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The Role of Jirgas in Honor Killing Cases: An Unconstitutional Parallel Justice System?

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Abstract

Honor killings are among the worst gender-based violence occurring in Pakistan and tribal injustice systems like jirgas have become the key determinant of the crimes. and even after all these legal reforms and pressure exerted by the rest of the world, honor related cases are still judged in the extrajudicial forums, and in many cases; the extrajudicial forums condone or approve murder in the name of upholding the family or tribal honor. The main character of this paper is to question the constitutional legitimacy and socio-legal impacts of jirgas as parallel systems of justice especially in the light of honor killings. It analyzes how these traditional assemblies lead only to weakening of the rule of law as well as to the weakening of fundamental rights envisaged under the Constitution of Pakistan such as the right to life, equality and to a fair trial.

The continuance of jirga decisions in honor related cases is a big challenge against the formal criminal justice. Such forums exist outside the procedural protection of the state and they in many cases support violent traditions that victimize women and disadvantaged persons. Although the Constitution establishes the model of legal conformity and judicial supremacy, application of the state laws in the tribal and rural areas where jirgas have social acceptability is uneven. This conflict between the informal power and the formal legal institutions created the situation where people who commit honor killings are treated as systematically immune and the democratic legal rules are weakened.

This article will rely on the inter-disciplinary literature, which are factual data on legal pluralism and ethnographic accounts of tribal justice as well as human rights literature. It takes a swipe at the institutional tolerance of jirgas and the socio-political reasons that prevent the state in breaking them down or controlling them. The paper does not take the concept of jirgas as a form of cultural or display of community justice, but rather as a cause of the refusal of constitutional rights to honor killings. Through this, it refers to the collusion of local politics and power structure to preserve these extra-legal systems.

The international human rights obligations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) among others are also analyzed and the way in which the non-addressing of the issue of jirga-facilitated violence by Pakistan acts as a breach of its international commitments is also considered. In the end, the paper insists that either of the following two approaches by the state is essential; first, it should integrate such traditional systems with formal legal oversight, and second, it should abolish them altogether in order to avoid constitutional subversion and violence against women and girls. It requires a stronger legal structure that will make parallel adjudication of criminal acts a criminal act and that will allow formal judicial institutions to carry out their work unhindered by customary authority brokers. The paper shall highlight how the use of the jirga system in Pakistan lends itself to a wide array of legal, ethical, and human rights abuses and thus fill the gap in the policy debate on justice and gender equality in the country.

Introduction

Honor killings are considered one of the most stubborn and brutal forms of patriarchal domination in Pakistan, where the traditions often dominate the constitutional rights. The main feature of such a process is the functioning of jirgas - the system of tribal and community-based courts of justice, which to this day are turned into parallel justice in most regions of the country. Such informal institutions commonly decide cases pertaining to what is claimed to be a breach to the family or tribal honor and the decisions made can authorize and even force a murder, a forced marriage, or an exile, without necessarily referring to the existing state law, or due process, or gender equality. Although officials in the Pakistan legal system technically outlaw such extrajudicial processes, very significant questions that can be asked are about the rule of law and efficiency of state institutions in the protection of constitutional rights when it comes to the continued existence of jirga judgments, even under circumstances when honor-based violence occurs.

The fact that jirgas continue to play a prominent role in the rural and semi-urban settlements indicates a wide hole between the norms of the law and practice. Even though Pakistan adopted the practice of using a modern legal code based on constitutionalism, Islamic jurisprudence, and British common law, the presence of customary systems of justice such as a jirga is evidence of how legal authority is fragmented. In such cases, legal pluralism allows the non-state actors to exercise their judicial powers without responsibility and regularity. This happens especially in the cases of honor killing where often such forums condone violence in the name of tradition or morality or integrity of the community.¹ The victims, in most cases, women, are deprived of their chances to receive the formal legal redress and fall victims of the decisions that have been made and which breach their basic rights according to the Constitution.

The constitutional structure of Pakistan also promises equality under the law (Article 25), the right to life and freedom (Article 9), and due process of law during a crime (Article 10-A). But in practice, these safeguards are often skipped where jirgas are given de facto legal power. Additionally to undermining the potentials of judicial independence and procedural fairness, jirgas also contribute to developing the culture of impunity among the perpetrators of gender-based violence. Although a number of legislative reforms have been proposed to make honor killings punishable by law, including adding amendments to the Pakistan Penal Code, the lack of government action to disband or regulate jirgas exists to the point of neutralizing the effectiveness of such legislative works.²

¹ Tuba Iqbal, "Aurat March: Religion and Feminism in Pakistan," *Central European University*, 2020.

² "How the Parallel Judicial System of Jirga Perpetuates Injustice For Pakistani Women," accessed July 21, 2025, <https://courtingthelaw.com/2017/07/07/commentary/how-the-parallel-judicial-system-of-jirga-perpetuates-injustice-for-pakistani-women/>.

Also, it is not possible to overlook the political economy of jirgas. The regional power structures are based on these traditional systems in that the local elites, the landlords, and the tribal leaders use them as their tools to maintain the social control as well as to curb any rebellion. The inability or unwillingness of the state to take a decisive action in the effort to eliminate jirgas can be based not only on the logistic or jurisdictional limitations but also on the political consideration. In this respect, the informal justice system does not serve as the cultural alternative to the state law, rather a coercion mechanism of patriarchal, classes, and tribal hierarchies.³

Scholarly interest on role of the jirgas in honor killings points out to the perilous contradiction within Pakistan legal and constitutional framework. The state claims that it is committed to universal norms of human rights and to the primacy of the formal law on the one hand, and continues to tolerate the existence of institutions that directly defy these norms, on the other. The international community has also continuously spoken against the fact that Pakistan has not been able to control the extrajudicial courts and this has been because the country violates duty as per the international law including its treaties like the convention on the elimination of all forms of discrimination against women (CEDAW).⁴ However, despite an increasing knowledge and campaign, it is not possible yet to achieve legitimate change.

The purpose of the paper is to explore critically the role of the jirgas in trying honor victim cases as well as to evaluate the establishment of the same form of justice system as a parallel unconstitutional entity. It shall discuss both the historical development of jirgas and their legitimacy in Pakistani culture as well as their use in Pakistani society today. The paper will go on to analyze the reason in which jirgas contravene provisions of the constitution, and international legal obligations. This study demonstrates structural, legal, and normative problems with adjudication by using jirga, thus preparing to complement the general discussion on the progression of justice and gender balance in Pakistan. The main point presented is that the inability of state to curb jirgas not only undermines the Constitution but also leads to a very unsafe culture of impunity when it comes to honor-oriented violence.⁵

The Concept and Functioning of Jirgas in Pakistan

However, originally just called councils of elders, Jirgas have been informal venues through which tribal and rural areas of Pakistan, especially Khyber Pakhtunkhwa (KP), Baluchistan, and some sections of interior Sindh, have historically tried to resolve their disputes. Anchored in local tradition and customary law, they are governed to resolve civil cases, family or clan conflicts and controversially criminal cases including honor killings, sexual violence and murder. Some of the strengths that the jirga proponents attribute to the system include its accessibility, quick and violence-free proceedings and its acceptance of local values. But the manner of its operation particularly in matters of honor when he involves a serious inconsistency with the avowed legal systems and constitution of Pakistan.

The jirga system is very patriarchal and communalist in nature and values community honor more than the rights of individual people. Jirgas are usually formed by men of the tribal elders or landlords, and work without any rules of procedure, evidentiary rules, or appeals. It makes decisions according to the norm of custom but not according to a written law, the decision is usually made

³ "Jirga as a Mechanism of Dispute Resolution: An Evaluation in the Eyes of Islamic Principles and Legal Challenges in Pakistan | Indus Journal of Law and Social Sciences," accessed July 21, 2025, <https://ojs.indusjls.com/index.php/ijlss/article/view/25>.

⁴ Ali Shahid et al., "Honour Killings in Pakistan: Legal Perspectives and Reforms," *Qlantic Journal of Social Sciences* 5, no. 1 (2024): 134–40, <https://doi.org/10.55737/qjss.547319279>.

⁵ "Sharia Law and Legal System in Pakistan: A Historical Overview | Tanazur," accessed July 21, 2025, <https://tanazur.com.pk/index.php/tanazur/article/view/235>.

by consensus or an influential elder. The maintenance of such systems although seemingly granting social cohesion systematically excludes women in the process of participation in governance and overweight them as victims of punishment, especially when charged with some form of moral outrage or disgrace. In the cases of honor killings, the jirga can give orders to execute a woman or to execute a revenge killing as a way of restoring the balance of the community.

Jirgas are considered part and parcel of socio-political phenomenon in rural Pakistan where the state institutions are either non-existent or inaccessible. Traditional forums will also be used in many of such places because the judicial system established for it is regarded either as costly, corrupt or ineffective by local communities. But this social legitimacy is not synonymous with the legal power. As a matter of fact, the operation of jirgas can be considered a straight-out usurpation of judicial authority granted to the state. When these assemblies settle criminal wrongs, such as the ones that can be the result of an honor-based violence, they betray the due process principle and the exclusive power of the formal judicial authority.⁶

Studies have depicted that frequently jirgas contain verdicts that are, until not only extra-legal, but also comprise outrageous violations of human rights. These are the practice of vani (giving of women in marriage as compensation), the legalization of karo-kari murders (honor based murders) and forced exile or corporal punishment. Lack of accountability methods or procedural protection in jirgas leads to great chance of arbitrariness, coercion, and gender discrimination. This would be particularly problematic considering the fact that some of their verdicts cannot in any way be overturned including death sentences sentenced under the traditional rules of honor.⁷

Within legal pluralism terms, jirgas can be regarded as components of what scholars call non-state legal orders, or the systems that are related yet do not pertain to the formal law. These are not constitutions and laws directing the authority but happen through tradition, bloodline and local hierarchies. Although legal pluralism is an accepted sociological reality in most post-colonial countries, it becomes questionable when the non-formal systems take jurisdiction over the criminal cases without the supervision of the state. In the Pakistani case, jirgas are quite worrisome especially the fact that it functions outside the constitutional structure where equality, due process of the law, and supremacy of the law are guaranteed.⁸

The gendered aspect of jirga decision has as well been contemplated by recent literature. Feminist legal theorists claim that jirgas are not only parallel legal systems but rather an instrument of patriarchal domination and gender norm enforcement, comprising compulsive and violent measures of correct actions. Women who dishonor their families do not have lawyers or innocent until proven guilty, and tends to be regarded as a commodity to be traded and beaten as a way of saving the face of the tribe. This institutionalized exclusion of women in the processes of jirga goes against the commitments which Pakistan has made both in the Constitution and the international human rights conventions.⁹

Moreover, the evolving role of jirgas in the digital and political era reflects a concerning normalization of extrajudicial authority. In some cases, jirga decisions are now broadcast or reported in local

⁶ "Legal Analysis of the Customary Practices in the Resolution of Family Disputes in Pakistan 19 Journal of International Law and Islamic Law 2023," accessed July 21, 2025, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jispil19&div=37&id=&page=>.

⁷ "Legal Analysis of the Customary Practices in the Resolution of Family Disputes in Pakistan 19 Journal of International Law and Islamic Law 2023."

⁸ "Access to Justice; Informal Justice System and Principles of Human Rights | Pakistan Journal of Criminal Justice," accessed July 21, 2025, <https://journals.centeriir.org/index.php/pjcl/article/view/90>.

⁹ Zeeshan Ashraf et al., "Legal Analysis of the Customary Practices in the Resolution of Family Disputes in Pakistan," *Journal of International Law and Islamic Law* 19 (2023): 82.

media, lending them unintended legitimacy. Simultaneously, political actors at the local level often support jirgas to maintain their influence over rural populations. This political patronage inhibits state institutions from dismantling such assemblies, further entrenching their role in perpetuating parallel justice, particularly in honor-related cases.

In sum, the jirga system in Pakistan represents more than a customary institution; it functions as a deeply embedded alternative to the formal legal order, often contradicting constitutional and international legal standards. Its operation in honor killing cases is particularly troubling, as it legitimizes gender-based violence, erodes the authority of state courts, and violates the fundamental rights of victims. Understanding the structure, authority, and persistence of jirgas is essential to any discussion of legal reform and justice delivery in Pakistan, especially in relation to violence committed in the name of honor.

Jirgas and Honor Killings: A Symbiotic Relationship

Honor killings in Pakistan are not just a product of violence on an individual level but, in many cases, a part of communal social norms that per accept gender-based violence as a means of preserving a family or tribal honor. In the maintenance of such practices, jirgas as traditional adjudicating institutions become highly significant in providing a system through which such type of killing is rationalized, negotiated and in most cases out rightly supported. In this section, the authors argue and discuss how jirgas and honor killings have turned into reinforcing interdependent systems in particular regions of Pakistan, creating a deleterious interdependence that questions the authority of law by the state and overrides constitutional protection.

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.¹⁰

The most disturbing aspect about this dynamic is the role jirga plays as a legitimizing body. Once justified under the jurisdiction of a jirga, an honor killing ceases to be considered as a criminal but an activity that is a social obligation. This changes the cultural view of honor-based violence as deviance to necessity, which protects the offenders in the eyes of society and the law. In those areas where the jirgas are entrenched, the communities may resist any inquiry by the police or court claiming that the case has already been brought to a conclusion through tradition.¹¹ Consequently, numerous honor killings are not reported, not investigated or not charged against.

Empirical research shows that in areas like Upper Sindh, South Punjab, and parts of Baluchistan, jirgas are frequently involved in post-crime reconciliation efforts, where they mediate between the perpetrators and victim's families. These reconciliations often culminate in the use of the Diyat provisions of Islamic criminal law, which allows the family of the victim to forgive the offender in exchange for monetary compensation. However, when jirgas broker these settlements, the

¹⁰ Shahzeb Khan and Aizaz Ali Khan, *Jirga as a Mechanism of Dispute Resolution: An Evaluation in the Eyes of Islamic Principles and Legal Challenges in Pakistan* | *Indus Journal of Law and Social Sciences*, March 29, 2025, <https://ojs.indusjls.com/index.php/ijlss/article/view/25>.

¹¹ "UBIRA ETheses - Crimes of Honour: Formal and Informal Adjudicatory Systems in India and Pakistan to Enforce and Contest Honour Crimes," accessed July 21, 2025, <https://etheses.bham.ac.uk/id/eprint/12312/>.

process is rarely voluntary or equitable, especially when the victim is a woman whose murder was itself sanctioned by the same forum¹².

Moreover, the jirga's collective nature further obscures individual criminal liability. Since verdicts are rendered by a group of elders, responsibility is diffused, and no one person is held accountable for the consequences. This diffusion of blame, coupled with the community's endorsement of the verdict, enables perpetrators to escape punishment with impunity. Jirgas therefore serve both as moral validators and legal shields for acts of honor-based violence. They convert what should be a matter of criminal prosecution into one of cultural arbitration, thus subverting both constitutional principles and international legal standards.¹³

The gendered implications of this relationship are particularly profound. Jirgas operate within a strictly patriarchal logic that treats women as vessels of honor and property of their male kin. Their agency, consent, and personhood are absent from the deliberative process. Even when a woman survives an attempted honor killing, jirgas may impose alternative punishments such as forced marriage, ostracism, or exile from the community. In these instances, the jirga functions not only as an adjudicator but as an enforcer of gender subjugation. This reinforces systemic gender inequality and contributes to the normalization of violence against women in the name of tradition.¹⁴

In this mutually reinforcing cycle, honor killings bolster the authority of jirgas, and jirgas legitimize honor killings. Each act of communal violence decided in a jirga strengthens its status as the ultimate moral arbitrator in the eyes of the community, further marginalizing the formal legal system. Simultaneously, each jirga-sanctioned killing erodes the reach of the constitutional criminal justice system and signals to other potential perpetrators that violence in defense of honor can be committed without fear of retribution.

This dynamic presents a major challenge to the state's legal supremacy. Despite legislative reforms aimed at limiting the use of Diyat in honor killing cases, and despite constitutional guarantees of due process and equality, the enduring operation of jirgas reveals a parallel moral and legal universe that continues to operate unchecked. Without addressing this relationship directly, any effort to combat honor killings through legal reforms alone will remain incomplete and ultimately ineffective.

Constitutional and Legal Challenges to Jirga Decisions

The continued operation of jirgas in Pakistan poses a fundamental challenge to the supremacy of the Constitution and the authority of formal legal institutions. While jirgas claim to deliver swift and culturally resonant justice, their procedural informality and normative foundations stand in direct conflict with the country's legal obligations, both domestic and international. Nowhere is this contradiction more evident than in cases of honor killings, where jirga-sanctioned decisions routinely violate constitutional guarantees, statutory protections, and human rights standards. This section critically assesses the incompatibility of jirga decisions with Pakistan's constitutional order and statutory legal framework.

¹² Robina and Allah Nawaz, "Jirga and Panchayat as the Precursor to Honour Killing in Pakistan. | EBSCOhost," January 1, 2020, 15:104, <https://openurl.ebsco.com/contentitem/gcd:142910428?sid=ebsco:plink:crawler&id=ebsco:gcd:142910428>.

¹³ "Honor Killing as a Dark Side of Modernity: Prevalence, Common Discourses, and a Critical View - Arash Heydari, Ali Teymoori, Rose Trappes, 2021," accessed July 21, 2025, <https://journals.sagepub.com/doi/full/10.1177/0539018421994777>.

¹⁴ Abdul Qayyum Gondal and Dr Zulkarnan Hatta, *Women's Rights Laws in Pakistan: Challenges and Solutions*, 5, no. 2 (2024).

At constitutional level jirgas contravene the principle of equality before the law as espoused in Article 25(1) of the Constitution of Pakistan, which states in the following words, that is to say, all citizens are equal before the law and are entitled to equal protection of the law. Jirga decisions, on the contrary, are highly stratified and exclusionary. In these forums, women, minorities and those in lower castes are often not allowed equal opinion, representation or protection. Rather than safeguarding vulnerable groups, jirgas merely support structural disadvantages through the established traditional practices that undermine the status of individual rights in favor of larger societal stability represented by tribal or familial notions of honor.¹⁵ The equal protection under the constitution is pegged useless when the jirgas authorize honor killings.

Jirgas also infringe Article 9 that entitles every citizen with the right to life and liberty. The survival is not the only reason, but in the presence of dignity, autonomy and the safeguarding of personal integrity is permitted in this provision. In issuing or authorizing honor killings, jirgas do not only take away lives but also forfeit the procedural protections attendant to any deprivation of life by the law. As jirgas are not held under any charges or trials and allowed to appeal, they are a sharp lapse to constitutional behavior. It is instructive that the state did not act to stop such decisions, which casts aspersions on positive obligations of a state as far as protecting life is concerned, not only against state agents, but also against a community of personalities like jirgas.¹⁶

In addition to that, Article 10-A amongst the provisions incorporated in the Constitution by the 18th Constitutional Amendment ensures right of fair trial and due process. These are the right to know the charges, right to enter into counsel, access to fair and impartial tribunal, and the right to appeal. All these protection mechanisms are lacked in jirga proceedings which are informal, patriarchal, and neither transparent nor predictable. This has left the people that are involved in such proceedings without a chance to defend themselves against the accusations made as well as provide defense particularly in the cases involving matters of honor. The lack of a procedural safeguards in jirgas therefore does not only breach the letter of the Article 10-A but also the democratic and legal principles.¹⁷

Statutorily, the Pakistan Penal Code (PPC) and the Criminal Procedure Code (CrPC) makes it a state concern in which the jurisdiction in criminal cases of any nature is fully vested in the state and its institutions. The category of murder, including a murder of honor is a criminal offense under Section 302 of the PPC. Nonetheless, jirga decision tends to bypass this system by addressing criminal cases privately thus hindering justice process. The implication of this is interference of the administration of justice which by itself is a punishable offence in the Pakistani law. The situation raised as a problem is worsened when the community, or political unwillingness puts pressure on such decisions, leaving no legal remedies to be obtained by the family of the victim-or the survivors.¹⁸

Moreover, Qanun-e- Shahadat Order, 1984 that regulates the law of evidence in Pakistan, requires formidable evidentiary rules and procedural practices in the criminal prosecution. Unlike jirgas,

¹⁵ Noor Mohammad Osmani and Md Fakar Uddin, "The 'Right to Equality' in Universal Declaration of Human Rights (UDHR): A Qur'anic Analysis," *Al-Risalah: Journal of Islamic Revealed Knowledge and Human Sciences (ARJIHS)* 6, no. 2 (2022): 2, <https://doi.org/10.31436/alrisalah.v6i2.406>.

¹⁶ "(PDF) 'Honor Killing' Crimes in Pakistan: A Scenario Analyzed Under Legal and Human Rights Perspective," ResearchGate, accessed July 21, 2025, https://www.researchgate.net/publication/368355282_'Honor_Killing'_Crimes_in_Pakistan_A_Scenario_Analyzed_Under_Legal_and_Human_Rights_Perspective.

¹⁷ Amr Ibn Munir, "Due Process in the 1973 Constitution and Its Judicialization," SSRN Scholarly Paper no. 4522354 (Social Science Research Network, July 27, 2023), <https://doi.org/10.2139/ssrn.4522354>.

¹⁸ Amy J. Cohen, "The Rise and Fall and Rise Again of Informal Justice and the Death of ADR," *Connecticut Law Review* 54 (2022): 197.

there are no didactic rules associated with the jirgas; instead, facts are presented in oral form, status and social belonging as well as based on a shared perception of how things are and should be done. This corrupts the whole idea of justice on the basis of the truth, objectivity, and legal examination. In situations where the honor killings are dispensed by means of the jirgas, the victims are not allowed the use of the evidentiary stages because they might acquit the victims or at least allow them a legal trial.¹⁹

Moreover, jirga rulings on such honor killings circumvent the Pakistani country obligations under international human rights law, as well as constitutional and statutory provisions. The state has adhered to all the major international agreements, which include Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and International Covenant on Civil and Political Rights (ICCPR). The two instruments compel the signatory states to do away with discrimination, guaranteeing access to justice and guarding individuals against the arbitrary deprivation of life. Through tolerating extrajudicial adjudication under the auspices of jirgas and more so in incidences of gender-based violence, Pakistan not only contravenes its own engagements with the international human rights regime, but also exposes itself to criticism by the treaty-monitoring bodies.²⁰

While the Constitution affirms the supremacy of law and the authority of the judiciary, the state's passive stance toward jirgas suggests a gap between legal theory and institutional practice. Legislative attempts to criminalize or restrict jirga activity have largely failed due to political inertia, lack of enforcement, and the entrenched power of tribal structures. This failure represents not merely a legal lapse but a constitutional crisis, wherein informal actors are allowed to exercise quasi-judicial functions in defiance of the state's exclusive mandate to adjudicate criminal matters.

It is important to note that the issue is not simply the existence of customary dispute resolution mechanisms per se. Many countries maintain traditional justice systems that complement formal institutions without undermining human rights or state sovereignty. The problem in Pakistan arises when such systems are used to adjudicate serious criminal offenses and violate fundamental rights in the process. In the case of honor killings, the legal and moral consequences are severe: victims are denied justice, perpetrators are emboldened, and the credibility of the Constitution is eroded.

The challenges posed by jirgas to constitutionalism and the rule of law are thus systemic and profound. Without effective legal reform and political will to curtail their jurisdiction—particularly in criminal cases involving honor-based violence—the promises of equality, dignity, and justice in the Constitution will remain aspirational rather than actual.

Judicial Response and Legislative Measures

Theoretically, it is the mandate of Pakistani judicial institutions and legislature to take care of the Constitution and protect people against extrajudicial and discriminational habits. Nevertheless, their reactions to the continued application of jirgas in honor killing cases have been hitch-hiking, narrowly skewed and mostly ineffective in eroding the bargaining power of the said informal systems. This section critically looks at the ways through which judiciary and legislature in the country have managed to take a look at the use of jirgas in violence connected to honor not doing enough, based on institutional inertia, normative contradiction, as well as the restrictions in its implementation.

In Pakistan only those courts formed under the Constitution or other appropriate legislation are formally recognized by the judicial system. A tribunal or some other form of forum that is not introduced

¹⁹ "Jirga System in Pakistan: A Transgression of Human Rights," accessed July 21, 2025, <https://rsilpak.org/2022/jirga-system-in-pakistan-a-transgression-of-human-rights/>.

²⁰ "Jirga System in Pakistan: A Transgression of Human Rights."

with a legitimate source of authority is invalid as a matter of constitutional law and jurisprudence. Although the supreme courts have at times recognised the risks that these paralleled forms of justice pose, such as by being used to perpetrate honor murders, this has not been followed by legal remedy much beyond declaration. Courts have not taken the path of developing a unified jurisprudence as to the illegality of jirgas instead, they have tended to restrict themselves only to making piecemeal denunciations or vague provisions of safeguarding fundamental rights. Although these responses are symbolically important, they have not been able to turn into structural deterrents that would prevent criminal matters being adjudicated at jirga level.²¹

Besides, courts have rarely applied themselves to jirgas due to sociopolitical factors. Most of these jurisdictions have been challenged by courts in most of the rural areas where formal state institutions are non-existent or non-accessible. The absence of the administrative reach, the non-cooperation of the police, and the opposition of the community members have made it difficult to act by the judiciary in instances where the jirga endorsed the decision made especially those involving honor-based violence. Workers union members who often work as professionals in their own fields are also threatened or lured to keep quiet on the issue by the power brokers in their localities who support jirga system.²² Such real-life obstacles have been reflected in a dysfunctional judicial reaction, which is marked by legal uncertainty and systematic noncompliance.

On the legislative front, Pakistan has made some notable attempts to address honor killings through statutory reform, particularly with the passage of the Criminal Law (Amendment) Act, 2016. This law aimed to close a major loophole in the Penal Code by preventing family members from pardoning perpetrators of honor killings under Islamic law provisions related to *Qisas* and *Diyat*. The reform inserted stricter sentencing requirements, especially in cases labeled as crimes committed "in the name or pretext of honour." While these changes marked a significant step toward criminal accountability, the legislation failed to address the role of jirgas in facilitating, endorsing, or mediating such crimes.²³

The legal reform focused on the *substantive* elements of honor killings, rather than the *procedural* structures that enable them. As a result, jirgas continued to operate in parallel, circumventing criminal statutes by offering extrajudicial "settlements" or coercing victims' families into silence. There has been no dedicated federal legislation criminalizing or formally banning jirgas, nor have adequate institutional mechanisms been introduced to monitor or dismantle their influence. In the absence of such targeted legislation, jirgas remain legally ambiguous yet socially powerful actors in the realm of informal justice.²⁴

Efforts to legislate against informal tribunals at the provincial level have also been piecemeal and politically sensitive. In some instances, local governments have attempted to introduce oversight over community dispute resolution bodies, such as through *Musalihati Anjuman* frameworks or village-level committees. However, these mechanisms are not designed to handle serious criminal offenses, and in practice, they have often operated in tandem with or been co-opted by traditional jirga authorities. Moreover, they lack the legal tools or enforcement powers to

²¹ "Full Article: Reading Legal Ethnographies to Re-Map Legal Pluralism: A Pospisilian Corrective to the Prevailing Dichotomous Description of Afghanistan's Legal Order," accessed July 21, 2025, <https://www.tandfonline.com/doi/full/10.1080/27706869.2023.2213519>.

²² Nadia Almusleh, "Honor Crimes: A Question of Honor, Culture, and Humanity," *Master's Theses*, May 1, 2021, <https://repository.usfca.edu/thes/1429>.

²³ "'Honour' Killings in Pakistan: Judicial and Legal Treatment of the Crime: A Feminist Perspective 7 LUMS Law Journal 2020," accessed July 21, 2025, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/lumsj7&div=8&id=&page=>.

²⁴ Faiza Shamim, "PARALLEL AND CONFLICTING LAWS," *Al-Azhār* 8, no. 01 (2022): 01.

challenge the authority of deeply entrenched tribal councils, especially in areas where such bodies are protected by political patronage or ethnic solidarity.²⁵

One of the fundamental barriers to effective judicial or legislative reform is the absence of political will. Local politicians, tribal elites, and feudal landlords frequently derive their authority from the very customary structures that jirgas represent. In return for social control and voter loyalty, they allow these institutions to operate with minimal interference. This political complicity has created a structural disincentive for any meaningful reform. Even where laws are enacted, their enforcement remains selectively applied or actively resisted at the local level.

Additionally, there has been little effort to train the police, prosecutors, and judicial officers in how to identify and respond to jirga-led violations, particularly in cases of honor killings. Without institutional awareness or inter-agency coordination, even well-intentioned reforms are likely to be absorbed into existing patterns of impunity.

In a nutshell, though both the legislature and the judiciary have shown rhetoric protest against honor killings and non-judicial justice, both have done little to put theoretical action to the good. The episodic condemnation by the judiciary is toothless as the law-making body has not been able to break apart the very systems of procedures that allow jirgas to prosper. Jirgas will remain an autonomous jurisdiction in dealing with honor killing until and unless the state takes a comprehensive approach to the problem-statutory ban, training of enforcers, and institutional reform-and comes out of the constitutional violations and preservation of a parallel system of gendered violence.

The Way Forward: Reform, Regulation, or Abolition?

The continued survival of the jirgas as an alternative system of justice, especially in honor killings, gives rise to one of the most serious threats to the democratic legal tradition in Pakistan. In very wide areas of the rural part of Pakistan, jirgas still play the role of de facto judges that is not provided by the constitution, the legislative changes, and the heightened awareness of the population. Such a clash of legal monopoly of the state with rooted social legitimacy of customary forums requires an integrated policy intervention. No matter who chooses the way will be the path of total abolition, integration, regulation by the state, or selective reform, it must be based on constitutional values, gender equality and power of the law.

There is a great reason to abolish jirgas in every respect when it comes to criminal responsibility and especially in the case of homicide. They are also not established by any formal legal system and more often than not their operation often tramples on fundamental procedural rights such as the right to a fair trial, right to counsel and the right to due process. The majority of the jirgas do not have written accounts, do not allow appeals, and are based on patriarchal rules that make women and minorities invisible before the law. According to the abolitionists, the existence of such forums to operate even informally will keep displacing the state jurisdictions and eroding the confidence of the people in the formal societies.²⁶

Yet, abolition faces deep structural and political obstacles. In many rural areas, jirgas are perceived as the only accessible or responsive form of justice. For communities historically marginalized from the state system, these customary forums offer quick, culturally resonant, and low-cost dispute resolution mechanisms. Consequently, outright abolition without providing viable alternatives may create a justice vacuum, fostering resentment and possibly even greater lawlessness. Additionally, jirgas often enjoy protection from powerful local elites who view them as extensions

²⁵ Maham Asghar and Ramisha, "Women Protection Laws in Pakistan: Issues and Challenges," *Journal of Development and Social Sciences* 5, no. 1 (2024): 1, [https://doi.org/10.47205/jdss.2024\(5-1\)65](https://doi.org/10.47205/jdss.2024(5-1)65).

²⁶ Muhammad Imran, "Gender Disparity in Judicial System of Pakistan: Attitude and Practices of Lawyers," *Journal of Law & Social Studies* 4, no. 3 (2022): 458–68, <https://doi.org/10.52279/jlss.04.03.458468>.

of their influence over tribal or caste-based constituencies. Therefore, a state-driven strategy of eradication would require simultaneous investment in rural judicial infrastructure, police reform, and civic legal literacy, all of which demand political will and sustained funding.²⁷

Another recommendation indicates it should be regulated or chosen to be incorporated formally into the state law. It would entail separation of their contribution to civil mediation (e.g. land, inheritance and family disputes) and forbidding their intervention into criminal cases. Institutionalizing state regulated dispute settlement mechanisms such as other relationships that employ alternative dispute resolution (ADR) mechanisms operating in other countries--would enable the state to access the availability of jirgas without the promotion of violent or unconstitutional aspects in their organization. Nonetheless, this sort of compromised methodology comes with its share of dangers: it can unknowingly sanction patriarchal values in the name of cultural appreciation or pose an unhealthy precedence on the invulnerability in locales that state authorities cannot sufficiently enforce.²⁸

One of the major principles that should be put into focus in a rights-based approach is the non-negotiability of constitutional concepts. No reform should allow the trial of honor crime- or any gender-based violence- on other platforms than criminal courts. The introduction of the specialized Gender-Based Violence (GBV) courts and the extension of the mobile court system may be very practical in areas where the jirgas are dominant. Similarly, the initiatives of legal empowerment- i.e. community-based paralegals, publicity campaigns, and networks of legal aid providers are also needed to make vulnerable people, particularly women informed about, as well as aware of formal legal recourse.²⁹

Additionally, federal legislation is urgently needed to criminalize the adjudication of criminal offenses by non-state forums. Such a law should define and outlaw extrajudicial tribunals operating outside the constitutional mandate, particularly when their decisions lead to human rights violations. This law must include both punitive sanctions for individuals presiding over such jirgas and institutional accountability mechanisms for local officials who allow or participate in them. Enforcement should be supported by an independent monitoring body, perhaps linked to the National Commission on the Status of Women or a parliamentary oversight committee on human rights.³⁰

Educational and ideological change is also essential. The normalization of honor killings and the legitimacy of jirga rulings are deeply embedded in patriarchal cultural narratives. Reforms must be accompanied by long-term strategies of gender sensitization, particularly in school curricula, public service training, and religious discourse. Clerics, teachers, and community elders must be engaged not merely as targets of regulation but as potential agents of social transformation. Without this cultural shift, legal reforms will remain ineffective against deeply entrenched community norms that valorize honor over life and obedience over justice.

In the final analysis, the state must make an historic decision they can either choose to continue to aid and abet a system, whose assumption is that extrajudicial executions and parallel governments

²⁷ "Reviving the Jirga System as Alternative Dispute Resolution (ADR) in Pakistan's Tribal Areas," <https://Pide.Org.Pk/>, n.d., accessed July 21, 2025, <https://pide.org.pk/research/reviving-the-jirga-system-as-alternative-dispute-resolution-adr-in-pakistans-tribal-areas/>.

²⁸ Samra Iqbal and Waheed Iqbal Chaudhry, "An Analysis of Jirga System and Perception of Local People: A Case Study of Bahadur Khan Village, Attock District, Pakistan," *Journal of Development and Social Sciences* 4, no. 4 (2023): 4, [https://doi.org/10.47205/jdss.2023\(4-IV\)19](https://doi.org/10.47205/jdss.2023(4-IV)19).

²⁹ Geetanjali Gangoli, "Gender-Based Violence, Law, Justice and Health: Some Reflections," *Public Health Ethics* 13, no. 1 (2020): 29–33, <https://doi.org/10.1093/phe/phaa012>.

³⁰ Kamran Adil, "Jirga System in Pakistan: A Transgression of Human Rights," *Research Society of International Law / RSIL*, April 11, 2022, <https://rsilpak.org/2022/jirga-system-in-pakistan-a-transgression-of-human-rights/>.

are acceptable, or they can exercise their constitutional mandate with regard to destroying illegal and discriminating systems. The formal legal system should not be reformed without undertaking radical measures on the informal means of trivializing human rights and justifying violence. In whichever way; of abolition, regulation or integration, any approach should make sure it re-establishes the supremacy of the constitution and the respect of women and the sanctity of life. The future justice in Pakistan should not be two-dimensional; the justice that should be bound together, fair, and based on legality and not legacy.

Conclusion

The continuity of jirgas as avenues of parallel justice in Pakistan and even more so in honor killings cases, showcases a significant conflict between the notion of constitutional ideals and social-cultural realities. Although the Constitution of Pakistan ensures that citizens enjoy core rights that include the right to life, equality before the law and due process, the exercise of these rights turns to be meaningless when such rights are disregarded in regions where customary forums have greater power compared to those of formal government. Jirgas not only fulfill their role of a locally accepted conflict resolution method but also serve as mechanisms of the routine disempowerment of the rule of law, empowerment of patriarchy and the normalization of violence against women in their country.

Honor killings are one of the most outrageous examples of such an extra-legal system of justice. Such crimes are not mere products of either at Grasse personal moral weakness or cultural backwardness, and such crimes are the consequence of liberality of the laws in which parallel systems are practically immune. In administering criminal cases, including murder, without due process or legal responsibility, jirgas themselves undermine the powers of the state, as well as denies the victim of those crimes the benefits of constitutional protection.

Any attempts to seem this parallel system should deal with the two-fold reality in which jirgas are not only socially placed but legally unaccountable. Although certain reformists propose to include jirgas in the justice architecture of the state within the protection of legislative models, this would lead to the legitimization of the forums that work according to the principles of exclusionary and patriarchal logics. Conversely, direct abolition, as an approach may work but is strongly resisted by local power structures, combined with poor infrastructure (judicial and otherwise) and the traditional mistrust of the formal courts by the general population.

The solution is by way of a mix of remedies that doubles up on both the principle of supremacy of constitutional law and targeting the socio-political situations where jirgas proliferate. These are criminalizing of the illegal exercise of adjudication of criminal acts, increasing the ability to connect to formal legal procedures in underdeveloped areas, and enhancing investment in legal literacy and gender-sensitive mass education. Alternatives that are practical to customary systems can also be in form of setting up gender-based violence courts, mobile courts, and networks of paralegals.

Notably, legal changes should be followed by a wider shift in the society. The constructs of culture, linking female obedience and male power to the idea of honor, should be exposed as the enemies of any work by the educational community, media, and religious rhetoric. This war against jirgas and honor killings is not only a legal war but an ideological war as well which needs to kill the social legitimacy that could be supporting it.

To sum up, it could be concluded that the existence of jirgas in the cases of honor killings is not so much a legal anomaly as a structural injustice. It raises fundamental doubts on the aspect of constitutional commitment on human dignity and upholding of rights by Pakistan. The state is now faced either with the decision to stand by its legal and moral duties or rather to continue to remain complicit to a system that not only justifies extrajudicial violence but also cloaks this

action under the supposed mantle of tradition. Parallels admit of no justice and no dignity of impunity.

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