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Reviving The Jirga System with Safeguards: Can Adr Be a Tool Against Honor Killings
Aqsa Asif Ali palh

LL. B Student (Part II), Department of Law, University of Sindh Jamshoro

143palhasifali@gmail.com
Rind Ali

LL. B Student (Part III), Department of Law, University of Sindh Jamshoro

rindali11223@gmail.com
Faheem Ahmed

LL. B Student (Part III), Department of Law, University of Sindh Jamshoro

faheemahmedlegahri@gmail.com
ABSTRACT

This research paper provides comprehensive analysis on Honor killing and Jirga system. Honor Killing is the one of the most serious social problems in Pakistan, where women often victims the harmful traditions. The Jirga system which is traditional method of resolving disputes is deeply rooted in many communities of rural areas but is often criticized for being unfair and discriminatory especially towards women. This research paper explores whether reviving the Jirga system with strong safeguards and legal monitoring can work as a form of Alternative Dispute Resolution (ADR) to reduce honor killing by adding protections such as women's participation, state supervision, and accountability measures, the Jirga could be a reformed into a community-based justice system that helps in preventing honor crimes. Furthermore, the Jirga System cannot be fully replacing the formal judicial system but it can serve as complementary mechanisms if legally restructured and monitored its strength, accessibility, speed, and cultural legitimacy can be redirected towards preventing honor killing. The study concludes that a restricted Jirga system integrated within the formal legal order has the potential to function as a complementary ADR tool to combat honor-based violence provided it is reoriented toward justice rather than tradition.

Keywords: *Jirga system, Honor Killing, Alternative Dispute Resolution, Safeguards, Customary Laws, Women's Rights, Legal Reforms.*

Introduction

Honor killings in Pakistan persist as a deeply embedded cultural and legal challenge, disproportionately affecting women and marginalized communities. Honor killing is a persistent phenomenon not only in Pakistan but in many other parts of the world. The term "honor killing" refers to the killing of a woman on the grounds that she has committed actions seen as sexually or morally unsuitable, thereby bringing shame to her family. The adulterous female is killed by men for the sake of restoring honor, to erase shame, and to control women's lives. In most cases the woman is killed by her father, brother, uncle and even her husband. The tribal communities endorse honor or ghairat as an essential element of one's status in the society (Abdullah, Kamran). The tribal communities known as jirga, Jirga is the centuries old institution of alternative dispute resolution in Pakhtun society. With the passage of time, the efficiency and integrity of this institution slowly deteriorated because of an absence of regulation, accountability, and conformity with contemporary legal norms. A system once regarded as honored and credible for resolving disputes at the local level slowly diminished in efficacy. Thus,

individuals started losing faith in its capability to provide fair and unbiased justice. This decline not only impaired the institution itself but also drove it away from the very communities it was designed to serve, eventually eradicating its once-traditional role as a solid mechanism for preserving concord and arbitrating disputes among ordinary citizens. People's reliance on Jirga. The Jirga system, with the passage of time, has become very deep historically. Historically and even today, Jirgas have been forums for mediation, conciliation, and resolution of conflicts.

Rooted in the shared wisdom of community elders and informed by time-honored local tradition, the Jirga mirrors both the cultural and religious values of the societies in which it operates. In spite of transformations in the government and legislation, it still remains an important device for ensuring social order as well as providing community-based justice. Peacebuilding and conflict resolution have been important in maintaining harmony and re-establishing social order for centuries, especially in the tribal areas of Pakistan, where age-old mechanisms such as Jirgas still resolve conflicts and maintain communal stability. Originating from the Aryan tribes of contemporary Afghanistan and India, the Jirga system is one of the oldest methods of conflict resolution. This centuries-old Jirga system holds significant historical and cultural importance, especially among the Pakhtun community and in the tribal belt (samreen fatima)

It has been a core institution for settling conflicts, upholding social equilibrium, and achieving the notion of justice at the grass root level for centuries. Traditional in basis and led by village elders, Jirga has traditionally been seen as a proximate and accepted means of alternative justice, particularly in those regions where formal courts are weak or nonexistent.

Yet, whilst the Jirga system has unquestionably facilitated resolution of conflicts and social unity, it has also faced increasing criticism from academics, jurists, and human rights activists. These critics point to a number of main issues, such as the absence of codified or established legal processes, discrimination against women participation on account of being an all-male system, and the patriarchal nature of the system. Additionally, where it is not properly regulated or subject to judicial supervision, the Jirga has frequently been abused by powerful local leaders to make decisions violating the most basic human rights and constitutional safeguards. Accordingly, although the Jirga remains a culturally legitimate and socially valuable institution, its untrammelled version casts grave doubts upon the justice, gender equity, and rule of law in modern-day Pakistan. The Jirga system has faced immense criticism for discriminating against women and violating the sanctity of women rights during the decision-making process and the implementation of those decisions. One of the most egregious criticisms of the Jirga system is its blanket exclusion of women from taking part, even where they themselves are directly affected as victims, accused individuals, or witnesses. Not only does this reinforce patriarchal values but also denies women access to justice and equality before the law. The lack of representation of women ensures that all matters concerning them are made without them being heard, leading to unfair and skewed decisions. Through the years, various instances have shown how decisions made have compromised the basic rights, dignity, and protection afforded to women under the Constitution of Pakistan and international human rights law.

Identifying these recurring violations, the Supreme Court of Pakistan was firm in 2019, pronouncing the customary Jirga and Panchayat systems illegal. The Court's move was in accordance with the foundational principles of the Universal Declaration of Human Rights (UDHR), with emphasis on equality, due process, and safeguarding human dignity. This historic decision was a significant move toward ensuring that justice mechanisms within Pakistan align with constitutional protection and international human rights standards, while at the same time

recognizing the cultural significance of community-based conflict resolution. Chief Justice Saqib Nisar emphasized that Jirgas lacked precedents, predictability, and certainty in their decisions. Personal knowledge and hearsay were used to determine civil rights violations and criminal charges. Such practices were deemed contradictory to Article 4,10A, 25, and 8 of the Constitution, which prohibit customs that infringe upon fundamental rights. The Court did, however, recognize that some cultural and community values are still deeply rooted in rural societies and cannot be absolutely disregarded. It thus recognized that informal gatherings of village elders can still play a positive role in local dispute resolution, provided that such proceedings take place within the parameters of the law and do not infringe on basic rights. The Court reiterated that these traditional customs should function under the direction of the courts and follow constitutional canons of justice, equality, and due process. In this way, the judiciary attempted to balance respect for local traditions with enforcing the rule of law throughout Pakistan and without functioning as parallel courts.

This research, therefore, embarks on an effort to answer the question: Can the restructured Jirga system with legal safeguards operate effectively as an Alternative Dispute Resolution mechanism against honor killings in Pakistan?

The aims of this paper, therefore, are: (1) to assess the Jirga system as related to honor killings, (2) to analyze whether legal reforms can make the Jirgas compatible with the principles of constitutional and human rights, and (3) to propose an outline of how reformed Jirgas can be situated within the ADR structure. The paper is organized as follows: the next section reviews relevant literature, followed by an explanation of the research methodology, analysis of findings, and finally conclusions and recommendations.

Research Methodology

Instead of using surveys or interviews, this study employs a doctrinal and qualitative legal research methodology, which focuses on comprehending and evaluating the law through already published written sources. Books, journal articles, court rulings, government reports, and legal documents are among the primary sources of secondary data that it uses. The doctrinal approach aids in analyzing how current laws, such as the Khyber Pakhtunkhwa ADR Act 2020, the Code of Civil Procedure 1908, and the Constitution of Pakistan, relate to or address informal justice systems like the Jirga. The research determines the shortcomings, advantages, and restrictions of Pakistan's current legal system in handling cases involving honor killing by examining these legal documents and pertinent court decisions. In addition, the qualitative component enables a thorough, interpretive examination of social and legal contexts. This means that in addition to outlining the law's provisions, the study also looks at how it might be modified or enhanced, particularly how a revised Jirga system might function as a useful tool for Alternative Dispute Resolution (ADR) provided that appropriate legal protections are put in place to stop abuse or discrimination. Additionally, a comparative dimension is included in the study. In order to extract useful lessons, it analyzes how India's Lok Adalat system works effectively as a legally recognized ADR model and contrasts it with Pakistan's circumstances. Additionally, it makes reference to global viewpoints from institutions such as the National Commission on the Status of Women (NCSW) and the United Nations Development Programme (UNDP). which offer worldwide perspectives on gender-sensitive reforms and community-based justice. To put it simply, rather than gathering fresh data from individuals, the methodology involves examining laws, cases, and reports to assess whether conventional systems like Jirgas can be made equitable, legal, and successful in settling conflicts and stopping honor killings.

Literatural review

(UNDP (2023)) emphasizes that integrating traditional dispute resolution systems with formal legal frameworks can promote access to justice, provided that human rights safeguards are ensured. While community leaders uphold the jirga system as its direct stakeholders, the socially legitimizing process of the Jirga system creates mixed reactions since various groups either perceive it as a cultural origin of pride or as an impediment to gender and legal equality.

A survey carried out by the Community Appraisal and Motivation Programme (CAMP) showed mixed community sentiments regarding the tradition of jirgas. According to most men in Swat, there was a need to do away with the practice of involving women as tools for conflict resolution, admitting that such traditions have inflicted a lot of suffering and desecrated women's dignity. To the contrary, Dir respondents justified the tradition, calling it the people's version of bringing peace back to their community and arguing that women should not be empowered to oppose it. This dichotomy spotlights the profound cultural and moral gulf surrounding the jirga system. Additionally, the Hyderabad Women's Action Forum began a campaign to ban jirgas, collecting more than ten thousand signatures from throughout rural Sindh. Such evidence highlights the fact that the jirga continues to be an acutely contested institution, far from its supposed unanimous community support claimed by its champions. Its support (NCSW), In ncsw 2022 study it was studied that while these traditional bodies provided local dispute resolution but are normally used for justify violence towards women.

The combination of traditional approaches with strict legal criteria continues to be a serious challenge in ADR integration within the former FATA region. Traditional alternate dispute resolution (ADR) procedures, including the Jirga system, provide community-conscious and readily available mechanisms for resolving conflicts, but it is important that these mechanisms satisfactorily meet essential the key aim of these efforts is to fulfill human rights commitments while providing equal and just justice for every citizen of the community. Ongoing efforts for reforms attempt to combine traditional governance patterns with formal state institutions, developing a hybrid framework that honors the cultural heritage of the Jirga system but enhances its alignment with national law and contemporary ideals of justice and international legal requirements (NCSW report)

The connection between jirgas and honor killings is based on common social and moral rules. Both appeal to patriarchal structures that equated female sexuality and agency to the family dignity. In cases when a woman is believed to have breached the social norms, say, through extramarital sex, a runaway marriage, or any unauthorized association, a jirga can be formed to investigate the contravention and to fix the penalty. This solution has in most instances resulted in either the execution of the woman or a man who is in a relation with her as a means of purifying the dishonor to the family. These judgments are packaged in the form of non-crimes, as a reintroduction of morality, as well as communal balance (shahzebkhani and Aziaz Ali)

It is hard to see the motive behind such a retrograde and unconstitutional measure, which threatens to divide the federation and potentially compromise the country's overall security and stability (Zahid hussain)

For this objective to be reached, the traditional practice of postponing reforms which favor an equitable and accessible justice system has to stop. The state must act firmly against Jirgas issuing decisions based on practices rather than on legal principles, and against those who further condone such practices. (Dawn, editorial board)

In order to build the authority of women's jirgas in village society, the state needs to give official sanction, financial assistance, and support for attendance. Although conventional male jirgas have tended to perpetuate injustices and brutal customs, giving strength to women's jirgas can help make Pakistan a more just, humane, and equitable state. (Womens jirga)

Historical background of jirga system.

People have had different opinions based on their life experiences in history and these differences led to disputes and conflicts. In early societies, there was a real need for an unbiased person or group to help resolve these issues. During that era, various traditional mechanisms were established for resolving disputes, with the Jirga serving as a prominent method in specific regions. Within Muslim communities, a diverse array of conflict resolution strategies has been employed throughout history. These methods reflect a deep-rooted cultural heritage, rooted in principles of justice and communal harmony. Notably, even after the regions were conquered by Muslims, these traditional dispute-resolution practices continued to thrive, maintaining their relevance and importance in addressing conflicts. Below are some illustrative examples of these enduring traditional conflict resolution methods found within Muslim communities. These councils have no place in the formal legal system and are to that extent unconstitutional. They are mandated only in the Federally Administered Tribal Areas (FATA) and the Provincially Administered Tribal Areas (PATA) where the law explicitly gives allowance to establish their own form of adjudication. For the rest of Pakistan, as defined by Chapter VII of the Constitution, jirgas are not part of the formal structure of the justice system, which creates the formal judicial bodies and lists their functions and jurisdiction.

While jirgas are often criticized in the mainstream media and by human rights activists for their anti-women orientation, for many others, locally constituted jirgas are perceived as more 'just' than the national justice system, more so outside urban provincial capital cities. Pakistan has failed to extend state presence in remote villages, leaving jirgas as the only means of justice and reconciliation in these areas.

Chief Justice Saqib Nisar emphasized that Jirgas lacked precedents, predictability, and certainty in their decisions. In most instances, determinations of civil rights violations and criminal culpability were heavily dependent upon hearsay and personal observation, and not on formalized legal processes or established fact. Such practices were deemed contradictory to Article 4, 10A, 25, and 8 of the Constitution, which prohibit customs that infringe upon fundamental rights. However, the court also recognised that certain customary and traditional sentiments could still be addressed by gatherings of village elders, provided these disputes were resolved within legal boundaries and without functioning as parallel courts.

Despite these concerns, the Jirga system continues to be the most reliable platform for resolving conflicts within tribal communities. Stopping jirgas would mean transference of those disputes to the formal courts, which already cannot cope with the current burden. By doing so, a lot of the hassles and complexities that people would otherwise experience in the traditional court process are efficiently eliminated, if not absent in jirgas.

Honor killing cause and legal response.

To trigger this act only the suspicion that women committed an offence is more than enough. Mostly, the women are killed by their father, brother and even by her husband. While in this offence, other women in the family are equal perpetrator. Generally, the offenders are praised to restore the prestige of family and mostly they are sentenced to lessen punishment for extenuating circumstances. To commit the crime, an underage man is chosen so that he could avail the judicial leniency. In some societies, the implementation of honor crimes be rite de passage to show and guarantee the social maturity. Honor killing has been taken place on a big scale in so many leading and developed. countries as well as in the following ones: UK, Turkey, Germany, Pakistan, India, Iran, Kingdom of Saudi Arabia, Afghanistan, Jordan, Yemen and so many others. For varying reasons, the women of different age groups in Pakistan fall the victim of Honor Killing. Poverty, tribal laws, lack of education, culture, religious mindset, jirga system,

divorce and marriage against the will of family. customs, settling of debts, previous enmity and provoking by community are the main reasons behind the honor crime. No exhaustive list can be enumerated to illustrate the causes of honor crime. Today in Pakistan the honor crimes are uncontrollably increasing and unfortunately socially accepted. Honor crimes victims are between the newborn to old age women irrespective of married, unmarried or resident of rural or urban society. Impunity of perpetrator is one of the important motivations causing rapid increase in honor crime, which is enjoyed by the offender. Reporting the honor crime is very rare in Pakistan, if it is done so then instead of exemplary punishment, the lighter punishments are given to the perpetrator in the male dominant society that really affects the judicial system of Pakistan.

The British colonial administration did try to push through change in notions of justice mediated by jirgas, in the case of "honor killings" for instance, they were unsuccessful. For instance, after the conquest of Sindh, Charles Napier attempted to clamp down on honor killings, and issued a proclamation prohibiting it, introducing punishments including hanging and banishment. It resulted in the spiking of cases of apparent 'suicides' by women, which were in fact murders. Captain Kieth Young, as quoted by Nabi and Baloch, noted that suicides were almost unknown in Sindh at the time of the British conquest

Jirgas relation with honour killing.

mechanism, called swara, vanni and sung chatti, is the barter of women for marriage as a form of settlement. This is detailed in Naveed Shinwari's report on jirgas in FATA. Compromise between two hostile persons or groups is sought in a way that avoids bloodshed, by giving away women as that ensures both antagonists become related by marriage and hence part of the same family. Vanni applies in cases of murder, kidnapping or attack on other women. "The nearest virgin daughter, sister, etc. of the offender is given over to the aggrieved family," Shinwari documents. "Since it is a forced marriage between the enemies, there is no wedding.

Once a jirga has passed a verdict for swara, vanni, sung chatti or other issues, no appeal is possible against the decision. The implementation mechanisms are built into society, so refusal to accept is not a possibility. In a household survey of five thousand women, the Rutgers World Population Foundation found that more than 77%ages were settled under customary practices such as swara, vanni and sung chaft. The survey was conducted in areas within Pakistan known for the high prevalence of such harmful cultural practices, namely Dera Ghazi Khan, Muzaffargarh, Jacobabad, Kashmore, Jaffarabad.

ADR Framework in Pakistan

Alternative Dispute Resolution (ADR) is a set of processes designed to resolve legal conflicts outside the traditional courtroom setting. This approach offers an alternative to the adversarial system, promoting collaborative solutions to disputes. In modern legal systems, ADR has gained significance due to its efficiency, cost-effectiveness, and flexibility in delivering resolutions. In the context of the legal landscape in Pakistan, the traditional adversarial system faces several challenges. The current system is marked by delays, backlog issues, and high costs associated with litigation. Court proceedings are often protracted, leading to frustration among litigants and hindering the timely delivery of justice. The overburdened judicial system struggles to cope with the volume of cases, contributing to prolonged wait times for resolution. Additionally, cultural and societal dynamics in Pakistan, emphasizing community values and relationships, pose unique challenges for the adversarial approach, which can strain interpersonal connections.

Home and Tribal Affairs Department Khyber Pakhtunkhwa, being department per Section 02 (f) of the KP ADR Act 2020, has shared an "Alternate Dispute Resolution Manual". This manual serves the purpose of creating awareness among the general public about the ADR mechanism, providing an explanation of its salient features and offering guidelines for practitioners. Notably,

as an official government document, it provides insights into the government's mindset behind enacting this legislation.

Code of civil procedure Pakistan 1908 section 89A also shows that when The Court may, where it considers necessary, having regard to the facts and circumstances of the case, with the object of securing expeditious disposal of a case, in or in relation to a suit, adopt with the consent of the party's alternate dispute resolution method, including mediation and conciliation.

Both jirga and ADR Both aim for amicable dispute resolution Jirga can be localized ADR if reformed.

Jirga with safeguard.

First, institutionalizing and formalizing the Jirga system within Pakistan's judicial system as a recognized form of ADR can lead to more efficient and cost-effective justice and reduce the burden on courts. Second, it is important to provide conflict resolution training to influential societal figures, such as religious clerics and tribal leaders to ensure that Jirgas operate within the bounds of justice and inclusivity. With state monitoring these jirgas it can help in losing the burden of cases from formal judicial system. Stopping jirgas would mean transference of those disputes to the formal courts, which already cannot cope with the current burden. The problems that citizens face with the formal courts are minimized, if not absent in jirgas. In a survey of district courts conducted when the state takes proper penal actions if there are any misuse of power the record keeping and monitoring will help in making the legal system of Pakistan better. There should be mandatory female participation, and human rights and legal education for the member of jirga, inclusions of lawyer, teachers and social workers. Decisions should be subject to judicial review jirgas should act as pre mediation forms not as courts. This will help in reducing honor-based violence and will build the trust of people on community and law. When the cultural legitimacy merges with legal justice. It will help people to build trust in justice without losing hope.

Completely banning jirga can cause in rebellion when the government end the cultural legitimacy and heritage people will go rampage. It can also isolate communities. A revolutionary step in Swat where women created their own Jirga to raise voice against injustices and promote women's rights. The women's Jirga provides a platform to women who otherwise remained out of bounds to traditional male gatherings. It seeks to solve community conflicts amicably, lower gender discrimination, and grant local-level justice. The article contends that when empowered, Jirgas can become instruments of inclusion instead of oppression. Encourages the notion that restoring old mechanisms with reforms (such as women's participation) will improve access to justice in rural Pakistan (Dawn)

A big Peace Jirga in Khyber Pakhtunkhwa called on communities to eschew extremism and armed militancy. Traditional conflict resolution was employed by community elders to foster harmony and dialogue rather than armed violence. The Jirga highlighted local wisdom, tribal solidarity, and reconciliation as instruments of long-term peacebuilding. It illustrates how Jirgas can be remodeled as a platform for peace, not conflict. Demonstrates the state's increasing acknowledgment that traditional systems can augment formal governance in conflict zones. (Dawn)

Research outcome

The study shows that Jirgas still serve as an important justice tool for many rural communities in Pakistan. Banning them completely would isolate people who depend on them for quick and affordable dispute resolution. However, unregulated Jirgas often lead to human rights violations, especially in honor killing cases. A better solution is a hybrid model that blends traditional practices with legal safeguards, as seen in the KP ADR Act (2020) and India's Lok Adalat. This

approach can improve access to justice while protecting rights. Still, challenges like political pressure, corruption, and gender bias must be addressed through transparency and state oversight.

Conclusion

The study comes to the conclusion that although the Jirga system has deep cultural and historical roots in Pakistan's rural and tribal communities, its unregulated form has frequently perpetuated injustices, especially against women, through decisions that violate basic constitutional rights. However, a total prohibition on the system would isolate rural communities that still depend on Jirgas for prompt, reasonably priced, and locally based justice. As a result, the study suggests a modified Jirga model that operates as an Alternative Dispute Resolution (ADR) mechanism under legal supervision. When based on constitutional protections, such a model can aid in bridging the gap between formal legality and cultural legitimacy, guaranteeing that justice is still available and accountable.

A comparative evaluation with India's Lok Adalat system demonstrates that traditional justice mechanisms can coexist with formal institutions if structured within a clear legal framework. Pakistan's KP ADR Act of 2020 provides a practical starting point for such integration, insofar as it promotes community participation while retaining judicial oversight. Under this framework, a restructured Jirga system should be premised on mandatory participation by women, human rights training of its members, proper documentation of the proceedings, and judicial review of the decisions. Such measures would not only prevent any excesses of authority but also ensure that the Jirga was more inclusive, transparent, and respectful of due process—reforming it from an informal patriarchy into a legal instrument of community mediation.

This research, therefore, concludes that the revival of the Jirga system with adequate safeguards provides a balanced approach between retention of cultural identity and the advancement of constitutional justice. Empowerment of women's Jirgas and their placement within a state-monitored ADR structure can redefine traditional justice in Pakistan along principles of equality and human dignity. When customs operate under the umbrella of constitutional protection and legal oversight, the Jirga system can be transformed from an instrument of oppression to one of peace, reconciliation, and fair justice—so that what was an ancient tradition becomes a modern tool for social cohesion and prevention of honor killing.

Recommendations

1. The legal system should limit the authority of the Jirga as much as possible, instituting that they have legal authority only if they abide by laws which are very clearly defined and are enforced by the courts.
2. All decisions made by the jirga, must be contextualized by written decisions that are accessible to the judges so that they can discourage abuses, and to ensure justice.
3. All jirgas should be required to include women, and women jirgas should be supported and encouraged, by the government.
4. Members of the Jirga should be trained in human rights, protection of woman law, and basic principles of law.
5. The government should develop a statistical compilation system to follow and report findings and outcomes in order to provide accountability and transparency regarding Jirgas.
6. Jirgas can only act as mediation processes, and should never act as a court. Any decision which the Jirga makes must have ratification from a court.
7. Public education programs should be developed to inform the public of their rights and how to pursue a complaint for Jirga abuse.

8. Successful models of peace and women's jirgas must be replicated and endorsed in every part of Pakistan, with Swat and KPK leading the charge.
9. Any Jirga involved in honor killings or illegal practices must face legal punishment.
10. Instead of banning Jirgas, the government should reform them to ensure justice, equality, and cultural respect

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