jarga (governmental jarga)
- Loya jarga (grand jarga)

4.12.1 Koranai Jarga or familial Jarga

Koranai Jarga is formulated for minor conflicts usually taking place between two individuals or families. This type of Jarga is common among the Pukhtoon society, because such conflicts are common in every household and family on minor issues. Korania Jarga or familial Jarga is dealing with the solution of family problems between individual composed of family elders. The family level issues like the disagreement among a couple over some internal matters, divorce, disagreement on the household duties, etc.

4.12.2 Qaumi / Tribal Jarga

This type of Jarga is made-up to be convening for the solutions of societal disturbance. Qaumi Jarga is the assembly of the elder of the concerned society comprising of every household elder. It is convened to discuss the issues related to the collective property rights and distribution of water etc.

The jurisdiction of Jarga is determined by the local representatives as and when a criminal act is committed by someone in the village's territory. In this type of Jarga the issue

was brought mostly concerned with the inter village. The Qaumi or tribal Jarga is announced after initial consultation with the local elder. It is an open assembly of the local elders and any one have the opportunity to speak and all the opinion are given space.

This type of Jarga can decide the case even in one session, but if the case is complicated to some extent than it will take another session. This type of Jarga include the spingeries or white beard , masharan or the elder of the Society , mullah or the clergy man and some of the women can also participate as an observer without having the right to speak. Conventionally, the elders taking part in this form of Jarga are mostly from the Arbab family, but they just judge the situation as they do not have the right of decision making. Final verdict of Qaumi jarga depends upon the willingness of the rival parties.

4.12.3 Sarkari Jarga or governmental Jarga

In the research, sarkari Jarga has been mentioned as a type of traditional form of Jarga. Sarkari Jarga being a type of sarkari jarga was a modified form of traditional Jarga. Arbab Dost Mohammad khan not only dealing with the traditional Jarga at Tehkal but he was also attending the sarkari Jarga too. Whenever a sarkari Jarga was held in the periphery of Peshawar out of the jurisdiction of Tehkal, he participated as a professional Jargamar. Thes specific type of Jarga was convened rarely in Tehkal. According to the influential figure, no incentive or potential benefits were taking by the arbitrator, but he receieves the allowances as fixed by the government when he travel to attend the jarga meeting. The reasons of free arbitration were mainly due to political affililiations for gaining the sympathies of the common man for political motives.

The sarkari Jarga was sponsored by the government, while as per common perception; it was the initial intervention of the government in the traditional structure of Jarga in Pukhtoon society. According to the FCR a governmental representative was allowed to regulate the formation and reformation of the Jarga.

The sarkari Jarga was dealing with all kind of conflicts emerging on the tribal level. The political agent, magistrate and his assistant were authorized to designate a group of tribal elders on the Jarga, they were to investigate the case whether civil or criminal nature. The numbers of the designated members was according to the nature and importance of the case. Witht the consent of government the jarga finalise a verdict firstly, second step was to bring the

Jarga decision before the governmental tribunal for examination.

This Jarga was has the authority to recommend a penalty maximum up to fourteen years imprisonment and also a pass award based on the local tradition. The political agent was to approve such recommendation and enforce the decision.

The main components of the sarkari Jarga are:

A government representative;

A case registered by one of the parties;

A written referral of the case to the Jarga nominated by the governmental official;

Recording of the statement of the parties by the Jarga;

Visits to the disputed sites by the Jarga members;

Recording of further evidence by the Jarga members;

Presentation of recommendation to the government agent;

Consideration, approval, or disapproval of the recommendation;

Referring back to the same Jarga for recommendation in light of new facts;

Announcement of the award;

Rights of the parties approval;

Implementation of the award

The selection of Jarga member was a sensitive matter, the criteria was an influential, good reputed and trustworthy person from amont the community accepted by the majority of the people.

The Jarga members were selected from among the penal of local maliks because of their role as mediators between the governmental officials and the local people. The government official request them to nominate their representative for Jarga, in case of any disagreement on the selection of members, the government requests them again to select their own party members to be finally reviewed by a government referee for the selection of members from among the nominated persons. All members and local inhabitant were required to follow the decision announced by the government representative.

4.13 Loya Jarga

It was a customary body of elders, consisting of prominent spiritual leaders and heads of all tribes. It was a grand assembly of the elders and basically formed for the main

actions such as to choose the fresh sovereign, acceptance of constitution and for to discuss significant nationwide political or social crisis, as well as dispute in Pukhtoon areas of Pakistan and Afghanistan.

The appearance of the loya Jarga was the international level version of Pukhtoon traditional judicial system. Loya Jarga was a check upon the government and also on the tribal affairs on both side of the border. Initially it was for the Pukhtoon society but later on other ethnic groups were included in its jurisdiction.

Afghan Loya Jarga was also as a stand of Pukhtoonwali, observing the salient features of Pukhtoon society and was similar to the Islamic judicial system in structure as described by the BBC:

"The phrase loya Jarga is Pashto and means "grand council". The institution, which is centuries old, is a similar idea to the Islamic "shura", or consultative assembly." (BBC world)

Whenever a meeting was arranged by the Pukhtoon society in Afghanistan, they call upon the tribal leaders of the agencies of Pakistan. These agencies have their own nominated members from the Bajour agency, Turkani , Mamond, from Khyber agency Afridi, Shenwari and Mullagori, while from from Mohmand agency, Mohmand and Safi etc. mostly the members were the members of royal family as discussed by Aleemuallah that:

"The member of the Jargas was mostly members of the Royal Family, religious leaders and tribal chiefs of the Afghans. King Amanullah khan institutionalized the Jarga. From Amanullah until the reign of Mohammad zahir shah (1933-1973) and Mohammad daoud khan (1973-1978) the Jarga was recognized as a common meeting of regional Pukhtoon leaders."(Dawn 17th March, 2009)

For deteriorating the militancy influences in both side of Durand line, the Afghan government also invites professional jurist from Pakistani settled areas to beneficiate from their valuable intellectuality in which figure like Afrasiyab Khattak, Afzal Lala, Ajmal Khattak, Haji Arbab, Dost Mohammad khan, Arbab Ahmadullah Baba were included.

"A question about the representative status of the participants Jargamar was Usually quite and sensitive, if the Jarga was slightly mishandled, the Credibility of the national level process quickly loses its efficacy."

(Dawn 17th March, 2009)

the selection of jarga members is a delicate process, each representative was heard and each tribe would be represented through a representative in the Jarga and the concern raised by a member must be taken into account while collective decisions were made.

The meetings of loya Jarga have no such organized schedule, but rather called whenever an issue or dispute arises. Many different problems were addressed the loya Jarga, like foreign policy, declarations of war, the legitimacy of leaders, and the introduction of new ideas and laws.

4.14 Rules and laws of traditional Jarga

As there was no written record available regarding the rules and laws of Jarga but the main thing laying was "Pukhtoonwali". Since the Pukhtoonwali contain rules and regulations that were enforced as the law. Pukhtoonwali was basically framed for the dispensations of justice and regulation of the societal affairs. All decisions would be according to local custom and tradition. An accused would be weighted according to the local scale on the basis of local customs. The compensation of crime would be on the basis of seriousness of crime. For example a person intentionally kills another one; in such case the accused would be killed, but there were also two types of decisions, firstly if the victim's family forgive the accused, if not so, the accused would have to pay the cash penalty imposed by the Jarga, otherwise he would be given death sentence.

Though a Pukhtoon hardly forgive a murderer but through the Jarga amicably they solved the matter. The elders sitting in such a local representative Jarga try to resolve and ensure implementation of the decision which depend upon the agreement of the victim family, if the family forgive the accused, the Jarga announces the accused free, if the victim family demands compensation, the Jarga endorsed their demand. The discretion lays with the Jargamar whether to impose the penalty in cash money, the demand of the family was owned by the Jarga. The jargamars have developed such rules and regulations that regulate the Jarga process of justice. These rules and laws were prevailing everywhere in Pukhtoon society, but the scale which could be used for the weighting of a situation different from area to area. They represent the culture ethos and reflect the values of different clans and tribes for example in Peshawar it was called the Da Arbabano Da Jirgi Dastor (custom of the arbab Jarga) and in the tribal area of Bajur was

called Da Salarzao Riway (customs of the salarzo) and in the Khyber agency Da Afrido Da Jirgy Osool (custom of the afridi Jarga) etc. the aim of the clans based values was a source of keeping the society out of any disturbance, and provision of security, peace and harmony within the circles of their forefather inherited culture.

4.15 Customize progression of traditional Jarga in Tehkal

The main fact for the continuation of Jarga was the perception of its organized body. Different perception similar to some of the jarga was not more than a judicial system prevailing in the Pukhtoon society for the dispute resolution, for others it was a sacred and holy, and those who totally depend on their Pukhtoon culture they call it's a "guardian angels" of society. Whenever a distressed circumstance emerged in the Pukhtoon society, the restricted people call a Jarga for the resolution of the problem despite the availability of other judicial system.

In Tehkal, the traditional Jarga was called whenever a dispute or mishape occur between individual, families, clans, tribes, and villages. Some time the jarga decision can be manipulated by the influential figures.

The customize progression of traditional Jarga depends upon the nature of the area (urban and rural). If the Jarga was arranged in a tribal area or in a city like Peshawar or mardan anywhere, the visible structure of the Jarga would be changed to some extent but the inner side process remain the same. Following were the common steps that were observed in the field during the process of Jarga.

4.16 Convening Jarga (Jarga Raghokhtal)

Jarga take start whenever an issue, dispute, conflict or problem arise which could be acknowledge as a sign of threat to the harmony of society .According to the local views, Jarga was called by two methods, firstly, the oppressed made a request to elders of concerned tribe to call a Jarga, secondly, Jarga was called by the societal influential elders when there was a case in which a threat has been observed to the harmony, peace, stability, discipline and prosperity and unity of the society.

In the settled areas comparatively in Khyber Pukhtoonkhwa, the Jarga could be convened without any type of the traditional ceremonial instrument. Comparatively, the settled areas were going out of the traditional practices. In the tribal area for calling of indigenou Da

Jarga Ghaga, announcement was made through beating of drum was another custom. Whenever the people listen in the sound of beating of a drum they inquire the venue and time of the Jarga. The drumbeaters (Nagharchi) were appointed for the job and the khan remunerates them.

The settled area was not practicing such instrumental announcement for the Jarga participation, simply the elder convey a message to each other, while the other elders who were living at a distance were usually informed through the youngster to participate. The messenger should be aware about the disputed side and also about the issues, because some time common issues were also brought to the Jarga for resolution. The messenger informs the elder regarding the venue and time of the Jarga too.

4.17 Venue for Jarga

Gathering of the elders for a dispute settlement could take different shapes; it depends upon the nature of the problem. The only place in Tehkal was Hujra of Dr Arbab Alamgir, the first cousin of Dost Mohammad Khan where all the issues were resolved through a Jarga. In the village a great concern was regarding the women embarrassment, no one desire to come under such a stigmatize case. When such a case emerged in Tehkal, the local elders under the supervision of Arbab family come to the Hujra, the involved women was kept hidden behind a wall while she could indirectly participate in the process of Jarga.

Contrary to the tribal areas, various places were known for the Jarga gatherings, common places where no one has any objection to go. In the rural side Jarga has more than one place where the Jarga could take place like streams, shrines, spring side, and also the Hujra. The places of Jarga determine the consensus building, as people believe that conducting of Jarga in holy places results in success. But with the increase in religious preaching and shariat movement, the popularity of shrines has gradually reduced. As the research was concerned to the Tehkal, where the Jarga could only be arranged in Hujra of Dr Arbab Alamgir, the local elders come together without any drum beating or any other slogan against the preaching of religion. The invitation for the participation in the Jarga firstly conveyed to both disputed sides about the venue selected for the Jarga. Selection of Jargamar depends upon the disputed sides to which they want to invite for the resolution of the dispute.

Some time the place for a Jarga can be changed, keeping in view the nature of the problems. The people who lived in the outskirts of the Tehkal and want to resolve their problem,

firstly they contact the local elders; through them they sent a message in the form of a delegation to the Arbab family elders to come there and resolve their problem. In such a situation, the venue shifting from Tehkal to other places was a problem for the elders and other participants. As already mentioned that place for the Jarga depends upon the nature of the problem, if the issue was of a holly nature then it would be resolve at the mosque, as the nature of the problem become wider the selection also become complicated, the cone of the selection of the place was a problem for the two rival groups and the third party arbitrator or Jargamar. Usually the pukhtoon resolve their problem at hujra or mosque but if there was a dispute within family members, that could be resolved at home.

4.18 Symbolic distinction B/W Jargamar and common masses

Whenever a Jarga arranged by the Malik or Khan, the elders invited for the participation in Jarga, usually wear white clothes and a cap that symbolized the age and honorable status of the Pukhtoon elders. It's not compulsory that everyone wear such a dress, it just depends upon the elders.

4.19 Proceedings of Jarga

After the selection of the place for gathering of a Jarga next important step was the start of Jarga, traditional Jarga proceed in a very straightforward and simple manner comprised of 'Spingiris,' or white bearded elder men, and other male members. The 'Spingiris' act as judges and others participants as jurists. All parties involved were required to respect Jarga members. If the parties have any reservation, that were shared in the pre-mediation process.

4.20 Start of Jarga

Jarga member reach to the specified place on due time and sit in a circle, when the Jargaiz want to start the session of Jarga, an elder man Malik or Khan stands and say please keep quiet and listen (Ghali Shai Khabara Wawrai).

4.21 Sitting in the Jarga

Usually in the settled areas of Khyber Pukhtoonkhwa, people were using bed (kutt) for sitting puposes, while in Tehkel the same was practiced in the Hujra of Dr. Arbab Alamgir. During the Jarga in Tehkal three circles were observed, in the first row, the jarga arbitrators, in

the second, elders and and lastly were the youngsetrs. The bed of Arbab saib some time covered up with a bedsheet.

In the tribal belt of Khyber Pukhtoonkhwa, the elders were setting in the first circle that was also the sign of their wisdom. It was not compulsory that the entire participant should sit in a circle. In Jarga there was no hierarchy, all of them were equal and sit in a circle but white bearded sit in the center and the younger keep on standing to serve the elders. In a rare case the rival sides recall gunmen's to serve their masters. In the Jarga every one has the right to speak but there was a pre-decided head where in Tehkal, the duty was assign to Arbab dost Mohammad Khan who was presiding the Jarga session.

4.22 Recitation

When an elder announces the start of proceedings, a mullah (religious practitioner) stands in the middle of the circle and recites verses from the Holy Quran. All the members and others listen carefully. During recitation, the entire listeners bow their head and at the end of the recitation all the participant pray for the successful process of Jarga in form of positive resolution to the problem. After the recitation, discussion takes place.

4.23 Discussion on the disputes

After recitation of verses from the Holy Quran, the mullah sits. Before listening to the opinion of both sides, a Malik or Khan from the Jarga side (neutral) adress the whole Jarga that Jarga has been called upon so a matter of dispute between A and B (may be khel, clan ,sub tribe, tribes, families, individual) on Z (may be any problem) issues. Then the Jarga gives time to each party for the presentation of their respective opinion regarding Z. Mostly the cases were relating to the land disputes like irrigation water, over the animals harvesting in the other fields, cutting of gross from the field of the neighbor without his permission.

4.24 Speakers of Jarga

From the time when the Jarga formally recognized as a traditional judicial system the speaker has got a prestigious position for ever. In the category of speaker those persons were included who speak from the disputed side to the Jargamar. They were acting as assistants during Jarga. A Jarga have to face two type of situation regarding speaker:

1. Issues related to two individuals;

2. Issue related to the families, section, clan, sub tribe, tribes etc.

If a case was related to two individuals, then they must present their case by themselves before the Jarga. At the same time, both were considered as criminals and accused. How they defend themselves, it depends upon them but the final verdict of Jarga must be announced by the jargamar.

In the other situation, if the issue was relevant to the families, subsection, section, or sub tribe, then any one from the family, section, or subsection was selected before the Jarga starts. The selection of the spokesman for the Jarga depends upon the knowledge, experiences, and pro-verbal language of the individual.

The spokesman was the person who advocates the case before the Jarga with an excellent method and was considered as wise, sharp, and shrewd person of his family, section and tribe.

4.25 Jarga atmosphere

Jarga was always occurred in a cool and calm atmosphere, and everyone has the right to speak when the discussion proceeds. Both the parties were given right to speak for their respective point of view, only one person was allowed to speak without any interruption as the standing armed young tribesman were there to maintain a good atmosphere.

4.26 Oath in Jarga

The oath was usually taken from two types of the participants, by the witnesses, when the Jarga starts, an elder stands and read out the oath wording by saying that if anyone who knows about the ongoing case and remain silent during the accused advocate's discussion would be considered the defender of his client by telling a lie. May Allah destroy him and his family, secondly when the accused by putting his hands on the Holy Quran takes oath by saying that *Da Quran Mi dei Owahi Ku Ma Da Kar Kary V* (if I speak false, the Holy Quran may destroy me). The native quotes examples of those who intentionally sworn upon the Holy Quran falsely were destroyed. Another type was the stipulated oath whenever the oath was taken from a married person he would declare before the whole Jarga by throwing three stones and saying that *Khaza Ba Rabandi Talaqa ve* (if I falsely speak, I may divorce my wife) As the matter of divorce was socially disapproved in the area, so that type of oath was uncommon there.

4.27 Evidences

How to make a case just right was only probable through reliable and valid evidences. The evidences were provided by the witnesses from both the sides, while the witness were selected and approved by the local people. If a person appearing before the Jarga as a witnesses, must be a close relative of the involved party, he must be a participant of local ceremonies, have a good record of the past, the religiosity of the witnesses also counted.

The appearing of witnesses depends upon the phenomena; e.g. if a case occurred in the day time, there would be a need for three to four witnesses and if the crime was committed in the night, five to seven witnesses were required. To make the accessibility of witnesses sure, if the claimer failed to made available the required witnesses, then he would be punished and the accused would be free of punishment. When I conformed from one of my respondent that how many cases of the same nature have been faced by the Jarga, he replied that in the past many cases were solved, but with the awaewness the intensity of such cases has become almost zero.

4.28 Investigation of the case by the Jarga members

During the session if the Jarga not reached to a final decision and needed some proofs regarding the case. One of the Jarga member standing in circle with the permission of Arbab Dost Mohammad Khan says that Jarga has been postponed for the next session, till that time they have appointed a group of elders to investigate the case. After their investigation the Jarga will proceed. During the unsatisfied announcement of the decision all the participant including, jurist and the common masses get upset and all of them one by one slept away with a murmuring noise from the Hujra. For further inquiry the Jarga set a team of reliable and sound elders to investigate the case themselves. They visit the area personally and find out the basic roots of the issue. As Gluckman argued:

"In order to fulfill their task the judge constantly has to broad the field of enquiry and consider the total history of relations between the litigants not only the narrow legal issue raised by one of them." (Gluckman 1955)

Through an indepth investigation with the study of the problem, the truth on the basis of information collected by the inquiry team was finds out by the team appointed by the Jarga to decide the case.

4.29 Jarga decision

After the investigation of the case by the Jargamar themselves they again judge the situation for further validity of the case. In such circumstance the Jargamar personally take interest to high light the case more easily. In this situation the decision of Jarga was based upon two types of concept of judgment.

1. Haq (the rights)

2. Wak (authority)

As Hassan M. yousafzai argued:

"The Jarga or Maraka passes a judgment after necessary investigation into the dispute. No effort is spared to reconcile the disputing parties. The decisions are of two types, Haq or the right, and Waak, which means authority, and both sides are allowed to present their arguments before a decision is given." (Hassan M. yousafzai 1999)

As mentioned above that there were two types of concept regarding the judgment of the Jarga, both parties (claimant and the accused) have to present their arguments to defend their respective case. In case of Haq if one of the disputed sides was not satisfied with the final verdict of the Jarga, they could challenge the decision on the basis of merit. The Jarga have some rules for such situations, on the appeal, they would be constituted for the third time to decide the case finally.

In the second case Wak (authority) the decision was based upon the consensus of the Jargamar to decide the issue between the contending parties impartially. The parties have no right to challenge the decision of Jarga. As a tradition the Jarga enjoy Wak full authority for taking decisions, may be manipulated by the strong argument of a sharp and shrewd Jargamar and the decision announcements were one sided rather than impartial.

The concept of Jarga regarding the judgment of Wak has also some rules, full authority with in Jarga, security of the authority in the form of material, and punishments in case of violation of the order of Jarga. In case of security whenever Jarga was deciding both the disputed sides were given three to five sound economic conditional members from their respective party for security, in case if the disputed party step back the members would be responsible to bring them for the decision or to compensate on the behalf of the party. According to the traditional Jarga, comparatively in tribal area rifle were kept as security as the rifles were

available in every house. That's why it has become a custom to keep rifles as security in such cases. In some cases, the property could also be kept as a security whenever a person violating the decision of the Wak. In that way the Jarga have full authority or discretionary powers to do so.

4.30 Announcement of the decision

As the practice of Jarga was not uniform throughout Pukhtoon, however, the above description relates to a fairly ideal form of practice prevalent in most parts of the Pukhtoon belt where Jarga dominates the lives of its people without any external influences. Where there were some forms of governmental system in place, the processes of Jarga and its credibility and decision announcement would vary. Nevertheless, the people of the Pushto speaking world place enormous confidence in Jarga. In the traditional Jarga the decision were announced openly and there is nothing kept secret. Before to announcement of decision openly an elder (masher) stand up and say that as you people come to know that the Jarga was now going to announce the decision without any partiality, the great elder Haji sahib would now announce the decision with his attractive remarks. People were murmuring with one other about the decision and every one establishing his prediction regarding the decision. Haji Arbab Dost Mohammad Khan starts up with the name of Allah almighty. After that he tries to convince the accused one. After ten to fifteen mints he announces the decision. The affiliated side men of both sides express and share the moment with the concerned rival side. The winner goes to Haji saib to attribute him over the decision, while the loser too shows his response in a positive attitude to the arbitrator. The Jarga further announces the decision with the term, condition, compensation and responsibilities openly. If both the parties found the final verdict respectively well, they show their agreement, but if any one has any objection, they could reject the decision.

4.31 End of Jarga

Before dispersion of the Jarga, a respectable elder with full confidence says that as you people come to know that the decision of Jarga has taken place and both the parties have no objection, the mullah saib would offer a collective prayer. After the prayer the Jarga members thanks the parties for their cooperation, both the rival parties embrace each other and end their enmity and offer a khairat in which both the opponent parties and the Jarga member with the local resident participate. The enmity as consider as destruction for the family, and the

conciliation is the blessing of God, some times the case of conciliation lead to familial ties. (Kinship through marriage).

4.32 Symbolic representation of final verdict of Jarga

Symbolically representing the success and failure of the Jarga could be seen in different forms. Both of the disputed sides sit on bad or chairs, but usually the common masses were being seated on the ground during the proceeding of the Jarga, having the same perception regarding the decision of the Jarga. People with stick and stone plying on the ground making the picture of animal, birds and houses, etc. at the end of the Jarga if it declares the success then the participant stand up and embrace each other, while in case of failure they smash the houses and rub the drawn picture with their feet. And breeze their sheet in the air by saying that "every where is injustice".

4.33 Implementation of the decision

When the decision seems reasonable to both the parties, it could be effectively implemented; however, when one of the parties has serious objections to the outcome of the Jarga, the implementation process becomes difficult.

The traditional leader could impose a strict sanction upon the violated party. It can put a person out of the society. If a party refuses to face the decision the Jarga use the force to bring them to the people and make them agree upon the decision. But in some cases the Jarga send the men to burn the houses, or sabotage the property, the sending militants was called the lakhkar. Lakhkar with a moral and militant support execute the Jarga decision through the collective strength of the village. Burning of house of a violated party or sabotaging the property, but in stead of sabotaging the property, the property was distributed among the lakhkar.

Case study

Rozee Khan village was situated in the North West of Tehkal in the jurisdiction of the Peshawar district. A conflict taken place between two villagers one of them was Hazrat Nabi and the other was Khair-ur-rehman over a piece of land. When Jarga decided to return the land to Hazrat Nabi and leave the village, the brother of Khair Rehman than took revenge by killing the Hazrat Nabi's brother and violated the Jarga decision. Jargaiz in that case rose against their disgrace and along with their respective tribe attacked the Khair Rehman, the Khair Rehman

requested the Jarga member that he was ready for any kind of decision. Jargaiz reconsider his request and made another decision that his property should be confiscated and he was forced to leave the village. After one year both the disputed side conciliated mutually and requested the Jarga for the recovery of confiscated property. Jarga accepted their request.

5.1 Introduction

Some scholars date back the tradition of Jarga to the era many centuries before Christ. The historians were unable to find out an answer to the question as to how the foundation of this centuries old democratic practice were mired in time, because no visible sign can be seen of its revival till the beginning of the 18th century. These were the initial events from which can perceive the importance of this centuries old tradition. The common notion of democracy that we found today is the outcome of sacrifices and endeavors.

"Jarga is the mechanism through which cohesion and stability are assured. The history of Jarga is dated to thousands of years to the original settler in the area (Aryans) now known as Afghanistan, who then had two kinds of Jarga, the Semite/Semite and the Sabah. The first was a village meeting in which everyone is concerned took part in order to settle the local dispute. The second was a meeting of elders of tribes in time of national and regional emergencies to elect a king or in his absence to take decision on war and peace." (Wajidi 1986)

Throughout the history Jarga has performed the role of a traditional judicial system. Whenever a problem originated, has been resolved by the meeting of elders. The problem might be either in form of a natural disaster or a social one. Both were resolved by the consensus of tribal elders. A social problem in form of conflict, dispute or any other matter was considered as a matter of routine. In fact the existence of a social problem itself was considered as a custom and the people deal with such a problem as a custom inherited by their culture. There were many ways to resolve a problem. But the main focus of the study was on the transitional perspective of Jarga that how the enforcing bodies implementing the decision upon the people, despite the fact that the Jarga has been modified with the passage of time.

Despite the facts that most of people of the village Tehkal were literate. They know that Jarga decision in cases of land dispute settling, family and marriage dispute, dispute arising out of divorce and especially love matters that often lead to honor killing, or a chain of killings.

These were the facts that attracted the willingness of people of the area to prefer

their inherited traditional judicial system for the resolution of local problems. The main perception about the function of Jarga was that it regulates the life at all level with in pukhtoon society. The history of the locale reveals that Jarga has the following main function in its broadest and purest form.

1. Jarga was the traditional socio-judicial process through which the dispute and conflict were resolved;
2. Jarga was basically the out com of mutual understanding and consensus;
3. Jarga was the only source to bring unity cohesion and harmony in the society;
4. Jarga was the mediation between a tribal life and outside the world.

5.2 Transformation from a Traditional Setup to a Sarkari or Local Representative

As we have discussed traditional Jarga in details, with its structure, classification, rules and laws for operation of Jarga in chapter 4th. Data in this chapter will facilitate to understand changes and modification occurred in traditional Jarga, changes in its structure, rules and laws or in decision implementation. So the researcher has selected mainly these two contradictive forms of Jarga prevailing in Pukhtoon society. The first is traditional form of Jarga and the second is modified Jarga. What are the changes that occurred from a traditional judicial system to a modified one and its structure, which bring these changes, and how these changes took place? Does the function changed with the change in the structure or not etc?

As a common perception, that Jarga resolved dispute and problems of people after long critical debates. In the colonial period a body of arbiters existed in the tribal region that worked under the autonomy of tribal chief. The judicial power of this Jarga was recognized by the British government. So in a way the position of this Jarga was as a formal institution and not as a socially recognized one.

The table below elaborate the responsible factors, are listed in the table in vertical column and the transitional aspect are shown in horizontal columns. And the digit in the table shows the number of respondents of a particular point of view:

Table No 7: Responsible Factors for Modification in Jarga

Responsible Factors	Transitional aspects of traditional jarga				Criteria	Total	percentage
	Structure	rules and laws	Process	Types			
Government policies	5	3	4	3	7	22	42.307
Jargamar	3	1	2	0	2	8	15.384
Changes in values	2	0	1	0	0	3	5.769
Adult franchise	1	1	1	0	0	3	5.769
Contemporary Judicial bodies	3	2	0	3	0	8	15.384
Livelihood needs	3	2	1	0	2	8	15.384
Total	17	9	9	6	11	52	100%
Percentage	32.692	17.307	17.307	11.538	21.153	100%

Table shows the deep rooted changes in the traditional Jarga and also focus upon the study of responsible factors. Structurally a criterion for the membership of Jarga has been changed, for this modification the credit is laying on the behalf of government. Overall structure including rules and laws were also changed. The local malik were also encounter for this modification with combine efforts of contemporary judicial bodies. Not only macro level factors have been disturbed but also the micro too. According to the local view government wants to change all political, social and judicial institutions. These institutes represent symbolically the Pukhtoon cognition presiding by their code of the conduct (Paktoonwali).

The actual local Jarga existed in pre-colonial period that consisted upon certain respectable, experienced and elderly people of the area. This body addressed the problems on social and individual level with all its autonomy. This type of Jarga does not exist today in that particular sense. Now local Jarga includes every aged person without distinguishing his character and repute in the society. Demographic changes in the area have also contributed to the prevailing obscure status of the local body in pukhtoon society. However, at present this vague body of Jarga is called in case of much serious and grave political and social issues of the area.

Traditional Jarga is a sort of conference, mainly for the resolution of the prevailing problems of the society. Every member has the right to speak and to discuss the issue under a collective consideration. Traditional Jarga has an informal head to properly preside the Jarga but in an aristocrat type, the head is an arbitrator. Every member is to be considered as a head in the modified form of Jarga.

5.3 Structural changes

Structurally the traditional jarga changed when the colonial government introduces a new pattern in the form of FCR (1901). The traditional leader loses their status and the so called malik in the tribal areas while the khans of the settled areas lost their unrestricted powers. These Jarga members were like a bridge between the government and the local people. On one hand they are the spokesman of the local people while on the other they were a representative of the government. An attribute should be given to those who are officially nominated by the government. Not only symbolic prestige and power is given to those khans but they also provided with some economic and political incentives. He received a quota for food rations; he is given the choices for the selection of employees, from his section, also contract of building in his jurisdiction, or taking share from the contractors. In case if a Jarga succeed he is given cash and also a Malik of a tribal area and a Khan of the settled area can visit the crime site which was be facilitated by the government too.

Usually pattern for the membership of a Jarga become changed. The traditional Jarga was a name of competition among the people. Those who are qualified for the Jarga must be the high status person. There must be an indigenously competition in this egalitarian structure of Jarga. In this competitive structure, the whole political organization revolves around the membership of Jarga. During a traditional Jarga a person skill and ability as a spokeman could manifest the position of his tribe. During a speech a person could be judged for his sharpness. A certain criteria must be fulfilled by a traditional Jargamar for the membership, like maintaining upright character, a good knowledge of Pukhtoonwali, belonging to a well off and reputable families, religiosity, and a good sense of humanity, sympathy, respect, and understanding. Structural changes take place, and the traditional Jargamar replaced by malik and khans who arbitrate in conflict and dispute of a particular area. The British establish a contract with the locals allowing them to settle all the issues between themselves and

government through a local representative Jarga. For the membership government changed the criteria too, and announced that the criteria for selection of a Jargamar:

1. Have a well-known statute in the society
2. Must be in a regular contact with the state.

The determination of a well known status can be measured by his economical position, his family background, should know about Pukhtoonwali, perseverance of honor, a good relation with the other status fellow in the society.

Whenever the government introduces the modifications in Jarga in first phase they try to find out those people of area who can be kept in a regular contact with the state officials. Through them they try to rule these people indirectly in form of malik and khan. If a person has a sound economical position it's a sign of his prominence. Everyone will respect him and everybody listen him very carefully. It is a common perception in the area that those people are our leaders whose help us in the bad days, it's clear that those people can help them who were economically sound.

Kinship is also an important factor for the *Sarkari* Jarga (Jarga patronized by government) membership. Usually all the *Malik* and *Khan* of the area belong to prominent families. These families are considered an influential one of the area. To have good relation with the kinsmen, one has to actively participate in one and other functions on different ceremonial occasion like marriage death, enmity and illness etc. As they saying a proverb that, *Da yaw lass na prhaq na khiji*. (The beating of one hand can't reproduce music)

In the tribal area of Pakistan the responsive behavior of *Malik* with state is based on the utilization of the *Malik* and *Khans*. Some time a loyal *Malik* can earn the title from the state officials in the name of *Sarkari Malik*. The political agent of the concerned agency entitled them for various favors and imposed some duties places their names. Usually these officials like P.A(Political Agent), A.P.A(Assistant Political Agent), Tehsildar and often Niab Tehsildar invited on dinner by these Maliks And Khans. If a Malik or a khan consistently regulate this pattern can be keep on the post otherwise will be removed.

Pukhtoon social structure is basically governed by the convention and tradition patronize by Pukhtoonwali. Being a Pukhtoon must be accepting the four main obligation of Pukhtoonwali. These are Hospitality, hujra, repentance over past hostility, and *Teega* or truce declared by a Jarga. In Pukhtoon society these four obligations must be observed in every one.

5.4 Changes in Types

All the specified types based upon the nature of the problem. The Jarga may be classified as follow.

1. Koranai Jarga (Familial Jarga);
2. Qaumi / Tribal Jarga;
3. Sarkari Jarga (Jarga Patronized By the Government);
4. Loya Jarga (Grand Jarga)

In a traditional *Koranai*/familial Jarga the family members were allowed to preside the entire case. Modifications not only disturb the national level structure of a Jarga but it does intervene in the familial level Jarga too. to some extent, it will not be wrong to say that mostly the land cases are registered with the *Tehsilḍar* and also the administration of the agencies taking a little-bit interest in the familial level issues and dispute. But in many other cases like murder, and elopements the local people don't call the Jarga. They prefer retaliation rather than to resolve through a manipulated judicial body.

In case of a *Qaumi* or tribal Jarga as in the traditional form this type of Jarga should be convened for the solution of local problems. The local elders collectively try to get the problem resolved and no one individually preside the case, but in modified form a *Malik* for the respective tribe and matter relating to collective disturbance, relating with land, irrigation, agriculture etc also criminal cases are decided. Almost all the matters in the settle areas are resolved by this form of Jarga and every tribe represented by his concerned *Malik* or *Khan*. It is a form in which every tribal *Malik* is participated and play a vital role, under the supervision of governmental allies. The implementation of a colonial government passed act in form of a formal law over the tribal people of Pakistan is directly a threat to the indigenous system.

5.5 Rule and Law of Modified Jarga

Rule and law is the basic thing, which lying in the deep root of every administrative set up for some measurable purposes. In the traditional Jarga set up was mostly regulated by the norm and values and some form of customs. The custom and tradition transform into, an invisible law known as Pukhtoonwali. A non material tradition has presiding over the Pukhtoon society the sub ordinate is satisfied beside its contradictive decision with the humanity.

Everyone is equal in the eyes of this man made law, no discrimination on the basis of land, property, or location. When this man made law has been interrupted by an arbitrator group, the hidden prominence came-out an evil. those areas where the Pukhtoon claimed that they are under a control of a valuable custom Pukhtoonwali, known by inaccessible area now come under the jurisdiction of an evil law, this law rules upon them known as a Sarakar Hukam or governmental order and the remaining where the accesses of government was feasible known by protected areas or settled area of Khyber Pakhtunkhwa. Any type of dispute can be resolve through custom and also through Sharia, but mostly cases are dealt by custom (Pukhtoonwali). The villager in a form of an assembly passed the nomination of Jargamar whose were already in good book of government officials. This system was introduced by the British or royal official as stated that,

"On the judicial function, justice was administer by royal official with the help of village council (or assembly), often the assembly sat alone in judgment, while there may have been exceptional incident that the functionaries of the imperial state- qazis, mohtasibs, ktwals always supported the decision of the village council."

(The network publication, published in 2000)

Traditional set up was the same throughout the whole Pukhtoon area. Selection of a Jargamar was on the behalf of the villager but not in need of the political affiliation or any incentive fulfillments. According to the rules of traditional Jarga if a person has intentionally killed another one must be punished what the decision announced by the victim. But in modified Jarga decision must be in favor of influential one either an accused or a victim manipulated the Jarga decision. The traditional Jarga amicably solved the dispute no one be harm for the sack of justice.

5.6 Proceeding of Modified Jarga

In rural area of *Tehkal* whenever a mishap occurred a traditional Jarga was called for resolution. The mishap may be between individual, families, clans, tribes, or village etc. In most cases the traditional Jarga convened by a request made to the local elders by the oppressed. While some time local elders called the Jarga when they saw a threat to the stability, unity, peace etc. wherein the modified Jarga, the oppressed to gain justice against an individual, group or village against another villages by an approach to all those elder, could be hijacked by the

influential by the intention of occurring undue incentive from the monopolizes. The way for seeking justice to obtain the damage and other private remedies was the tradition, should be followed. The nature of the case may be a possession of land, construction of a house, claim for the property of someone else, or the theft of irrigation water etc. Grievances and dispute were arising due to these circumstances. The communal property (*Shamilat*) could be the cause of dispute among the people of tribal areas. The *Shamilat* consist of mountain, land, trees, and stones. But some time the *Shamilat* was consider a threat to the law and order situation and the government takes a preventive step to solve the matter themselves. It's the rule for proceeding of traditional Jarga that all the masses and jurist including the presiding authority set on the ground. The modified Jarga has introduced the level of discrimination among the commoner and jurist at all degree. The jurist set on cot and some time on chair while commoner set on the ground. A clear distinction between a slave and a master could be observed.

In hierarchal proceeding of traditional Jarga *convening* for the ongoing dispute or problem of village Tehkal could be arranged. Anyone who's recognized the threat must be in contact with the regular traditional judicial body to prevent the risk. Modernized or administratively structured Jarga was quizzing thirst upon the poor class of the society. The entire Jargamar want a chaotic situation for their intervention to extract money from disputing parties. According to one of respondent, Jarga has been become an earning tool for influential people, he further added that Modern Jarga system from the announcer to the presiding authority everyone in need of some type of incentives. The announcers first take some type of benefits from the rival side then he goes to announce the venue and Jarga process.

Selection of the *Venue* was traditionally counted as another thing which also depends upon on the nature of the problem. If an issue was to be run inter tribe can be brought in the khalil tribe hujra where they impartially decide the problem. Mostly the cases of the tribal are held, but some time the matter which can be consider intra tribe, should be held in the open hall. Participation of different parties is also important, but when an issue deals the common interest of all people, so they all witness the proceeding of Jarga.

Transition has occurred in every aspect of Jarga. The selection of place where Jarga should be convened has become a hectic job. Usually it was consider against the honor of the people to participant in Jarga convened outside of their area. Any type of dispute should be brought to the *hujra* of local elders for settlement. In traditional Jarga the participation of outside

would be encourage and every one set as a jurist in the crowd, but in modified Jarga participation of irrelevant person was consider the disgrace of victim and accused both.

Not only the intellectuality should be in counted but the physical appearance was also a matter of interest in traditional Jarga. Symbolically distinction was manifested among the Jargamar and common masses. The traditional elders wear a white turban, but there was no specified shoe or any other symbols as in the past.

Religion has played a distinctive role in Pukhtoon society. Mullah was to be considered second in importance to the Pukhtoon elders. Similarly in case of Jarga when Jarga take start and the entire participant come, mullah sit down near to decision maker for the recitation from holly Quran was the clear example of his status. With change in Jarga mullah status has also been affected to some extent. Now Mullah was just an announcer at mosque (moizen). His place takes up by Jargamar too. Traditionally religiosity should be considered limited to those whose descendents heriarical from mullah family. With modern education everyone knows the usual contextual verses of holly Quran. So the mullah replace by a common Jargamar.

According to the view of a key informant that the *atmosphere* of a traditional jarga always was keep cool and calm. No one has claimed a threat during proceeding of Jarga. Ideological clashes not only interrupted the collective security but also the traditional set up has been disturbed. In modern Jarga a threat not only can be observed from the rival side but most hazardous threat was from the outside in form of target killing and suicide attack too. Jarga terminology also has been changed to some extent. Pro western want to manipulate indigenous by the use of other languages during the process of Jarga. Traditionally those jurists were to be encouraged whose properly used basic Jarga terms that were easily understood by the people.

Traditionally oath was taken in a serious case. Oath taking was common practice in modern Jarga system. A witness could easily take oath without any fear of holy indignation. There were some types of professional oath takers, and anyone could hire their services in case of gravity of the situation.

Reliability and validity of evidences make a case more strong and perfect. Modern Jarga system shaped not only structurally but process of Jarga has too. Evidences were not any more a reliable source for the weight age of a case but a finger tip for the Jargamar. They could easily collect the relevant evidences.

After the deep rooted investigation of evidences and witnesses, traditional Jarga announces the decision.. The decisions depend upon two things' Haq (rights) and Wak (authority). Claimant and the accused have to present their argument to depend their respective cases. Modern Jarga has taken all the *haq* and *wak* from both of disputed side. Decision announcement some time has already made by the Jargamar without proper process. But announcer proclaimed that the Jarga has not yet find out any solid solution to the problem and Jarga would be postponed for the next session. Normally modern Jarga conducting three times session to reach to a decision, but if they don't, a new setup was arranged to decide the prevailing case in a manipulated way. When the Jarga reach to a final decision the Jarga has to visit the concerned place and rarely take a verbal oath from both of the disputed side proclaimed and accused. Some time there come different natures of problems that create a complexity for Jargamars. In this situation they take the *waak* (authority) from both side, and the decision lay upon the mercy of these Jargamar. The final decision must be accepted to both the parties, willingness of the Jargamar was essential for final decision; otherwise any contradiction occurred, the Jarga would be dissolve and a new has to be constituted. Jarga was conducted for final verdict even it may take one to three sessions, but for every session, Jargamar take their fixed rate. Their fixed rates changes with change in cases. No mercy left on behalf of the poor class.

End of modified Jarga was different from that of traditional Jarga. Traditionally at the end of Jarga, both contesting party were obliged for the cooperation of elders and also for willingly accepting the decision and both embrace each other. Offering of *khiaarat* for the present society was a custom. Modified Jarga have no clear slogan for the end of Jarga. One of the respondent said that a clear distinction could be seen at the end of Jarga when the upper class (jirgmar) set aside in a safe room and distributed the amount taken from both the parties. The presiding authority or the so called Malik some time collect the money from both of the disputed side. A new custom has taken place, according to it, an animal of the rival side was kept by the Jargamar.

The implementation of the decision is totally depending upon the will of these Jargamar under the supervision of malik or khan or any other discretionary power is also to some extent. If these persons were not agreed on a decisive point they can reject the final decision too but in case of the violation they have also the authority to seize the houses of the

offenders, can jail them and also their male kin in the time of need. In case of violation malik or khan collectively take a step with the collaboration of villagers. Not only the accused one will be affected from the violated step but also his family and other relatives are too. And their property and houses can also be seized and burnt if the case is serious in nature.

5.7 Responsible factors for the transformation of traditional Jarga

When the researcher interviewed the respondents about the changes and modification occurred with the passage of time in the traditional form of Jarga, they responded that mostly on their elders who were responsible for all the destruction occurred in the prestigious institution.

The tribal people of Pakistan were living in organized form, in the form of tribe, clan, or family. For the fulfillment of their basic requirements, they have been fighting with each other and the same situation was prevalent in the area. The settlement of the feuds has been made possible by the local elders through the Jarga. The decision of the respectable elders be acceptable and must be respected in the society.

The pukhtoon elders were the followers of an unwritten law namely Pukhtoonwali, and were struggling for its implementation in the jurisdiction of Pukhtoos settlements through simple and non technical system of customary law, that may be partly attributed to the plain structure of overall pukhtoon society and partly to the inadequate role that administrative courts play in the process of administering retributive justice in the area.

The coordinated system of custom and private law satisfied the demand of justice of these locale inhabitants in an acceptable manner. But the question was how a heterogeneous justice system could satisfy the misruled people. That was not impossible, they could be satisfied with the implementation of Pakhtoonwali as the rule of law instead of hegemony of so called Malik and Khans.

From the day when the British government manipulated the pukhtoon elders in a confidential manner, to rule over the host blood, the institution lost the centuries old chastity and respect.

Here the researcher will mention those factors that are responsible for the modification in traditional Jarga system; the factors were explored with the help of respondents during the research study in the village Tehkāl:

1. Government policies;
2. Role of Malik/khans;
3. Developmental needs;
4. Livelihood support;
5. Changes in values;
6. Adult franchise;

5.7.1 Government policies

The formal justice system of Pakistan has been influenced to varying degree by the external laws and thoughts as moderate Islamic, British law, normative justice system of the pukhtoon area, and by radical interpretation of Islam. These influences by and large, reflected the values, ideologies and politics of various governments that has affected the government of Pakistan. But Mostly of these independent external factors were also interrupted by the government through the indigenous allies. The government hands over the tribal administrative setup to the local elders (Maliks and rarely Khans) in the form of governmental executing agencies. Historically, traditional judicial system of Pukhtoons or the tribal justice was affected by the government through its so called executing agencies and political agent, the FCR (frontier crime regulation), khassadar/livies, and frontier carps. The rest of the responsibilities were pushed upon the local elders, as their recruitment and their assessment etc.

5.7.2 Role of Maliks/ Khans

Malik is titular head of a tribe or a clan. He is working like a mediator between the tribe and administration. Malik is considering is a dominant factor responsible for the empowerment of a governmental Jarga system in the pukhtoon area. It is the tradition of the Pukhtoon nation that they paying a great respect to their elders in the form of maliks, khans and nawab etc. this was the administration of the government that disturbs the traditional structure of the Jarga system.

It's reflecting the continuity of indirect rule of the colonial government. The state relies over the services of this intimidator. These lungi holders were the source, despite the fact that these people were very few in numbers but have an effective influence over the locality; the administration used them for the role to play. Pakistan retained the Maliki system, which the British introduce to gain the favor of the Pukhtoon by the creation of reliable local elites, whose

loyalties were rewarded with a special status, financial benefits and other influential benefits.

With the passage of time, as the numbers of these influences increase the traditional Jarga lost its structure and its independent role, when its members were started to be nominated by the AP under the dark law FCR, the role and status of the Khans was reduced just like that of the Maliks and they were in no way in the position to initiate all the important decisions on their own without the consensus of the local people. The respondents were of the view that the roles of Maliks and Khans have been curtailed by so many factors and they were no more the kings without thorn of the local people.

5.7.3 Developmental needs

Developmental needs or the basic need are the most important way for the access to avail the resources. As most of the Pukhtoon area was mountainous, there was a need of development, socially and also infrastructurally in the whole of the area. As the government sanctioned all the basic needs like, roads, school, hospitals etc for the needy people, only the remaining option with the people was to implement all the governmental policies willingly in the area. Therefore all the activities were possible through good relation with the government and to avail the resource for a better development. Every developmental step gave a space to the interruption in the traditional set up as when the road come the check posts also built up which ultimately give a chance to the administration to penetrate.

In the initial stages all the activities were avoided by everyone, but now there was a competition among all the people because no one wants to negate his importance. Education provides a way to the people for the involvement in governmental jobs, and also to bring out them from the state of hard, tough and barbaric environment. That was the reason that Pukhtoon new generation has forgotten his real culture and started struggle for the services of courts and other formal judicial institutions.

In the village, Khan was considered a good one who has good relation with the people (client). Without people support was not suppose to perform. It was a common notion about the local inhabitant that if they did something for a Khan in response he obliged the people by playing his role for the betterment of the people in general and in Jarga affairs in particular.

5.7.4 Livelihood support

Pukhtoon nation have lost all its socio-judicial independence by following the

formal judicial system prevailing in the country. The ministry of environment has also played his role to some extent in the destruction of the forestry of the Pukhtoon area in general and in the tribal area in particular. Deforestation has made them dependent on the resources being provided by the government.

These people have no other alternative to avail for the uplift of their survival in this situation they need jobs, and the government is the only one resource to provide them jobs, they also need passport, identity card, and many other thing which can be facilitate them in the life. As they were self sufficient in the penetration, before the government intervention, but now they have lasted their socio- political and political judicial independence.

5.7.5 Changes in perception

A conflict was found in the village Tehak over the values, among the younger and the elders. Both of them blamed each other for the destruction of the traditional set up. The elder laid the responsibility on the younger that they don't respect their elder khan, because they were affected by the education and media. They were running out of the control their elders and not following their footsteps, while the younger also blamed the elders for the destruction of the traditional set up. The younger perceived that there was a jealousy among the elders, therefore they don't request, to solve their disputes and conflicts and seek the help of the government institutions.

5.7.6 Adult franchise

The concept of democracy was the controvercial in the Pukhtoon area, especially in Tehkal village. They exemplified with the notion of equal rights to vote in the elections and there was no distinction between a common man and a influential Khan or Malik that was against the justice whereas for other that was the democracy. The situation not remained the same, more over the politics played its role that disintegrated the tribes in many sub tribes, the unity and harmony flew away by the democratic system, everyone has his own will and don't care for the elders. On the other hand the government facilitates them in the form of sarkari Jarga for resolving their problem right from domestic to national level.

Keeping in view all the factors for weakening the traditional Jarga system prevalent in the Pakhtoon society and in the village Tehkal that internal and external factors have brought numerous changes in the centurie's old tradition of the Pukhtoons.

The present research has been mainly focused on the transitional perspective of Pukhtoon Jarga from traditional to modern system of adjudication. The study was also aimed at the description of the enforcement entities. The process of change in Pukhtoon's Jarga system was very slow and at unconscious level. The people who are even taking active part in the process of Jarga can't realize that gradual change. And this is the reason that there is no written account available about the transition occurred in structure and function of this historical institution. This is mostly because of centuries old institution has been passed down from generation to generation without any written protocol or written terms and conditions. One can infer from the temporal priority of Pukhtoon customs and tradition over that of the rest culture that how much the Jarga institution is old.

Every Pukhtoon is expected, within his social structure, to abide by this unwritten code of life in the form of four foremost obligations. These founding stones of the Pukhtoon culture are Melmastya, Teega, Nanawaty and Badal. There are others obligation like politeness, truthfulness, honesty, loyalty, love, and attachment for the state are the necessary skin tone of Pukhtunwali. As mentioned by Lindholm:

"As the point most often mentioned, aside from three pillars (Mialmastiya, badal, Nanawati) are equality ,respect, loyalty, pride, bravery, pardah, pursuit of romantic encounter, the worship of Allah and most importantly the unselfish love for the friends." (Lindholm 1982)

Islam as a code of conduct has very close resemblance and proximity with Pukhtoonwali code of life, it is the simple but demanding. Group survival is its primary imperative it demand vengeance against injury or insult to ones kin, chivalry and hospitality toward the helpless and unarmed, strangers, bravery in battle, and openness and integrity in individual behaviors.

Traditionally, Pukhtoonwali is defined as the unwritten code of life, tribal law or the constitution of the Pukhtoons. Pukhtoonwali is the code of conduct of the Pukhtoons that operates in the proceeding of Jarga. As pointed by Ahmad:

"The Pukhtoon adheres to general Islamic law but also its own, the

Pukhtoonwali, with its institution of Jarga." (Ahmad 1980)

The traditional Jarga is based upon the convention amalgamated with the religion Islam. A religious leader mullah is also an integral part of the structure of Jarga. Usually in severe cases oath was also taken from both or either party in the supervision of a mullah in the presence of the Holy Quran. The Jarga try to resolve the dispute according to Islamic laws. It signifies the importance of Islam in the daily routine of the typical Pukhtoon villages. Mullah is one of the traditional arbitrators presiding over the whole society according to the Pukhtoon norms and values.

Hashim argued:

"Jarga is a body of customary rules which fulfill all the requirements for the benefits, developments and prosperity of the tribal's. it is the socio judicial for the promotion and enrichment of Pukhtoonwali and conduct of settlement of mutual disputes." (Hashim1985)

The structure of traditional Jarga is simple one. That is a combination of three components (i) decision making (ii) classification and the (iii) rules of the Jarga. As a convention institution, everyone knows about the structural organs of the Jarga. The decision makers have a full authority to decide any case in the light of Pukhtoon traditions.

The classification of traditional Jarga in the village Tehkal was also based upon the nature of the problem, if a dispute occurred between two individual a koranai Jarga was arranged and the matter was resolved at home, while in case of the dispute of tribe level or clan then the Qaumi or tribal Jarga was convened.

The third component for the structural importance was the rules and laws already based upon the dispensation of justice and societal affairs. The accused weighted for the compensation of the crime. A murder would be compensated in murder, and a beaten would be for the beating. Someone forgave the accused or amicably solved the matter.

The customize progression of traditional Jarga was very simple, whenever difference of opinion arise could be resolved easily by the traditional Jarga. The victim usually makes a request to the elder to arrange a Jarga, or the influential figure themselves call the Jarga in case if they realize a threat to the harmony of the Society. Usually the Jarga was convened at the Hujra of Haji arbab dost Mohammad khan.

Oath taking is another remarkable aspect of the traditional Jarga where the natives

believe that if anyone who falsely swears on the Holy Quran tries to deceive the individual or the family. The stipulated oath is taken from a married person to declare before the Jarga his innocence by throwing three stones with uttering the words that *"if I speak falsely I may divorce my wife"*, as their values were compound with religious belief.

Traditional Jarga need reliable and valid evidences for the perfection of stance of both sides, evidences are presented in the form of witnesses where everyone cannot be counted a witness, but analyzed according to the native yardstick.

The Jarga passes a judgment after necessary and deep rooted investigation into the dispute to arrive at final decision. No effort is spared to reconcile the disputing parties. The decisions are of two types, Haq or the right, and Waak, which means authority, and both sides are allowed to present their arguments before a decision is given. The disputed parties have the right to challenge the decision of first session if not satisfactory.

In Wak (authority) the decision is based upon the consensus of the Jargamar to decide the issue between the contending parties impartially. Both parties repose their full confidence in Jarga, and authorize it to decide according to whatever found right. The process of Jarga and its credibility and decision announcement vary but in the traditional Jarga an arbitrate announces the decision openly without keeping anything secret.

Before the dispersion of the Jarga, the unanimous decision is finally announced in the form of a rogha or conciliation. Both the rival party members embrace with each other and their enmity comes to an end. Reconciliation takes place in form of compensation; the offender pays cash or offers a khiraat to the local participants.

Normally the jurist and the arbitrator seek to obtain the approval of the parties before the announcement of the decision. Implementation of a Jarga decision is crucial to the credibility of Jarga. When the decision seems reasonable to both the parties, it can be effectively implemented; however, when one of the parties has serious objections to the outcome of the Jarga, the implementation process becomes difficult, if not impossible.

Usually, in the Traditional Jarga anyone who rejects the collective wisdom takes a crucial risk. The traditional leaders who arbitrate Jarga can impose a strict sanction upon the violating party. It can put a person out of the society, can burn their houses and sabotage their property.

The finding of the research doesn't negate the stance of Perry, Ahmad and

Landholm about the traditional Jarga system, on the other hand the sarkari Jarga is a mixture of code of conduct and a forum of implementing law enforced through the Frontier Crime Regulation (FCR 1901). Traditional and contemporary judicial system, both are functioning according to the same criteria and both of them are complementing each other to some extent.

These comparative social facts seemed to support the philosophical position of cultural relativists about the nature of all social phenomena, including conflicts and their resolution mechanism, are relative and culturally specific. Similarly Jarga is the Pukhtoon cultural oriented institution that is the ultimate solution for all the societal disturb situation.

The Jarga is although an informal institution but has very formal effects upon the Pukhtoon Society. Jarga is one of the most time-honored institutions in the Pukhtoon world as a part of their culture, where they are very proud and fond of their culture.

The Jarga, through which most society business, both public and private is settled in the Khyber Pukhtoonkhwa (and also Baluchistan), is the closest approach of Athenian democracy that has existed since time immemorial. Further authenticates the view of Spain who, in authentic way, described the Jarga as:

"The assembly of elders which are called to decide specific issues and whose decisions are binding on parties in conflicts, the Jarga has been called the closest thing to Athenian democracy that was existed since the original." (Spain 1963)

These dispute resolving bodies always consisted of authority-wielding elders. In the context of traditional Jarga I have analyzed that the authority is existed in wisdom, seniority, and kinship. Where Gluckman favoring the researcher's viewpoint:

"Probably the simplest type of authority is that of elders, or patriarch the most senior and able kinsmen in an interrelated band," (Gluckman 1965)

The Glickman argument is applicable on traditional Jarga rather than the modified Jarga. In modified Jarga for the membership not only the influence in the society is important but also a good relation with the other judicial bodies too. Pukhtoon society is undergone a state of changes. Many external influential factor has been disturbed the uniqueness of centuries old tradition. Contemporary other societies has been affected by and large the colonial government in an organized technique.

The change which has been occurred in the traditional unwritten set up of the

traditional societies is the affect of the culturally advance societies over those societies still in proceeding. As the African culture has been affected as Firth discussed that:

"There is no African culture has not been affected in some way by the European contact and there is more which has entirely given way before it the culture of the Africa has been modified by contact with Europeans and near east." (Firth 1959)

The elements responsible for the modifications may be internal or external affected the social institution Jarga which was present in the form of the judicial system.

My findings also revealed that the Jarga was one of the social institutions that largely affected by the governmental intervention through their possession of so called traditional elders as Maliks, Khans and other mediator and influential executing bodies. They con the Pukhtoos to amalgamate the good traditional practices with the modern times and develop systems best suited for their desires as a responsible nation-state. Even today Majority of the Pukhtoon who have no authority in their hands, are of the opinion that Maliks and Khans are the accountable figures for the changes and alteration and they put down all the demolition on the behalf of them . Favor this statement Ahmad describe that:

"Malik the only symbol of exploitation in the tribal area and his position as that of a bridge between his section and government and May soon make it's a rudiments." (Ahmad 1980)

On the other hand majority of these influential bodies laid the responsibility upon the government. According to the researcher's analysis, they classify these governmental intrusions as the main important factor for the transformation of the time-honored, traditional Jarga to sarkari Jarga. The minor factors responsible for these changes were changes in value system, livelihood support, developmental needs and adult franchise. These were the derivative factors responsible for the governmental penetration in the Pukhtoon areas leading to the transformation of ideal society in encapsulated area in all-purpose and from traditional Jarga to a governmental Jarga in specifically. As stated by Ahmad:

"The encapsulated TMA (Tribal Area of Mohmand) are in the process of being encapsulated through various forms of penetration symbolized by roads, schools etc. the roads brings with it schools, electricity, hospitals and inevitably administration which in the aggregate spell

encapsulation." (Ahmad 1980)

The developmental necessities led the process to a change, bring a new set up. Due to this transformation there is a steady shift of power, from the conventional to the governmental sphere, the alternative result was the provision of a chance to the government to get the ability, to influence the Pukhtoon social structure in general and the judicial system in particular. As Cohen characterized power in the statement that:

"Power is the ability to influence the behaviors of other and / or gain the influence over to control of valued actions." (Cohen 1970)

Government intervention in these areas not only changed the traditional set up but also the status of the elders too. Reflecting the continuity of indirect colonial rule, the state relies on the services and collaboration of the paid intermediaries, such as the malik and other holders of lungi status and other allowances , quota in khassadar force and other employment, contract of developmental projects, rewarding them cash in case of the successful Jarga . These were the incentives and potential benefits that made them loyal to the administration. Now the government has the power to implement the decision through the administrative institutions in order to influence the behaviors of these people. These were the elders' loyalties, which make the prevailing administrative set up in the appearance of a modified Jarga .In spite of the fact that everyone knows the eventual result that is the conversion from a conventional to an constitutional zed, from an unwritten to a written, and from a traditional to a government sponsored Jarga.

CONCLUSION

The Pukhtoon society is considered tribal, and classless has gradually changed into a class society. Various social classes have emerged in the settled area as well as in tribal too. Their overall aspiration and social behavior towards change and reforms are often characterized by the class to which they belong. Out of these four classes of aristocrats, the nouveau riches, the educated and professional and the common masses. Peshawar is one of the innermost places where all classes are obtainable. Every class has indigenous normative way based upon Pukhtoonwali.

The Pukhtoon social network governed by the convention and tradition mostly bind up by Pukhtoonwali. Pukhtoonwali as unwritten code is the arch of the Pukhtoon social fabrics. Its exercise a great influence on their action and has been held sacrosanct by them generation after generation and all the social institutions are preserved under the traditional set up. Jarga is one of the social practices in form of social institution, which passed from generation to generation for the societal integrity and harmony.

Traditional Jarga was emerged as a declarative body to avoid the Pukhtoon from bloodshed that has operated as an important mechanism of conflict resolution among the Pukhtoon through centuries. Jarga has largely contributed to the maintenance of social order in Pukhtoon society both directly and indirectly.

Structurally traditional Jarga is very simple and straight forward in its nature. All of the Customize progression of traditional Jarga is perceived in organized shape governs over Pukhtoon. The customary rules of traditional Jarga which fulfill all the requirements for the benefits, developments and prosperity of the Pukhtoons it is the socio judicial for the promotion and enrichment of Pukhtoonwali and conduct of settlement of mutual disputes.

Traditional tribesman/ Jargamar were those jurists, who were known as the elders of the tribe, respectable for society, deserving for the decision and implementation and a loyal one to the Pukhtoonwali and forefather religion Islam. The traditional Jarga try to convince the parties for the resettlement of the situation, according to Islamic law, because the religious leader mullah has been an important figure of the Jarga process. Usually in severe cases oath was also practiced in traditional Jarga for the peoples' satisfaction. The Jarga try to resolve the

dispute according to Islamic law. They bestow their final decision whenever a difference of opinion arises in the area. No specific limits were in existence for the members, everyone was a jurist be seated down in the penal. The authority was in their control. And usually both the parties accepted the decision. In case of violation they have the power to punish the accused.

The processes of transformation from a cultural oriented judicial system to an imposed one has gone through a numerous changes, the origin is laying in a traditional Jarga system while the ultimate result of changes in the form of a government sponsored Jarga. The existing modified Jarga is not an institutionalized one but a separated grown or an independent entity.

Over the passage of time transformation and modification from a traditional form of Jarga to modified Jarga has been occurred. Modification not only changed the influential entities selection but the process too. Cognition behind the changes embedded in strength of the local elders' Maliks and Khans. The responsible factors like government intervention in form of provision of developmental needs, as construction of roads, schools, tube wells, hospitals, etc where all of them were sanctioned by the administration. Additional dependable factors like adult franchise, changes in value and livelihood support are the major factors responsible for this shift.

The process of transformation is steady and slow, but the internal tribal leading figures like Khans, Nawab and Malik make it's a fast one. The economical incentive and potential benefits, in the form of allowances , cash and the social benefits like quota in khassadar force and other employment, contract of developmental projects, rewarding them cash in case of the successful Jarga made them to sacrifice their loyalties and achieve a social statues.

Their relation with the local inhabitant and other administrative staff also were important factor responsible for strengthen the hold of modified Jarga. Due to these incentives, the influential executing bodies become loyal to the government administration and the government influences the behavior of the people by exploiting their loyalties.

The supremacy that once was intensified in the traditional Jarga has at the present shifted to the modified or governmental Jarga that has become an exploitative imported part of the socio- political structure of the Pukhtoon society.

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GLOSSARY

Terms	meanings
Badal	revenge
Badshah	king
Dalla	block
Dodai	meal
Dua	pray
Hamsaya	one who share shade used for client or low status group
Hujra	male guesthouse
Hukumat	government
Izzat	honor
Jarga	assembly of Pukhtoon elders to decide various tribal matters
Jargaimar	chief, landowner
Khassadars	semi official tribal police force under the command of political agent
Khel	lineage
Lungai	allowances given by the government for section or sub section
Moulana	religious practitioner
Muharir	administrative clerk
Nanawati	from the verb to go in or refugee
Nang	honor
Nerkh	scale the plaintiff paid in compensation
Parda	seclusion
Peghla	virgin girl
Pirange	Britisher
• Pukhtoon	member of the Pukhtoon Society
Pukhtoonwali	code of the Pukhtoon
Qalang	encapsulated Pukhtoon area
Qam	tribe
Quran	holy book of Muslim

Rogha	conciliation
Riwaj	custom
Sarkari Jarga	government sponsored Jarga
Shamilat	communal property
Shariat	body of Islamic law
Siali	equality or cognition orientation of people to be so as other is
Tarrekx	penalties of Jarga
Teega	truce
Wak	authority, mutually agreed authority given by two factions to Jarga for decision
Zamin	land
Zanlawali	individualism (isolation)
Zar	money
Zor	might, power
Zun	women