

JIRGA IN AFGHANISTAN: ITS FUNCTIONS, CONTEMPORARY CHALLENGES, AND FUTURE PROSPECTS

Fazal Hadi Fazli*

Ainul Jaria Maidin**

Sodiq Omoola***

ABSTRACT

The Afghan “Jirga” system is considered one of the most ancient and well-respected institutions widely used for resolving civil and criminal disputes. The Jirga operates on a basic mechanism, which includes local customs and traditions. It offers swift, accessible, and affordable justice to the local communities. This paper aims to examine the Jirga, and its functions as a traditional mechanism for dispute resolution while identifying contemporary challenges, and evaluating their prospects in Afghanistan. The study seeks to provide insights into how the Jirga system can evolve to meet modern demands while preserving its cultural significance and effectiveness in local dispute resolution. The research adopts a non-doctrinal and library-based research methodology. The research used explanatory, descriptive, and analytical approaches. Non-doctrinal legal research adopts an empirical approach, focusing on collecting and analysing data. It employs techniques such as surveys, interviews, observations, and statistical analysis to gain insights into the dynamics between law and society. In this part, some interviews were conducted with the Jirga professionals to collect data. The library-based research involves gathering, explaining, and analytically analysing existing academic and scholarly sources like textbooks, journal articles, authoritative reports, academic conferences, and scholarly databases. Despite its advantages, this paper identified a number of challenges with the Jirga such as human rights concerns, inclusivity, and some

* Ph.D. Candidate at Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Email: fazilhadi67@gmail.com

** Professor, Civil Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Email: ainulj@iiu.edu.my

*** Assistant professor, Civil Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Email: sodiq_omoola@iiu.edu.my

contradictions with Shariah provisions and Afghan statutory laws. This research is significant for policymakers, scholars, practitioners, and stakeholders interested in the integration of the traditional justice system with state governance and the promotion of peace and justice in Afghanistan.

Keywords: Jirga, Afghanistan, Functionality, Contemporary Challenges, Prospects.

JIRGA DI AFGHANISTAN: FUNGSI-FUNGSI, CABARAN-CABARAN KONTEMPORARI, DAN PROSPEK-PROSPEKNYA

ABSTRAK

Sistem “Jirga” Afghanistan dianggap sebagai salah satu institusi paling kuno dan dihormati yang digunakan secara meluas untuk menyelesaikan pertikaian-pertikaian sivil dan jenayah. Jirga beroperasi berdasarkan mekanisme asas, yang termasuk adat dan tradisi tempatan. Ia menawarkan keadilan yang cepat, mudah diakses, dan berpatutan kepada masyarakat setempat. Kertas kerja ini bertujuan untuk mengkaji Jirga dan fungsi-fungsinya sebagai mekanisme tradisional untuk penyelesaian pertikaian sambil mengenal pasti cabaran kontemporari dan menilai prospeknya di Afghanistan. Kajian ini bertujuan untuk memberikan pandangan-pandangan tentang bagaimana sistem Jirga dapat berkembang untuk memenuhi tuntutan moden sambil mengekalkan kepentingan budaya dan keberkesanannya dalam penyelesaian pertikaian tempatan. Penyelidikan ini mengamalkan metodologi-metodologi penyelidikan bukan doktrinal dan berasaskan perpustakaan. Penyelidikan ini menggunakan pendekatan penjelasan, deskriptif, dan analitik. Penyelidikan undang-undang bukan doktrinal mengamalkan pendekatan empirikal, dengan tumpuan kepada mengumpul dan menganalisis data. Ia menggunakan teknik seperti tinjauan, temu bual, pemerhatian, dan analisis statistik untuk mendapatkan pandangan tentang dinamika antara undang-undang dan masyarakat. Dalam bahagian ini beberapa temu bual telah dijalankan dengan profesional-profesional Jirga untuk mengumpul data. Penyelidikan berasaskan perpustakaan melibatkan pengumpulan, penjelasan, dan analisis secara analitik sumber akademik dan ilmiah yang sedia ada seperti buku teks, artikel jurnal, laporan berwibawa, persidangan akademik, pangkalan data ilmiah. Walaupun mempunyai kelebihan, kertas kerja ini mengenal pasti beberapa cabaran dengan Jirga seperti kebimbangan hak asasi

manusia, inklusif, dan beberapa percanggahan-percanggahan dengan peruntukan Syariah dan undang-undang statutori Afghanistan. Penyelidikan ini penting bagi pembuat-pembuat dasar, sarjana-sarjana, pengamal-pengamal, dan pihak-pihak berkepentingan yang berminat dalam integrasi sistem keadilan tradisional dengan tadbir urus negara dan promosi keamanan dan keadilan di Afghanistan.

Kata Kunci: Jirga, Afghanistan, Fungsi, Cabaran-Cabaran Kontemporari, Prospek-Prospek.

INTRODUCTION

In several parts of the globe, local experts who are concerned about the peace and stability of their communities contribute to dispute resolution and peacebuilding. The use of integrated local and indigenous institutions and practices to settle various kinds of conflicts is widespread. However, even though the Jirga is the oldest and most dominant component of Pukhtun also called (Pashtun, Pukhtanah, Pushtun, Pathan, etc.)¹, culture, history, organisation, and activities have remained verbal.² Pukhtun society is dominated by the Jirga, which is one of the most important institutions for settling disputes. The Jirga is an ancient and customary institution for dispute resolution in which cases are tried and punishments and rewards are administered. The scope of influence of Jirga is not limited to the trials of major or minor crimes or civil issues; it also contributes to the resolution of disputes between people, organisations, and tribes.³ The Jirga often consists of white-bearded (*Speen Giri*) males, prominent leaders, and religious leaders who are committed to resolving issues via dialogue and negotiation. While the Jirga members may be illiterate, they are

¹ All these terms are used interchangeably and there is not any ambiguity using them instead of each other; however, in this chapter hereon the term Pukhtun will be used.

² Hassan M. Yousufzai and Ali Gohar, *Towards Understanding Pukhtoon Jirga: An Indigenous Way of Peace-Building and More ...* (City Towers, University Road, Peshawar Pakistan: Just peace international, 2005), 1.

³ Muhammad Nawaz Khan, Kaleem Ullah Bariach and Faizullah Khan Panezai, "The Role of Jirga in Conflict Resolution," *Takatoo* 6, no.12 (2014): 9, <http://web.uob.edu.pk/uob/journals/takatoo>.

required to be honest, impartial, and competent enough to announce a verdict regardless of any concerns or objections raised by any of the competing parties. Members of the Jirga are nominated by a group of individuals involved in conflict resolution between disputing parties, or tribes.⁴ This is considered a vital enabler of access to justice.

According to United Nations Development Program (UNDP) report “access to justice” refers to the ability to seek and secure a remedy via informal or formal justice mechanisms while adhering to the human rights principles.⁵ Based on another report, “providing accessible justice is a state obligation under international human rights standards but this obligation does not require that all justice be provided through formal justice system”.⁶

It is asserted that the Jirga system remains essential for resolving numerous contemporary disputes in post-war Afghanistan. For this to be effective, Jirga must be more gender inclusive, and respect universal Human Rights. Both historical and current experiences indicate that the Jirga system has the ability to bridge the gap between traditional practice and modernity.⁷ However, decisions made by Jirgas may occasionally lead to human rights violations, particularly gender bias, and when concerning the rights of women their rights are determined without their presence. The custom of *baad* is determined without the involvement of the girl.⁸ The ancient unlawful practice of *baad* in which a young girl from the family of the offender is married to one of

⁴ Nawaz Khan, Bariach and Panezai, “The role of Jerga,” 9.

⁵ UNDP, Programming for Justice: Access for All, A practitioner's guide to a human rights-based approach to access to justice (2005), 5, https://www.globalprotectioncluster.org/sites/default/files/2022-09/2005.undp_justice_guides_programmingforjustice-accessforall.pdf.

⁶ UNDP, Informal Justice systems Charting a course for human rights-based engagement, 11, <https://www.undp.org/sites/g/files/zskgke326/files/publications/Informal-Justice-Systems-Charting-a-Course-for-Human-Rights-Based-Engagement.pdf>.

⁷ Ali Wardak, “Jirga—A traditional mechanism of conflict resolution in Afghanistan,” Pontypridd, UK: University of Glamorgan, Centre for Criminology, (2003): 1, <https://www.researchgate.net/publication/254937578>.

⁸ Shaukatullah and Rubina Ali, “The mechanism of tribal jirga system: challenges and prospects”, *Central Asia Journal*, no. 88 (2021): 85. 10.54418/ca-88.143

the victim's brothers. The people who live in rural areas of Afghanistan have always seen the practice of *baad* as a good technique for restoring peace and unity among the murderer's family and the victim's family.⁹ It is worth mentioning that the custom of *baad* obviously views women as possessions that can be bought and sold like any other commodity, and it is a clear violation of women's rights under the sacred rules of Islamic shariah, international laws, and Afghan statutory laws.¹⁰

The leader (*Amir*) of the Islamic Emirates of Afghanistan issued a decree on the 3rd of December 2021, prohibiting the cruel custom of *baad*.¹¹ Allah Almighty says in the holy Quran that "وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ". Nor can a bearer of burdens bear another's burdens.¹² Those who are accountable are only rewarded for their actions; if they are good, they are good, and if they are bad, they are bad; and no one bears the sin or offense of another as long as he has no hand in it, and this is from the perfection of God's justice and wisdom. Moreover, according to a hadith narrated from the founder of the *Shafi'i* school, Imam Shafi'i (may Allah have mercy on him), the Prophet (peace and blessings of Allah be upon him) said: "No one is held responsible for the crime of his father or his brother."

Furthermore, according to Article 26 of the Afghan Constitution, "crime is a personal act. Investigation, arrest, and detention of an accused as well as penalty execution shall not incriminate another person." According to Article 9 of the Afghan Penal Code, "the crime is a personal act, and the resulting punishment does not spread to another person. Similarly, in accordance with Article 33 of the 1949 Geneva Convention IV, "[n]o protected person may be punished for an offense he or she has not personally committed." Lastly, the American Convention on Human Rights of November 22, 1969, has

⁹ Alissa J. Rubin, "For Punishment of Elders' Misdeeds, Afghan Girl Pays the Price," the New York Times, February 17, 2002, <https://www.nytimes.com/2012/02/17/world/asia/in-baad-afghan-girls-are-penalized-for-elders-crimes.html>.

¹⁰ Asif Bahand, "Giving Women and Girls in Compensation." *Afghan German Online*. Accessed November 13, 2024. https://www.afghan-german.net/upload/Tahlilha_PDF/Bahand_a_march8_21_5.pdf.

¹¹ Nunn.asia, <https://www.nunn.asia/1973487/-حقوقو-د-بنځو-حقوقو> /په-اره (accessed 10 September, 2024).

¹² Al-Fatir: 18.

the following provision in Article 5(3): "Punishment shall not be extended to any person other than the criminal."

This paper covers the following topics: a brief history of Jirga, the selection process of the Jirga members (*Jirgamaran*), Jirga proceedings and decision making, appeal and review of the Jirga decision, and enforcement of the Jirga's decision. Moreover, the contemporary challenges that the Jirga system faces are another part of the research paper. Such as unjust decision-making, illiteracy or semi-knowledge or the Jirga members and a lack of modern technology, violation of human rights values, gender bias, and lack of interface with formal institutions. Furthermore, reforming the Jirga system and its prospects is another aspect of the research paper. Such as amending the Afghan Constitution, code of conduct for the Jirga's proceeding, the integration between the formal justice system and the Jirga, training of the Jirga members, considering a fixed amount of wage for the Jirga members, approval of the Jirga's decision by the official institutions, and gender inclusion.

CONCEPT AND A BRIEF HISTORY OF JIRGA

The term "Jirga" is an old Pashto word that literally means "circle," "assembly," "consultation," congregation, line, or "line-up" of a large number of people.¹³ In Pashto, "*jar*" indicates an open tone, and "*gah*" signifies place or position.¹⁴ Furthermore, Jirga is used in Persian or Dari, which literally means "wrestling ring" or "circle," but it is most usually used to refer to a group of individuals who have come together to discuss an issue.¹⁵ Based on these and other numerous definitions of Jirga, it can be seen that Jirga is more than just a dispute resolution body; it has many different dimensions that vary depending on the

¹³ Hassan Amid, "Jirga (جرگه)," Amid Persian Dictionary, (Rahi Rushd Publications, 2010): 133.

¹⁴ Amna Mahmood, Shaukatullah and Shughla Ashfaq, "The Evolution of Jirga System: A Conflict Resolution Mechanism in FATA," *Liberal Arts and Social Sciences International Journal*, 2, no. 1 (2018): 22, <https://www.researchgate.net/publication/334987496>.

¹⁵ Pashto- Pashto descriptive dictionary, s.v. "Jirga," Academy of Sciences of Afghanistan, (2005), <https://shahmbookco.com/product/pashto-pashto-descriptive-dictionary-pdf/>.

scope and character of the Jirgas. In the eyes of Pukhtuns, the context in which a specific Jirga operates provides clear and undoubted knowledge of the role and obligations of that specific Jirga. Rubin describes the institution of the Jirga as follows:

“The Jirga includes all adult males and rules by consensus. In theory, a Jirga can be convened at any level of tribal organisation, from the smallest lineage to an entire confederation. Jirga is most commonly held at the lineage level, but there are also larger tribal or even inter-tribal Jirga as well, at least among the eastern Pukhtuns.”¹⁶

Undoubtedly, the Jirga is the oldest and most important institution in Pukhtun culture. It has served as a critical mechanism for resolving conflicts in Afghanistan for centuries and has made a significant contribution to bringing social order.¹⁷ In traditional and ancient Jirgas, the people's representatives in the Jirga sit in a circle. Sitting in this circle signifies the equality of the people in the Jirga. In other words, positions and status are not organised hierarchically. Jirgas are usually convened when specific issues between two families or clans become unbearably violent and no one agrees on any documentation. The issues are discussed in Jirga in a very serious and open manner. Participants of the Jirga have the power of critical thinking; therefore, disputed issues are resolved with logic, interaction, and tolerance.

The Pukhtun tribes are not the only ones who use the Jirga system. Jirga is a concept that is universally recognised. The origin of Jirga can be traced to the Aryans. The Aryans, migrated from Central Asia into present-day Afghanistan and later proceeded to India. The Aryans used Jirga system to settle their disputes. They operated a sort of Jirga system, with two types of councils: *Simite* (the summit) and *Sabha*. The *Simite* consisted of elders and tribe chiefs from around the country to resolve conflicts and disputes while *Sabha* was a village council.¹⁸

During the period 1451–1489, Sultan Bahlol Lodhi was the monarch of India. He convened the Jirga of elders to resolve critical

¹⁶ Barnett Richard Rubin, “The Fragmentation of Afghanistan: State Formation and Collapse in the International System, (Yale University Press, 2002): 378. DOI:10.2307/3591818.

¹⁷ Wardak, “Jirga—A traditional mechanism,” 3.

¹⁸ Wardak, “Jirga—A traditional mechanism,” 5.

issues facing the people. The Sultan used to sit among his people, who were normally arranged in a circle around him. Aside from that, he instituted an administrative structure that was adopted as a model by the succeeding kings.¹⁹ Another Indian emperor, Sikander, was a strong supporter of Afghan tribal freedom and organised local Jirgas. In India, Sher Shah Suri used a similar method. For the same goal, he convened a Jirga of elders.²⁰ In the Greek city-states, people used to congregate in a space called the "agora," where they would discuss various issues and attempt to find a solution through mutual consultation. In Arab tribal societies, meetings and discussions of this nature are referred to as "Shura".²¹ In some parts of Iraq, individuals have built massive houses where disputes are resolved amicably.²²

In Kandahar, Afghanistan, the Abdali tribe convened a Loya Jirga (Grand Jirga) in 1747. The issue was to elect a leader. After a nine-day debate, Sabir Shah declared the Jirga's decision that Ahmad Shah Abdali was the best candidate for this position. Moreover, during Amir Habibullah Khan's reign, the Loya Jirga convened in 1916 and proposed a decision that went against Amir's wishes. They issued a declaration of *Jihad* against the British in defense of the Turkish Caliphate. On the other hand, Amir Habibullah Khan overruled the verdict in favour of British India.²³

THE FUNCTIONS OF JIRGA

The Jirga serves several key functions within its traditional context in Afghanistan which are discussed as follows:

Jirga Members' (*Jirgamaran*) Selection Process

¹⁹ Mahmood, Shaukatullah and Ashfaq "The Evolution of Jirga System:", 22.

²⁰ Nawaz Khan, Bariach and Panezai, "The role of Jerga," 10.

²¹ Nawaz Khan, Bariach and Panezai, "The role of Jerga," 10.

²² Gul Hasan, Ali Azeem and Jalal Faiz, "Jirga: A Historical Institute", *Journal of Development and Social Sciences* 4, no.1(2023): 160, [https://doi.org/10.47205/jdss.2023\(4-I\)15](https://doi.org/10.47205/jdss.2023(4-I)15).

²³ Nawaz Khan, Bariach and Panezai, "The role of Jerga," 10.

The selection of the Jirga is one of the most vital and sensitive aspects of the Pukhtun Jirga. The first thing that needs to be done whenever a dispute emerges between two groups of people or tribes is to choose a Jirga member. The composition of the Jirga is different depending on the circumstances, importance, nature, and type of Jirga. Respected reviewer, in some cases the permanent Jirga members are required to solve the case and sometimes the disputing parties are allowed to appoint them. The selection process of the Jirga members is explained in the below paragraphs. As well as, in most cases, members of the Jirga are chosen from the notable elders of the region, as well as the *Malaks*²⁴ and *Khans*²⁵ of the region who have a reputation for loyalty.²⁶ In most cases, the Jirga members maintain their objectivity and impartiality; nevertheless, the parties may additionally appoint certain members to advocate for their interests throughout the proceedings. In most cases, the parties reached an agreement on members of the local Jirga who would remain neutral and unbiased. The disputing parties will typically select a Jirga member with a neutral stance.²⁷

Apparently, the Jirga members are typically selected from the more senior and respected residents of the community, who are known as white-bearded (*Speen Giri*). In order to effectively carry out their decision, the Jirga members should be influential residents of the region.²⁸ Moreover, if a Jirga is convened to settle a dispute between the two parties, they have the right to substitute or exclude one or more members from the Jirga. For instance, if a Jirga member is perceived as unjustly favoring one party over another, the affected party has the right to request the substitution or removal of that member.²⁹ This mechanism ensures the Jirga's decisions remain fair and unbiased, which is essential for maintaining the trust and effectiveness of the

²⁴ Is a leader in several different tribal societies especially in Pukhtoon communities both in Afghanistan and Pakistan.

²⁵ Is a term that originates from the civilizations of the Mongols and Turkic cultures and has historically been used to refer to a leader, ruler, or somebody of high status. Nowadays, it continues to be a surname and title that is widely recognized and symbolizes respect and social position, particularly in Muslim communities.

²⁶ Shaukatullah and Ali, "The Mechanism of Tribal Jirga system:", 76.

²⁷ Shaukatullah and Ali, "The Mechanism of Tribal Jirga system:", 77.

²⁸ Yousufzai and Ali, "Towards Understanding Pukhtoon Jirga:", 51-52.

²⁹ Sheenwary, "Institutionalizing Customary Dispute Resolution", 250.

process, if a Jirga member is unjustly favouring one party over another, the first-appointee party is authorised to substitute or reject that Jirga member. However, the selection of the Jirga members ought to be balanced. They ought to be selected with both parties' permission. Besides, the Jirga members have a responsibility to uphold justice and make decisions that are consistent with local tribal customs and traditions.³⁰

Individuals who intend to join the Jirga as members should have a strong reputation for honesty, reliability, and positive behaviour; be actively involved in social activities, demonstrate humanity, compassion, and respect. They should also respond actively to problems and stay connected with the community.³¹

Jirga Proceedings and Decision Making

When a dispute arises between two individuals, the matter could be brought before the Jirga in one of the following ways: In the first scenario, either side of the dispute asks the Jirga to step in and to resolve the issue. The Jirga's members are often approached by one side seeking to resolve the matter, and when the other side is informed of the approach of the Jirga, it welcomes the news.³² In the second scenario, the Jirga is approached jointly by the disputing parties when the issue is over financial and real estate affairs.³³ In the third scenario when the disputing parties have a history of violence or they are emotionally motivated, the elders and influential community members can organise a Jirga to approach both disputing parties to prevent complete breakdown of law and order.³⁴ It becomes necessary to announce the Jirga. Subsequently, the elders and influential community

³⁰ Mahmood, Shaukatullah and Ashfaq "The Evolution of Jirga System:", 25 - 26.

³¹ Shaukatullah and Ali, "The Mechanism of Tribal Jirga system:", 76-77.

³² Yousufzai and Gohar "Towards Understanding Pukhtoon Jirga:", 58.

³³ Yousufzai and Gohar, "Towards Understanding Pukhtoon Jirga:", 58.

³⁴ Basharatullah Sheenwary, "Institutionalizing Customary Dispute Resolution in Afghanistan: Lessons from the Navajo Approach to Harmonizing Traditional and Formal Justice, *Ohio State Journal on Dispute Resolution*, 32, no. 2 (2017): 257, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ohjdr32&div=14&id=&page=>.

members should approve the Jirga's procedure. After the approval, both parties are encouraged to ceasefire. After that, the Jirga members solve the issue according to the unwritten code of Pukhtunwali. Pukhtunwali is the code of honour that the vast majority of Pukhtun tribes employ to settle their disputes. It emphasises settling conflicts through negotiation and consensus, adhering to tribal customs, and maintaining personal and communal honour. Pukhtunwali plays a central role in the social and legal fabric of Pashtun society, influencing how disputes are handled and how justice is perceived within the community.³⁵

When the Jirga receives a case, the members of the Jirga go to a specific or isolated chamber, a guest house (*hujra*), a mosque (*masjid*), or beneath the shade of a big tree.³⁶ The purpose of the Jirga members going to the mentioned isolated places is to discuss cases privately, away from distractions and to ensure that the discussion is confidential. This setting is generally part of the Jirga process rather than a preliminary stage.

All of the disputing parties have the same rights when the matter is being discussed, regardless of their social status. Traditionally, before beginning to discuss the matter, each Jirga member starts with a short narrative, a proverb, or an example relating to the case.³⁷ After that, both disputing parties are given sufficient time to present their arguments and the whole argument has to be patiently heard by the Jirga. Where necessary, the Jirga conduct interviews for witnesses to discover the facts of the case.

Additionally, every participant of the Jirga has the opportunity to discuss and clarify a particular point of view, as well as to make suggestions regarding possible impartial solutions. Traditionally, in Jirga proceedings, offensive and useless speech is prohibited. Additionally, it is expected of members of the Jirga that they will maintain their neutrality. The parties have the right to request the replacement of any Jirga member who is found to have been influenced by financial incentives or other forms of coercion to favor one party

³⁵Mahmood, Shaukatullah and Ashfaq "The Evolution of Jirga System:", 26.

³⁶Deborah J. Smith, Community-Based Dispute Resolution Processes in Nangarhar Province, *Afghanistan Research and Evaluation Unit Case Study Series*, (2009): 8, <https://www.refworld.org/pdfid/4b3870cf2.pdf>.

³⁷Nawaz Khan, Bariach and Panezai, "The role of Jirga," 12.

over another. The affected party can challenge that member's role and seek their removal.³⁸

Jirga sessions might last for hours, days, or weeks, depending on the circumstances. Jirga sessions may last more than a day for minor issues, such as misdemeanours, but they can last up to a week for major ones. At the start of the Jirga session, the disputing parties deposit *Machilgha* (customary guarantee).³⁹ The value of *Machilgha* varies depending on the circumstances.⁴⁰ *Machilgha* is significant when there are concerns regarding the parties' readiness to agree to Jirga's statements and their enforceability. This form of *Machilgha* is accepted and recognised by all of the tribes. *Machilgha* is returned to the disputing parties when they accept the decision of the Jirga; otherwise, none of the parties might be allowed to get their *Machilgha* back if their behaviour breaches the ruling of the Jirga. The Jirga Council divides *Machilgha* among themselves or in some Jirgas like in the Jirga of Pashai tribe,⁴¹ the Jirga members spend it on charitable tasks or surrendered to the government.⁴²

The Jirga decision is typically made in accordance with the applicable traditional norms. In more serious cases, the Jirga will request that a party take an oath on the Holy Quran in order to clear himself of the imputed guilt.⁴³ Jirgas are governed by a set of unwritten rules and procedures that have been passed down orally for generations. The members of the Jirga agree that it would be appropriate to first get the approval of both sides before announcing its decision publicly. This kind of practice is referred to as authority (*Waak*). The *Waak* has the effect of producing a legally binding Jirga

³⁸ Sheenwary, "Institutionalizing Customary Dispute Resolution", 257.

³⁹ *Jirgas* often require a sum of money called *Machilgha*. It can be a cash, property or any other valuable thing. It varies according to the importance of the issue

⁴⁰ Sheenwary, "Institutionalizing Customary Dispute Resolution", 250-251.

⁴¹ Pashai people mainly reside in eastern regions of Afghanistan, such as Nooristan, Nangarhar, Kunar and Laghman provinces. As well as, this tribe live in Parwan and Kapisa provinces. Many Pashai people think that they are Pukhtuns who speak their own unique language, while many of them are also fluent in Pashto.

⁴² Haji Dost Mohammad, interview by the author, Dar-e-Noor district, Suton village, Nangarhar province, Afghanistan, September 10, 2024.

⁴³ Nawaz Khan, Bariach and Panezai, "The role of Jerga," 12.

decision. Additionally, anyone who violates the decision of the Jirga faces harsh punishment.⁴⁴

A very good question arises here: whether or not women are able to establish Jirgas and make decisions? The Jirga system is entirely male-dominated and does not include any provisions for the participation of women. Even in situations where a woman is the accused or victim of a crime, she rarely has the opportunity to share her point of view.⁴⁵ Women rarely bring their own disputes to the Jirga, so a male family member or relative would typically convey a woman's issue to the Jirga. If she does not have any male relative who can act on her behalf or the woman is a widow, the white-bearded men allow her to come forward and proceed with her issue.⁴⁶

However, when some matters arise among family members in which women are involved, many women are active participants in the process of dispute resolution. These females are called white-haired (*spin-saree*), with higher level of authority and are older women. It is well acknowledged that they share many of the same characteristics as male Jirga members. Such as trustworthiness, fairness, and knowledge about the neighborhood. They also possess authority and are older women.⁴⁷

The role of the informal justice system in Afghan society is shaped by several cultural values and concepts, many of which are influenced by Shariah. One key concept is reconciliation (*Islah or Sola*), which is central to Pashtunwali. The Holy Quran emphasises the importance of *Islah*, stating, "If two groups of believers fight, make peace (*Islah*) between them." This principle of reconciliation is a fundamental aspect of conflict resolution within both the informal justice system and Pashtun culture.⁴⁸

⁴⁴ Abdul Qadir Mushtaq, Umer Yaqoob and Muhammad Usman Javaid, "Role of Jirga in Pukhtoon Society an Analysis with Special Reference to Justice Dispensation" *Journal of the Punjab University Historical Society*, 29, no. 2 (2019): 15, https://pu.edu.pk/images/journal/HistoryPStudies/PDF-FILES/2-v29_2_16.pdf

⁴⁵ Sheenwary, "Institutionalizing Customary Dispute Resolution", 252.

⁴⁶ Sheenwary, "Institutionalizing Customary Dispute Resolution", 252.

⁴⁷ Smith, "Community-Based Dispute Resolution Processes in Nangarhar Province," 13.

⁴⁸ Al-Hujarat: 9. <https://surahquran.com/english.php?sora=49&aya=9>.

Appeal and Review of Jirga Decision

Generally, the Pukhtun tribes consider the decisions of Jirgas authoritative in accordance with *Pukhtunwali*. *Pukhtunwali* is the code of honour that the vast majority of Pukhtun tribes employ to settle their disputes. Jirga is held in high regard by Pukhtuns; in fact, they consider it to be the primary basis for *Pukhtunwali*. Pukhtuns value the words of Khoshal Khan Khatak⁴⁹ in high regard. In a community where the Jirga's decisions are highly respected, people understand that no significant action or decision will be made without the approval or ruling of a Jirga.⁵⁰ The Pukhtuns claim that despite the absence of a powerful central government, the Jirga system works well and has been successful and functional in resolving both local and national disputes. As a result, the community as a whole has progressed and prospered.⁵¹ On this basis, a review or appeal against the decision of the Jirga is uncommon.

Any party who is unhappy with the decision made by a Jirga may ask for the decision to be reviewed by another Jirga. However, the grounds for the review must be justifiable and compelling. Any side is legally permitted to appeal and reject the Jirga council's verdict.⁵² The appeal should not be based solely on prejudice or impartiality. Moreover, members of the Jirga may evaluate the objection, provided that the reason offered is both legitimate and unique. A review cannot

⁴⁹ Khushal Khan Khattak was a renowned Pashtun poet, warrior, and tribal chief, often regarded as the "father of Pashto literature." Born into the Khattak tribe, he served as a military leader under the Mughal Empire before becoming a fierce advocate for Pashtun independence and unity, especially after falling out with Emperor Aurangzeb. Khushal's poetry, written in Pashto, covers themes of honor, bravery, love for the homeland, and the Pashtun code of conduct, *Pukhtunwali*. His works reflect deep philosophical thoughts on life, morality, and justice, making him an iconic figure in Pashtun history and culture. Today, Khushal Khan Khattak's legacy lives on as both a literary giant and a national hero, with his writings still widely read and revered in Afghanistan and Pakistan.

⁵⁰ Sheenwary, "Institutionalizing Customary Dispute Resolution", 252.

⁵¹ The international legal foundation, "The Customary Laws Of Afghanistan," (2004),9.https://www.usip.org/sites/default/files/file/ilf_customary_law_afghanistan.pdf.

⁵² Sheenwary, "Institutionalizing Customary Dispute Resolution", 251-252.

be more than three times as the third review is considered to be the last and most definitive one.⁵³

Enforcement of the Jirga's Decision

The enforcement mechanism of decisions is consensual and begins with the public announcement of the decision by members of the Jirga. However, prior to making the decision, the Jirga may seek consent from both disputing parties. The decision is considered final after it has been made, and the disputing parties are expected to respect the judgment of the Jirga council. If one of the disputing parties objects, the decision may be suspended or postponed; until the objection is addressed. The enforcement of the Jirga decision is convenient comfortable and does not require a lot of complicated steps or lengthy procedures.⁵⁴

On the nature of the decision, the Jirga council has the authority to impose sanctions on parties in order to compel them to execute and implement Jirga's decisions. The sanctions may consist of monetary payments, a fine, an apology, retaliation, or custody. The mentioned punishments set a precedent for others and reduce the rate of crimes in the future.⁵⁵ The Jirga council is responsible for putting the Jirga's decision into action and ensuring that it is followed. Despite the fact that Jirga lacks an enforcement body, respectable and reputable members of the community still enforce it.⁵⁶ While the Jirga performs some judicial and executive roles within the community, it does not function like a formal state institution that separates powers into distinct branches.⁵⁷ If a party refuses to abide by the Jirga's decision, the Jirga council is fully authorised to impose its ruling using whatever

⁵³ Shaukatullah and Ali, "The Mechanism of Tribal Jirga system:",83.

⁵⁴ Mushtaq, Yaqoob and Javaid, "Role of Jirga in Pukhtoon Society 15.

⁵⁵ Mahmood, Shaukatullah and Ashfaq," The Evolution of Jirga System:", 23.

⁵⁶ Community Appraisal & Motivation Programme (CAMP), "Reforming the Jirga System: Sensitization on Fundamental Human Rights, (2013): 9.

⁵⁷ Fehmeedah Khalid, "Traditional Mechanisms of Conflict Resolution: An Analysis Of Jirga In Pakhtoon Society" Proceedings of International Conference on Local Representation of Power in South Asia Held at GC University, Lahore, (November 12–14, 2014), 34.

means and the offending party may risk losing protection in the community.⁵⁸

Jirga's decisions often strive to focus on fair, equal outcomes that are favourable to both disputing parties. In doing so, elders attempt to promote social harmony rather than identify the winners and losers. This is one of the fundamental ways that the decisions of the Jirga diverge from the formal justice system.⁵⁹ Moreover, the Jirga is a traditional Afghan method of conflict resolution that adheres to the principles of restitution and forgiveness. For instance, a wrongdoer could be required to pay blood money to the victim's family rather than incarceration, and the victim might be requested to pardon the perpetrator.⁶⁰ It is worth mentioning that the aim of restorative justice is to serve as healing for victims and rehabilitation for offenders. In general, resolving issues in the future is more crucial than focusing on the past.

THE CONTEMPORARY CHALLENGES OF THE JIRGA SYSTEM

The Afghan Jirga system has received high praise for its effectiveness, trust, fairness, promptness, lack of corruption, clarity, accessibility, enforceability, and cultural familiarity with the public; as well, it is less expensive and easier to access than the court system.⁶¹ Furthermore, the Jirgas' decisions are frequently acceptable for both disputing

⁵⁸ Wardak, "Jirga—A traditional mechanism:", 12.

⁵⁹ The liaison office," Linkages Between State And Non-State Justice Systems In Eastern Afghanistan, Evidence From Jalalabad, Nangarhar And Ahmadaba, Paktia," (May 2009), 5. <https://www.usip.org/sites/default/files/ROL/state-and-non-state-justice-systems-in-eastern-Afghanistan.pdf>.

⁶⁰ Wardak, "Jirga—A traditional mechanism", 11.

⁶¹ Ghazi Hashimi, "Helping Afghanistan's Informal Dispute Resolution Systems Follow Afghan Law in Criminal Matters: What Afghanistan Can Learn from Native American Peacemaking Program," *Michigan State International Law Review* 127, No.1. (2017): 79. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/mistjintl25&div=7&id=&page=>.

parties, and they can reach a final settlement in a short amount of time compared to formal proceedings.⁶² Moreover, instead of focusing on punishing wrongdoers or blaming one another, the primary goal of the Jirga system is to resolve the dispute amicably. However, the Jirga system faces some contemporary challenges such as unjust decision-making. The reason why the author brought unjust decision-making under the contemporary challenges is because it has long been a problem that undermines the fairness and integrity of any justice system and still exists in the Afghan Jirga system. illiteracy or semi-knowledge of the Jirga members and a lack of modern technology, violation of human rights values, gender bias gender inclusion, and lack of interface with formal institutions. Each of them will be discussed as follows.

Unjust Decision-Making

Powerful community members sometimes influence the Jirga's decisions, resulting in biased outcomes.⁶³ These biased judgments do not only have a negative impact on the marginalised group within that culture, but they also undermine the reputation of this esteemed institution. The reliability of the Jirga institution becomes questionable, particularly in light of the growing concern that decisions may be biased in favour of more powerful parties, undermining the Jirga's role as a fair and equitable dispute resolution institution.⁶⁴

Jirga Members Exhibit Illiteracy or Semi-Knowledge

Jirga consists primarily of prominent community members. There are no rigid and definitive criteria for selecting individuals to be members

⁶² Ali Wardak, "Building a Post-War Justice System in Afghanistan," *Crime, Law & Social Change*, 41 (2004): 326. https://www.usip.org/sites/default/files/file/wardak_article.pdf.

⁶³ Ali Wardak, "Building a Post-War Justice System in Afghanistan," 327-328.

⁶⁴ Sumaira Gul and Fakhr ul Islam, "Role of Jirga and Dispute Resolution Councils in Khyber

Pakhtunkhwa: A Comparative Analysis", *The Dialogue*, 15, no. 4 (2020): 19, <https://journals.qurtuba.edu.pk/ojs/index.php/thedialogue/article/view/40>

of a Jirga. Traditional societies highly regard individuals who have lived among villagers with integrity and transparency as respectable citizens, entrusting them with decision-making responsibilities through Jirga.⁶⁵ Often, Jirga members lack formal education and rely solely on traditional knowledge when making judgments in their role as part of the Jirga council. Without formal education, members may struggle to critically analyse complex issues or understand legal frameworks, potentially leading to biased or unjust decisions.⁶⁶ Additionally, it can sometimes lead to decisions and outcomes in the Jirga proceeding that contradict the sacred provisions of Islamic Law and Afghan statutory laws.

For instance, in Khogyani district, Nangarhar province, Afghanistan, a man was accused of raping a married woman. The Jirga decided that, as compensation, the man's family should give two girls to the woman's family as *Baad*. As a result, the accused man's uncle, who had two wives, was forced to give one of his wives to the woman's family as part of this arrangement.⁶⁷ Furthermore, the absence of modern technology hinders the capacity for comprehensive communication and data management, which are essential for the transparency and efficiency of any judicial process. Without these tools, the process can remain opaque and slow, potentially leading to decisions that are less informed and more susceptible to bias. Overall, modernising these aspects by incorporating basic education and technological tools could greatly enhance the accuracy, fairness, and acceptability of decisions made within such traditional systems.⁶⁸

Violation of Human Rights Standards

Jirga is an institution that has formulated all of its rules based on customary law. Despite often contradicting human rights principles,

⁶⁵ Sheenwary, "Institutionalizing Customary Dispute Resolution", 253.

⁶⁶ Thomas Barfield, Neamat Nojumi and J Alexander Their, "The Clash of Two Gods: State and non-State Dispute Resolution in Afghanistan," United States Institute of Peace, 3. https://www.usip.org/sites/default/files/file/clash_two_goods.pdf.

⁶⁷ The international legal foundation, "The Customary Laws Of Afghanistan," (2004),7. https://www.usip.org/sites/default/files/file/ilf_customary_law_afghanistan.pdf.

⁶⁸ Shah Mahmood Karo Khail, interview by Fazal Hadi Fazli, April 16, 2024.

society accepts Jirga rulings and verdicts due to their cultural characteristics.⁶⁹ For instance, the ancient practice of *Baad*, or *Swara* is one of the most criticised parts of the Jirga system, in which a young girl from the offender's family is married to a member of the victim's or deceased family in order to resolve a dispute.⁷⁰ Human rights advocates and the international community have paid close attention to this aspect of the Jirga system. Over the years, the Afghan government has faced intense pressure to resolve this issue by fostering a robust relationship with informal dispute resolution mechanisms like the Jirga system. However, the majority of these initiatives have been unsuccessful due to the non-existence and weakness of law enforcement agencies in such areas.⁷¹

Additionally, the tribe council has the authority to penalise any party that denies accepting the Jirga's decision. Among these punishments are simple monetary fines as well as more severe and even unlawful or inhumane punishments, such as setting fire to the house of the offending party.⁷² The setting of fire to the offending party's house as a form of punishment is unequivocally illegal and violates the provisions of Islamic Law, domestic laws, and international legal standards. Such an action constitutes a severe violation of fundamental human rights, including the right to property, dignity, and freedom from cruel, inhuman, or degrading punishment.

Furthermore, the concept of *Machilgha* in Afghan Jirga systems, as well as its alignment or contradiction with Islamic principles and Afghan statutory laws, presents a complex legal and cultural dilemma. Before the Jirga begins its process, both disputing parties provide a form of security deposit known as the *Machilgha*. The purpose of this deposit is to ensure that the parties are serious about the process and abide by the Jirga's decision. The Jirga typically divides the forfeited *Machilgha* among its members or hands it over to the opposing party if a party refuses to accept the verdict.⁷³ In Islamic jurisprudence in

⁶⁹ Gul and Islam, "Role of Jirga", 20.

⁷⁰ Sheenwary, "Institutionalizing Customary Dispute Resolution", 258.

⁷¹ Ghazi Hashimi, "Helping Afghanistan's Informal Dispute Resolution Systems," 89-90.

⁷² Sheenwary, "Institutionalizing Customary Dispute Resolution", 258.

⁷³ Sheenwary, "Institutionalizing Customary Dispute Resolution", 250-252.

Afghan statutory laws, there is a strong emphasis on justice, fairness, and mutual consent in dispute resolution. The forfeiture of *Machilgha* may raise questions regarding its compliance with Islamic principles and Afghan statutory laws, particularly the concepts of fairness and non-coercion. Islamic law discourages practices that may involve unfair confiscation of property or impose financial penalties without clear, just cause and mutual agreement. According to the prophet Mohammad's hadith, "the property of a Muslim is not permissible unless he gives his consent".⁷⁴

Gender Bias

Men developed and dominated the Pukhtunwali code, which does not include any provisions for women's participation. Even in situations where a woman is the accused or victim of a crime, she rarely has the opportunity to share her point of view.⁷⁵ Males represent females in all matters, including marriage, child custody, property disputes, and domestic violence. The Jirga proceedings do not allow females to participate or voice their concerns. If she does not have any male relatives who can act on her behalf, or if the woman is a widow, the white-bearded men allow her to come forward and proceed with her issue.⁷⁶ Women's exclusion from the Afghan Jirga system not only denies them their rightful representation but also weakens the system's capacity to address the complex challenges facing Afghan society. Promoting women's involvement in the Jirga and other decision-making processes is essential for fostering inclusive governance and advancing gender equality in Afghanistan.

Lack of Interface with Formal Institution

Typically, Jirga's decisions do not reach official institutions, especially the primary court of the district governor's office, for approval. This

⁷⁴Al-Sunan al-Bayhaqi, Kitab al-Ghasb. vol. 6 p. 100. <https://makarem.ir/main.aspx?reader=1&pid=61974&lid=0&mid=49432>.

⁷⁵ Community Appraisal & Motivation Programme (CAMP), "Reforming the Jirga System: Sensitization on Fundamental Human Rights, (2013): 16.

⁷⁶ Sheenwary, "Institutionalizing Customary Dispute Resolution", 252.

could result in a lack of legal validity and enforceability, posing challenges to their effective implementation.⁷⁷ Moreover, it could result in ongoing disputes among the disputing parties, as there would be no recognised authority to enforce the Jirga's rulings. Overall, failing to seek official endorsement could impede the Jirga's ability to resolve disputes and contribute to social cohesion.⁷⁸

REFORMING THE JIRGA SYSTEM AND ITS FUTURE PROSPECTS

Despite the previously mentioned challenges and drawbacks, the Jirga justice system functions as a crucial method for resolving disputes in Afghan society. Given these concerns, the primary question is not about eliminating the Jirga, but rather about modifying it to align with the sacred principles of Islamic Shariah, international human rights standards, Afghan statutory laws, and international legal documents, all while preserving its effectiveness and cultural significance. In order to improve the Jirga system in Afghanistan, the following recommendations and reforms are suggested: First, to amend the Afghan Constitution is suggested to provide clearer guidelines on the Jirga's role. Additionally, the drafting of a code of conduct for the Jirga proceedings. Integrating the Jirga system with the formal justice system is also recommended to create a more cohesive legal framework. As well as, training for Jirga members is essential to enhance their skills. Furthermore, consider a fixed amount of wage for the Jirga members to provide financial security. Moreover, approval of the Jirga decisions by the official institutions. Finally, the inclusion of women in the Jirga process is recommended to promote gender equality and ensure diverse perspectives in dispute resolution.

⁷⁷ Ghazi Hashimi, "Helping Afghanistan's Informal Dispute Resolution Systems," 114.

⁷⁸ Shah Mahmood Karo Khail, interview by Fazal Hadi Fazli, April 16, 2024.

Amending the Constitution of Afghanistan to Formally Recognise the Informal Justice System (Jirga)

To maintain cohesion among Afghanistan's diverse justice systems, it is necessary to amend the Constitution to acknowledge and establish a mechanism for regulating the Jirga justice system. By recognising the Jirga in the constitution, Afghanistan can affirm the legitimacy of traditional practices while ensuring that they operate within the framework of constitutional principles and human rights standards. This acknowledgment would not only preserve Afghan cultural heritage but also reinforce the system's role in fostering community cohesion and resolving disputes. Additionally, integration into the constitutional framework could facilitate smoother collaboration between the Jirga system and formal government institutions, enabling more streamlined decision-making processes and ensuring better representation of diverse Afghan communities. Furthermore, constitutional recognition has the potential to empower local communities, promote inclusivity, and contribute to stability and peacebuilding efforts across Afghanistan.

Code of Conduct for the Jirga's Proceeding

The Jirga, a traditional assembly in Afghan society, is primarily a forum for resolving disputes, making decisions, and reaching consensus on community matters. While it has existed for centuries and varies depending on region, ethnicity, and context, there must be a general code of conduct that governs its proceedings, which reflects the values of Afghan culture, honor, and the need for community cohesion. Recognising the significance of the Jirga system as a traditional dispute resolution mechanism in Afghan society, this unified code seeks to uphold provisions of Shariah, Afghan law, international legal documents, and human rights standards. This draft provides a concise framework for the operation of Jirgas, emphasising principles of fairness, accountability, human rights, and cooperation with authorities. Different communities can adapt and refine it to suit their specific needs and traditions.

Composition and qualification of the Jirga Council: Jirga members must demonstrate integrity, impartiality, and knowledge of local customs and should be selected by community consensus. Every member of the Jirga must be literate to interact with legal materials.

Jirga Council shall be inclusive, consisting of representatives from diverse parts of the community, including women, youth, elders, and ethnic minorities. To enhance the quality and transparency of the Jirga, retired judges and legal practitioners shall be members of the Jirga council. Each Jirga member's term should not exceed five years, and he or she cannot nominate himself for two consecutive terms.

The mechanism of dispute resolution: Jirga shall serve as a dispute resolution forum, including disputes between individuals, families, tribes, and communities. Dispute resolution processes shall be neutral, unbiased, and conducted in accordance with the provisions of Islamic Shariah, Afghan statutory laws, international legal documents, and established customs. Jirga members facilitate open communication and mutual understanding. Jirga members will prioritise addressing the root causes of disputes, promoting understanding, and fostering long-term peace and reconciliation.

The decision-making process: The Jirga council makes decisions by consensus. In case the consensus fails, the Jirga council can use a fair and transparent voting process of 2/3 to make decisions. Decisions prioritise fairness, justice, and the common good. All decisions are recorded and communicated to the community.

Crimes and punishment criteria: The Jirga Council cannot prosecute and punish any of the disputing parties. The Jirga council should not announce inhumane and unconstitutional punishments, such as demolishing or burning perpetrators' house, confiscating their property, or imposing imprisonment. The Jirga should only handle minor crimes and misdemeanors and serious crimes like murder, rape, theft, etc., must be referred to the formal justice system. The Jirga must resolve civil law cases like land disputes and family disputes, but it should refer inheritance and divorce-related cases to the formal justice system.

Review and amendments: The code is subject to periodic review and amendment by the Jirga council. Amendments require the Jirga members' consensus or majority approval. Changes are communicated to all stakeholders.

The Integration Between the Formal Justice System and the Jirga System

The integration of the Jirga system with the formal justice system is a challenging but promising effort that aims to create a more inclusive and culturally sensitive dispute resolution system. To create coordination between the Jirga system and the formal justice system in Afghanistan, needs the following efforts: National laws must formally recognise the Jirga, outlining its scope, the types of cases it can address, and how its decisions interact with the state's legal framework. In other words, to introduce law or legal provisions that specify the extent of power and jurisdictions of Jirga's framework.

Communication channels need to be established to facilitate regular interaction and discussion between representatives of both systems. Additionally, authorities should offer material and intellectual support to the Jirga. Training and capacity-building programs should be introduced for officials and stakeholders from both systems to improve their understanding of each other's processes, laws, and cultural contexts. Furthermore, there should be a clear referral system for disputes from each other justice systems. Transparent record-keeping and public access to these records are critical to maintaining accountability and trust in both systems. Lastly, monitoring and evaluation mechanisms should be implemented to assess the effectiveness of coordination efforts and identify areas for improvement. This could include entities such as the provincial directorates of justice, primary courts, the provincial police headquarters, and specialised committees established for this purpose.

Training of the Jirga Members

Often, Jirga members lack formal education and rely solely on traditional knowledge when making judgments. Without formal education, members may struggle to critically analyse complex issues or understand legal frameworks. Additionally, it can sometimes lead to decisions and outcomes that contradict the sacred provisions of Islamic Shariah, Afghan statutory laws, international legal documents, and potentially lead to biased or unjust decisions. To overcome the above-mentioned issues, the provincial justice departments, the district governor's office, law and officials of Shariah schools' officials should train and educate the Jirga members through various means, including

training workshops, seminars, and educational materials tailored to their specific needs and contexts. Workshops can cover legal principles, human rights, conflict resolution skills, gender sensitivity, ethical standards, and procedural aspects of the Jirga system. Interactive sessions, case studies, and role-playing exercises can help reinforce learning and practical application.

This education's effectiveness lies in equipping Jirga members with the knowledge, skills, and ethical awareness needed to administer justice fairly and effectively within their communities. By enhancing their understanding of legal principles, human rights, and procedural fairness, educated Jirga members can contribute to building trust, promoting accountability, and upholding the rule of law.

Considering a Fixed Amount of Wage for the Jirga Members

The Afghan Jirga Council traditionally offers their services voluntarily as a duty to the community. Increasing external influences, such as political instability and economic hardships, there may be temptations to accept bribes from disputing parties, particularly in cases involving large sums of money or powerful individuals. In order to prevent the Jirga members from not being involved in bribes, a specific amount of wage should be set for them. The disputing parties must provide wage for the Jirga Council to maintain cultural ownership of the Jirga system and ensure decisions remain community-driven. The wage should be enough to support the Jirga members financially, without imposing a heavy burden on the disputing parties. The wage should reflect the importance and difficulty of their expertise and responsibilities. Defining a fixed wage for the Jirga council ensures fair compensation for their time and efforts. Additionally, a fixed wage decreases conflicts or biases, fostering transparency and trust in the community.

Approval of the Jirga's Decision by the Official Institutions

The approval of the Jirga's decision by official institutions, particularly the primary court of the district governor's office is crucial for legitimising and implementing the outcomes of its deliberations. When official bodies endorse the decisions made by the Jirga, it reinforces the authority and effectiveness of this traditional form of dispute resolution

within the broader legal framework. This approval not only validates the decisions reached by the Jirga but also ensures that they are enforceable and respected by government institutions. Furthermore, official recognition of the Jirga's decisions encourages greater participation and trust in the Jirga process, enhancing its role as a trusted mechanism for resolving conflicts and maintaining social order.

Women's Inclusion

Women should have equal representation and participation rights in all Jirga proceedings. Their participation in the Jirga system is crucial, as it offers a range of benefits. For example, it would increase the number of female representatives and ensure that their concerns and needs are considered. Additionally, it would be beneficial if women could establish a Jirga consisting of exclusively female participants in order to resolve disputes between females. Because women can understand each other and are more familiar with each other's issues. Furthermore, the importance of holding women's Jirgas cannot be overstated, as women often experience issues that they are unable to discuss with men. Conversely, when there are female Jirgas, these issues become easier to address, discuss, and resolve. In order to ensure the safety, security, and empowerment of women's involvement, distinctive measures should be taken.

CONCLUSION

The Afghan Jirga system is the oldest and most important institution in Pukhtun culture that has served as a critical mechanism for resolving disputes for centuries, and has made a significant contribution to bringing social order. The functionality of the Jirga system is strongly influenced by customs and social norms. The Jirga's significance stems from its capacity to settle disputes by mutual understanding and reconciliation. Jirga proceedings are typically quicker, more accessible, and swift offering a practical alternative to the often slow and inaccessible state judicial systems. Despite all these positive aspects, the Jirga faces contemporary challenges which affect its efficiency and legitimacy. These include, lack of modern technology and the limited educational background of many Jirga members, violation of human rights standards, lack of women's participation or gender bias, and non-confirmation of Jirga decisions through official institution.

Looking to the future, the Jirga's prospects hinge on its ability to adapt and reform. Amending the constitution of Afghanistan, drafting a unified and concise code for the Jirga's proceedings, integrating the formal justice system and the Jirga system, educating the Jirga members, considering a fixed amount of wage for the Jirga members, and the inclusion of women. These changes and reforms are vital not only for the survival of the Jirga but also for its role in promoting a fair, equal, and peaceful society in Afghanistan.

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