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Abstract: *This study explores the role of the Jirga system as a traditional mechanism of dispute resolution in District Mardan, Khyber Pakhtunkhwa. Using a qualitative research design and a phenomenological approach, the study examines the perceptions and lived experiences of community members, Jirga elders, and disputants. Data were collected through semi-structured interviews and analyzed using thematic analysis. The findings reveal that Jirga remains a widely accepted and effective institution due to its accessibility, efficiency, and strong cultural legitimacy. It plays a significant role in maintaining social harmony by emphasizing reconciliation and consensus-based decision-making. However, the study also highlights critical challenges, including gender exclusion, influence of power dynamics, and lack of formal legal safeguards. The coexistence of Jirga with the formal judicial system reflects legal pluralism, creating both opportunities and tensions within the justice system. The study concludes that while Jirga continues to be a relevant and functional institution, there is a need for reforms to ensure inclusivity, accountability, and alignment with contemporary human rights standards.*

Introduction

Traditional governance systems have historically played a central role in regulating social life and resolving disputes in many indigenous societies. In regions where formal judicial institutions are either weak, inaccessible, or culturally distant, local mechanisms of conflict resolution often emerge as effective alternatives. In Pakistan, particularly in Khyber Pakhtunkhwa (KP), the Jirga system represents one of the most enduring forms of traditional governance embedded within Pakhtun social structure. This study examines the role of Jirga as a mechanism of dispute resolution in District Mardan, highlighting its social, cultural, and functional significance within the local context. The term Jirga refers to an assembly or council of elders convened to deliberate on communal matters and resolve disputes. It is a fundamental institution in Pakhtun society and operates within the normative framework of Pakhtunwali, the traditional code of conduct governing social relations among Pakhtuns (Ahmed, 1980;

Barth, 1959). Historically, Jirga has served as an informal yet authoritative system of governance, facilitating decision-making and maintaining social order. It is characterized by collective deliberation, consensus-building, and the involvement of respected community members. The origins of the Jirga system can be traced back centuries, with early references found in colonial records and anthropological studies of Pakhtun tribes. It has been described as a democratic institution where participants sit in a circle to ensure equality and open discussion (Hanifi, 2008). This structure reflects the participatory nature of Jirga, where all parties are given the opportunity to present their perspectives before a decision is reached. Unlike formal courts, which rely on codified laws and rigid procedures, Jirga decisions are based on customary norms, local traditions, and moral principles.

One of the primary reasons for the continued relevance of Jirga is its accessibility and efficiency. Formal judicial systems in Pakistan are often criticized for being slow, expensive, and bureaucratic, making them less attractive to rural populations. In contrast, Jirga provides a quick and cost-effective mechanism for dispute resolution, which is particularly important in areas with limited access to formal legal institutions (Sajid & Ahmad, 2013). The community-based nature of Jirga also enhances its legitimacy, as decisions are made by individuals who are familiar with local customs and social dynamics. In District Mardan, the Jirga system continues to function as a significant institution for resolving a wide range of disputes, including land conflicts, family issues, and interpersonal disagreements. The district's socio-cultural composition, predominantly Pakhtun, reinforces the importance of traditional practices and values. Studies have shown that local communities often prefer Jirga over formal courts due to its cultural compatibility and perceived fairness (Iqbal & Chaudhry, 2023). The decisions of Jirga are generally respected and adhered to, as they are backed by collective social pressure and community consensus.

From a theoretical perspective, Jirga can be understood within the framework of Alternative Dispute Resolution (ADR). ADR mechanisms aim to resolve conflicts outside formal legal systems through processes such as mediation, arbitration, and negotiation. Jirga embodies many of these principles, particularly its emphasis on dialogue, reconciliation, and consensus-building (Shaukatullah & Ali, 2021). Its informal structure allows for flexibility and adaptability, enabling it to address disputes in a manner that is culturally relevant and socially acceptable. Despite its advantages, the Jirga system has been subject to significant criticism. One of the major concerns is its lack of formal legal safeguards and accountability. Critics argue that Jirga decisions may sometimes violate fundamental human rights, particularly in cases involving women and marginalized groups (Ahmed et al., 2024). The patriarchal nature of Pakhtun society often limits the participation of women in Jirga proceedings, raising questions about inclusivity and fairness. Furthermore, the influence of local power dynamics, such as tribal affiliations and economic status, can affect the impartiality of decisions.

Another important issue is the relationship between Jirga and the formal legal system. While Jirga operates as an informal institution, its decisions can sometimes conflict with state laws, creating legal ambiguities. The coexistence of formal and informal systems of justice reflects a broader phenomenon of legal pluralism, where multiple legal frameworks operate simultaneously within a society (Siddique, 2015). This duality presents both opportunities and challenges, as it allows for culturally sensitive dispute resolution while also raising concerns about consistency and legality. In response to these challenges, efforts have been made to integrate traditional mechanisms like Jirga into the formal legal framework. The establishment of Dispute Resolution Councils (DRCs) in Khyber Pakhtunkhwa represents one such initiative. These councils aim to combine the strengths of Jirga with the procedural safeguards of formal legal systems, providing a more structured and accountable approach to conflict resolution.

(Government of Khyber Pakhtunkhwa, 2012). However, the effectiveness of such initiatives remains a subject of ongoing debate.

The persistence of Jirga in contemporary society highlights its adaptability and resilience. Despite the expansion of formal legal institutions, Jirga continues to play a vital role in maintaining social cohesion and resolving conflicts at the community level. Its emphasis on reconciliation and restoration of social harmony distinguishes it from adversarial legal systems, which often focus solely on determining guilt and punishment. From a sociological perspective, Jirga can be viewed as an instrument of social control that reinforces community norms and values. By resolving disputes and promoting consensus, it contributes to the stability and cohesion of Pakhtun society. It also serves as a platform for participatory governance, where community members actively engage in decision-making processes. This participatory aspect enhances the legitimacy and acceptance of Jirga decisions. Moreover, Jirga plays a crucial role in conflict transformation by addressing not only the immediate dispute but also the underlying social relationships. Its restorative approach seeks to rebuild trust and prevent future conflicts, which is particularly important in close-knit communities. This aspect of Jirga aligns with contemporary approaches to conflict resolution that emphasize reconciliation and long-term peace building.

The focus of this study on District Mardan provides a localized understanding of the Jirga system within a specific socio-cultural context. While existing literature has explored the general role of Jirga in Pakistan, there is a need for in-depth qualitative research that captures the lived experiences and perceptions of individuals involved in the process. By examining how Jirga operates in Mardan, this study aims to contribute to a more nuanced understanding of its functions, challenges, and implications. In addition, this research seeks to explore the power dynamics within the Jirga system, including the influence of age, status, and gender on decision-making processes. Understanding these dynamics is essential for assessing the fairness and effectiveness of Jirga as a dispute resolution mechanism. It also provides insights into how traditional institutions can evolve to meet the demands of a changing society. In conclusion, the Jirga system remains a vital component of traditional governance in Pakhtun society. Its role in dispute resolution, social cohesion, and community participation underscores its continued relevance in contemporary contexts. However, its limitations and challenges necessitate critical examination and potential reform. By adopting a qualitative approach, this study aims to provide a comprehensive analysis of Jirga in District Mardan, contributing to both academic discourse and policy development.

Problem Statement

In Khyber Pakhtunkhwa, particularly in District Mardan, the Jirga system continues to operate as a widely accepted traditional mechanism for dispute resolution despite the presence of formal judicial institutions. The formal legal system is often perceived as slow, expensive, and inaccessible, leading local communities to rely on Jirga due to its cultural relevance, efficiency, and community-based approach (Ahmed, 1980; Sajid & Ahmad, 2013). However, this reliance raises significant concerns regarding justice, equity, and accountability, as Jirga operates outside the formal legal framework and lacks standardized procedures and legal safeguards. Critics argue that decisions made through Jirga may sometimes conflict with constitutional rights and modern legal standards, particularly in cases involving women and marginalized groups, where issues of exclusion and patriarchal influence are evident (Siddique, 2015; Ahmed et al., 2024). Furthermore, the coexistence of Jirga and the formal judicial system creates a condition of legal pluralism, leading to ambiguity in the legitimacy and enforcement of decisions (Lieven, 2011). Despite its continued importance, there is limited qualitative research

exploring how the Jirga system functions at the local level in District Mardan, including the perceptions, experiences, and power dynamics that shape its outcomes. Therefore, this study seeks to address this gap by critically examining the role, effectiveness, and implications of Jirga as a traditional dispute resolution mechanism within the contemporary socio-legal context.

Research Objectives

1. To explore the role of the Jirga system in resolving disputes within Pakhtun society in District Mardan.
2. To examine the perceptions and experiences of community members regarding the effectiveness of Jirga in conflict resolution.
3. To analyze the social and power dynamics (such as gender, age, and status) influencing decision-making within the Jirga system.

Research Questions

1. How does the Jirga system function as a mechanism for dispute resolution in District Mardan?
2. What are the perceptions and lived experiences of community members regarding the effectiveness of Jirga?
3. What social and power dynamics influence the decision-making process within the Jirga system?

Literature Review

The Jirga system, as an indigenous institution of conflict resolution, has been widely studied within the broader context of customary law and traditional governance in Pakhtun society. Scholars have emphasized its historical continuity, cultural legitimacy, and functional relevance in maintaining social order. The literature on Jirga highlights its dual role as both a dispute resolution mechanism and a system of informal governance embedded within the socio-cultural framework of Pakhtunwali. A significant body of literature situates Jirga within the framework of customary law. Customary law refers to a set of unwritten norms and practices that regulate social behavior within a community. According to Yousafzai and Gohar (2005), Jirga operates as a community-based institution where decisions are derived from local traditions, collective wisdom, and social consensus rather than codified legal statutes. This makes it highly adaptable to local contexts, enabling it to address disputes in a culturally appropriate manner. Similarly, Wardak (2003) argues that informal justice systems like Jirga are deeply embedded in the social fabric of communities and are often more accessible and legitimate than formal legal institutions. The effectiveness of Jirga as a dispute resolution mechanism has been widely acknowledged in the literature. It is often described as a quick, cost-effective, and efficient alternative to formal courts. Hussain (2011) notes that the informal nature of Jirga allows for flexible procedures and speedy resolution of disputes, which is particularly beneficial in rural areas where access to formal judicial systems is limited. Additionally, Shinwari (2011) highlights that Jirga emphasizes reconciliation and restoration of relationships rather than punitive measures, making it more suitable for maintaining long-term social harmony in close-knit communities. Another important aspect of Jirga discussed in the literature is its participatory nature. Unlike formal courts, where decision-making is concentrated in the hands of judges, Jirga involves collective deliberation by respected elders of the community. This participatory process enhances the legitimacy of decisions and encourages compliance among disputing parties (Shinwari & Naveed, 2014). The principle of consensus is central to Jirga proceedings, ensuring that decisions are acceptable to all parties involved. This consensus-based approach is often seen as a strength of the system, as it minimizes the likelihood of further conflict.

However, the literature also critically examines the limitations and challenges associated with the Jirga

system. One of the most prominent criticisms is related to issues of gender inequality and exclusion. Ali and Khan (2007) argue that women are largely excluded from Jirga proceedings, both as decision-makers and as participants. This exclusion reflects the patriarchal nature of Pakhtun society and raises concerns about the fairness and inclusivity of Jirga decisions. Furthermore, certain traditional practices associated with Jirga, such as giving women in compensation (swara or vani), have been widely condemned for violating human rights (Amnesty International, 2012). In addition to gender issues, power dynamics within the Jirga system have also been a subject of scholarly debate. Critics argue that Jirga decisions can be influenced by local elites, tribal leaders, and influential families, which may compromise the impartiality of the process (Shah, 2017). The dominance of powerful individuals in Jirga proceedings can lead to biased outcomes, particularly for marginalized groups who may lack the social or economic capital to assert their rights. This raises important questions about the equity and justice of the system. The relationship between Jirga and the formal legal system has also been extensively explored in the literature. This relationship is often described in terms of legal pluralism, where multiple legal systems coexist within a single society. According to Menski (2006), legal pluralism allows for the coexistence of formal state law and informal customary practices, but it also creates tensions when the two systems conflict. In Pakistan, the coexistence of Jirga and formal courts has led to debates about the legitimacy and legality of Jirga decisions, particularly when they contradict constitutional provisions or human rights standards. Recent studies have also examined attempts to formalize or integrate traditional dispute resolution mechanisms into the state legal framework. For instance, the introduction of Musalihat Anjuman and other community-based dispute resolution forums reflects efforts to institutionalize elements of Jirga within a regulated framework (Khan & Gohar, 2018). These initiatives aim to retain the strengths of Jirga, such as accessibility and cultural relevance, while addressing its weaknesses through legal oversight and accountability mechanisms. However, the success of such initiatives remains mixed, as they often struggle to balance traditional practices with modern legal requirements.

The literature also highlights the role of Jirga in conflict transformation and peace building. Unlike formal legal systems that focus on adjudication, Jirga emphasizes reconciliation, forgiveness, and restoration of social relationships. This restorative approach aligns with contemporary theories of conflict resolution, which prioritize dialogue and mutual understanding over punitive measures (Lederach, 1997). By fostering social cohesion and preventing the escalation of conflicts, Jirga contributes to the stability and resilience of communities. Moreover, Jirga has been examined in the context of governance and state-building. Some scholars argue that traditional institutions like Jirga can complement formal governance structures by providing localized and culturally sensitive solutions to social problems (Edwards, 2002). Others, however, caution that reliance on informal systems may undermine the development of formal legal institutions and perpetuate inequalities (Javaid, 2010). This debate reflects broader tensions between tradition and modernity in the context of governance and development.

Despite the extensive literature on Jirga, there remains a gap in qualitative, context-specific studies that explore its functioning at the local level. Much of the existing research is either theoretical or based on broader regional analyses, with limited focus on specific districts such as Mardan. There is a need for in-depth qualitative research that captures the lived experiences, perceptions, and narratives of individuals involved in Jirga proceedings. Such research can provide valuable insights into the complexities of the system and its implications for justice and social order. In conclusion, the literature on Jirga presents a complex and nuanced picture of its role in conflict resolution and governance. While it is widely

recognized for its accessibility, efficiency, and cultural legitimacy, it is also criticized for issues related to gender inequality, power dynamics, and lack of accountability. The coexistence of Jirga with formal legal systems further complicates its role, highlighting the need for a balanced approach that respects cultural traditions while ensuring justice and human rights. This study seeks to build on existing literature by providing a qualitative exploration of the Jirga system in District Mardan, contributing to a deeper understanding of its strengths, limitations, and future prospects.

Research Gap

Despite the extensive body of literature on the Jirga system as a traditional mechanism of conflict resolution in Pakhtun society, several important gaps remain unaddressed. Most existing studies focus on the general structure, historical development, and functional aspects of Jirga at a broader national or regional level, with limited attention to localized contexts such as District Mardan (Shinwari, 2011; Wardak, 2003). Additionally, much of the research adopts a descriptive or legalistic approach, overlooking the lived experiences and perceptions of individuals directly involved in Jirga proceedings. There is also insufficient qualitative inquiry into the internal dynamics of Jirga, particularly concerning power relations, decision-making processes, and the influence of social factors such as gender, age, and status (Shah, 2017). Furthermore, while some studies highlight human rights concerns, there is a lack of balanced analysis that simultaneously examines both the strengths and limitations of Jirga within contemporary socio-legal frameworks (Menski, 2006). The interaction between Jirga and formal judicial institutions, especially at the grassroots level, also remains underexplored. Therefore, this study aims to fill these gaps by providing an in-depth qualitative investigation of the Jirga system in District Mardan, focusing on community perceptions, power dynamics, and its relevance in the modern legal context.

Methodology

This study adopts a qualitative research design to explore the role of the Jirga system in conflict resolution within District Mardan, Khyber Pakhtunkhwa. A qualitative approach is appropriate as it allows for an in-depth understanding of participants' perceptions, experiences, and social realities regarding the functioning of Jirga. The study is based on a phenomenological research design, focusing on the lived experiences of individuals who have directly or indirectly been involved in Jirga proceedings. Data will be collected through purposive sampling, selecting approximately 6–10 participants, including Jirga members (elders), disputants, and local community members who possess relevant knowledge and experience. Primary data will be gathered using semi-structured, in-depth interviews to allow flexibility and encourage detailed responses. The collected data will be analyzed using thematic analysis, where key themes and patterns will be identified, coded, and interpreted systematically. Ethical considerations, including informed consent, confidentiality, and voluntary participation, will be strictly observed throughout the research process to ensure the credibility and integrity of the study.

Result and Discussion

Thematic Analysis

The qualitative data collected through semi-structured interviews were analyzed using thematic analysis. The interviews were transcribed, coded, and categorized into themes based on recurring patterns and meanings. Each theme is supported by direct quotations from participants, identified through pseudonyms (e.g., Participant 1, Elder 1) to maintain confidentiality while ensuring credibility and authenticity of the data.

Theme 1: Jirga as an Accessible and Efficient System

A dominant theme emerging from the data is the accessibility and efficiency of the Jirga system. Most participants highlighted that Jirga provides quick, low-cost, and locally available justice compared to formal courts. This perception was consistently observed across respondents.

Participant 2 (Local Resident) stated:

"Courts take years to decide a case, but in Jirga, we can get a decision within days or weeks."

Similarly, Participant 4 (Disputant) shared:

"We cannot afford lawyers and court expenses. Jirga is easy and free for people like us."

These responses indicate that Jirga is perceived as a practical and time-saving mechanism. The findings suggest that accessibility and efficiency are key reasons behind the continued reliance on Jirga in District Mardan.

Theme 2: Cultural Legitimacy and Social Acceptance

Another significant theme is the strong cultural legitimacy of Jirga. Participants emphasized that Jirga is deeply rooted in Pakhtun traditions and is widely accepted as a legitimate form of justice.

Elder 1 (Jirga Member) explained:

"Jirga is part of our Pakhtun culture. Our elders have been using it for generations, and people trust it."

Participant 5 (Community Member) added:

"When elders decide something in Jirga, both parties accept it because it is according to our traditions."

These statements demonstrate that Jirga derives its authority from cultural norms rather than formal legal systems. Social acceptance ensures compliance with decisions and reinforces the institution's legitimacy.

Theme 3: Role of Elders and Collective Decision-Making

The role of elders as key decision-makers emerged as a central theme. Participants described Jirga as a collective process where respected elders deliberate and reach consensus-based decisions.

Elder 2 (Jirga Member) stated:

"In Jirga, we listen to both sides carefully and then discuss among ourselves before making a decision."

Participant 3 (Local Resident) noted:

"No single person decides; it is always a group decision based on discussion."

This theme highlights the participatory nature of Jirga. The involvement of multiple elders enhances the perceived fairness of decisions, although it also raises questions about representation and inclusivity.

Theme 4: Gender Exclusion and Marginalization

A critical issue identified in the analysis is the exclusion of women from Jirga proceedings. Participants acknowledged that women are generally not allowed to participate directly in the decision-making process.

Participant 6 (Female Respondent) stated:

"Women do not attend Jirga meetings. Our issues are discussed by men on our behalf."

Participant 1 (Male Resident) also noted:

"Even if a case is about a woman, she does not sit in Jirga. Male elders decide everything."

These responses highlight the gendered nature of the Jirga system. The exclusion of women raises concerns about representation, fairness, and the protection of women's rights within traditional dispute resolution mechanisms.

Theme 5: Influence of Power and Social Status

Another important theme relates to the influence of power and social hierarchy in Jirga decisions. Some participants indicated that individuals with higher social or economic status may have greater influence in the process.

Participant 7 (Disputant) stated:

"If someone is powerful or belongs to a strong family, their opinion carries more weight in Jirga."

Participant 3 (Local Resident) added:

"Jirga tries to be fair, but sometimes influential people can affect the decision."

This theme suggests that while Jirga is ideally based on fairness and consensus, social inequalities can influence outcomes, particularly for marginalized individuals.

Theme 6: Emphasis on Reconciliation and Social Harmony

Participants strongly emphasized that the primary goal of Jirga is not punishment but reconciliation and restoration of social harmony.

Elder 3 (Jirga Member) explained:

"Our aim is to end the conflict and bring peace between the parties, not to punish anyone."

Participant 4 (Disputant) stated:

"After Jirga, both sides shake hands and agree to live peacefully."

These findings highlight the restorative nature of Jirga. By focusing on reconciliation, Jirga helps maintain long-term relationships and social cohesion within the community.

Theme 7: Coexistence with the Formal Legal System

The coexistence of Jirga with the formal judicial system also emerged as a theme. Participants indicated that both systems operate simultaneously, and people choose between them based on the nature of the dispute.

Participant 2 (Local Resident) stated:

"For small issues, we prefer Jirga, but for serious matters, people go to court."

Elder 1 (Jirga Member) added:

"Both systems exist, but Jirga is quicker and more suitable for local disputes."

This theme reflects the presence of legal pluralism in the study area, where informal and formal systems coexist, sometimes complementing and sometimes conflicting with each other.

Conclusion and Recommendations

Conclusion

This study explored the role of the Jirga system as a traditional mechanism of conflict resolution within the socio-cultural context of District Mardan, Khyber Pakhtunkhwa. The findings reveal that Jirga continues to function as a significant and widely accepted institution due to its accessibility, efficiency, and strong cultural legitimacy. It provides a quick, low-cost, and community-based alternative to the formal judicial system, which is often perceived as slow and expensive. The participatory nature of Jirga, where respected elders collectively deliberate and reach consensus, enhances its acceptance and effectiveness within Pakhtun society. The study further highlights that Jirga plays a vital role in maintaining social harmony by emphasizing reconciliation rather than punishment. Its restorative approach helps rebuild relationships and ensures long-term peace in close-knit communities. This makes it particularly relevant in rural areas where social cohesion is highly valued. However, the study also identifies several critical challenges associated with the Jirga system. The exclusion of women from participation raises serious concerns about gender inequality and lack of representation. Additionally, the influence of power dynamics, such as social status and economic strength, can affect the fairness of decisions. The absence of formal legal safeguards and accountability mechanisms further limits the system's ability to ensure justice in all cases. Moreover, the coexistence of Jirga with the formal legal system creates a situation of legal pluralism, which may lead to conflicts and ambiguities in decision-making and enforcement. Overall, while Jirga remains a culturally embedded and functional system of

dispute resolution, it requires critical evaluation and reform to align with contemporary standards of justice, equality, and human rights.

Recommendations

Based on the findings of this study, the following recommendations are proposed:

1. **Inclusion of Women in Jirga Processes**
Efforts should be made to promote the participation of women in Jirga proceedings, either directly or through representation, to ensure gender inclusivity and fair decision-making.
2. **Awareness and Legal Education**
Community members should be educated about their legal rights and the importance of justice and equality to minimize the risk of unfair or biased decisions within Jirga.
3. **Monitoring and Accountability Mechanisms**
A system of oversight should be introduced to monitor Jirga decisions and ensure that they do not violate fundamental human rights or constitutional provisions.
4. **Integration with Formal Legal System**
The government should develop frameworks to integrate Jirga with the formal judicial system, such as strengthening Dispute Resolution Councils (DRCs), to combine cultural relevance with legal safeguards.
5. **Training of Jirga Members**
Jirga elders should be provided with basic training on legal principles, human rights, and conflict resolution techniques to improve the quality and fairness of decisions.
6. **Addressing Power Imbalances**
Measures should be taken to reduce the influence of powerful individuals in Jirga proceedings to ensure equal representation and justice for all community members.
7. **Further Research**
Future studies should explore the role of Jirga in other districts and examine its impact on specific groups, particularly women and marginalized communities, to provide a broader understanding of its effectiveness and limitations.

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