

Jirga System in Pakhtun Society: An Informal Mechanism for Dispute Resolution

Barakatullah Advocate & Imran Ahmad Sajid

Abstract

Jirga is an informal mechanism in Pakhtun society for the resolution of civil and criminal disputes. This article analysis the legal and constitutional status of *jirga* system in the light of case laws in Pakistan. For the said purpose, Pakistan Criminal Law Journal, Supreme Court Monthly Review, Pakistan Legal Decisions and other sources were consulted. The findings show that *jirga* system is in contradiction with some of the constitutional provisions in Pakistan. However, it cannot be discarded immediately. There is a room for improvement in the *jirga* system.

Keywords

Jirga, Pakhtun Society, Pakhtun, FATA, PATA, Pakhtunkhwa.

Introduction

Jirga means 'an assembly, meeting of a party for consultation, and a sort of democratic council.' According to the Pashto Descriptive Dictionary *jirga* is an original Pashto word, which in its common usage refers to the gathering of a few, or a large number of people; it also means consultation according to this source. The word *jirga* is also used in Persian, Turkish and Mongolian languages that appears to be related to the word 'circle', but is commonly used to refer to the gathering of people. But regardless of the origin of the word, *jirga* refers to "Pashtun traditional tribal *jirga*, local/tribal institution of decision-making and dispute settlement that incorporates the prevalent local customary law, institutionalized rituals, and a body of village elders whose collective decision about the resolution of a dispute (or a local problem) is binding on the parties involved.

Jirga, in Persian is called *Majlis* and in Punjabi and Hindi *Panchayat*. The *Jirga* exercises both judicial and executive roles to settle all disputes pertaining to the distribution of land, properties, blood feuds, blood money and other important inter-tribal affairs on the basis of tribal conventions, traditions and principles of justice. There are no hard and fast rules for the selection of *Jirga* members. All reputable elders - Speen Geeri (white-beards) - are considered eligible for its membership. However, for effective enforcement of the decision taken by the *Jirga*, the *Jirga* members should have social status with sound economic position and sufficient manpower at home. The *Jirga* assemblies are normally held in a hujra or a village mosque or in an open field outside the village. The *Jirga* members usually sit in a circle without any presiding figure. This meeting, like the round-table conference, without a chairman, reflects their love of democracy and principle of equality.

In Pakhtun culture, most criminal cases are handled by a tribal *Jirga* rather than by laws or police. The *jirga* comprises of two or more persons, who are normally family elders or their representatives. Authority and competence of a *jirga* member depends upon the nature of the problems the *jirga* has to tackle.

If there is any dispute between two families, two individuals, two villages, or two tribes, such disputes are often resolved peacefully through a *Jirga*.

A *Jirga* consists of the most respected members of both parties and a third man (or party) as an arbitrator is selected by both the parties. The job of the arbitrator is to listen to the grievances of both the parties, and then provide a peaceful solution. Both the parties must agree on the solution in order for the *Jirga* to be completed. If any of the party is not agreeing, the *Jirga* has to look for other alternative solutions. However, once both the parties agree on the decision of the *Jirga*, none of them can deviate from the decision in the future. If they do, they lose their *Nung* (respect) in the society.

The *Jirga* System is not a new Phenomenon but Obscured by the Constitutional Way of Life.

In the present circumstances, the *jirga* system caught attention of the international community through media. Particularly in post 9/11 scenario when the US gave ultimatum to the then Taliban government on Thursday September 20, 2001, to handover Osama to the US government, the Taliban called upon a *Loya Jirga* (Grand *Jirga*). However, in the most recent scenario, a few decisions of violence against woman were recorded through *jirga* that caught media's attention. As a result some doubts were created about this institution.

Tribal societies are normally reluctant to accept ordinary laws and formal judicial systems. The reasons are manifold. In Pakistan, the Pakhtun and Baloch tribes had resisted the British colonial rule for almost a century, and with their continued struggle compelled the then mighty power to surrender to their demands of making the rules of Shariah and their local customs as part of their laws. As a result, Frontier Crime Regulations were introduced in 1901 in Pakhtun Tribal Area known as FATA. From then onward, the tribal territories in Pakistan are still administered under a complex political and legal system.

The main purpose of this article is to discuss the legal status of *Jirga*. Despite some positive aspects of the institution, courts of normal jurisdiction are generally reluctant to accept the verdicts of *Jirga*.

The *Jirga* system is based on custom. It is not the only instance where the legal mechanism established for the resolution of disputes has its roots in customary law. It is worth mentioning that custom and usage is one of the primary sources of the law

of England. *Jirga* is a product of custom, which has been practiced since time immemorial, when there were no codified laws. Quddus refers that “*The Jirga.....is probably the closest approach to Athenian democracy that has existed since the original.*”

Structure of a *Jirga*

For a *jirga* to constitute, there must be

1. At least two parties (p)
2. An unresolved dispute between the parties (d)
3. The parties agree that the dispute needs a solution (r)
4. An arbitrator (selected through consensus of both the parties) (a)

If any of the above variables is absent, a *jirga* cannot be constituted. For example, if variable 'p', 'd', and 'a' are present but the parties don't want an agreement, then the *jirga* would not be constituted. Likewise, in the absence of 'a' no *jirga* can be constituted.

Functions of *Jirga*

The function of *jirga* is resolution of the dispute through consensus. Both the parties must accept the decision being taken by the *jirga*. As mention earlier, after the acceptance of a decision of the *jirga*, if any party breaches that decision, they lose their *Nung* (respect) in the society. For a Pakhtun, *Nung* is everything. If an individual or a family loses *Nung*, their survival becomes extremely difficult. Usually, they lose all their social ties in the community. In most cases, such parties migrate to other communities.

While resolving disputes between individuals or tribes through *Jirga*, usually an elder of the tribe will preside over the proceedings and pronounce his verdict, which has a binding effect and normally not open to review. According to Scottish philosopher David Hume “Custom.... is the great guide of human life.” The fact cannot be denied that *Jirga* provides an expeditious, rapid and inexpensive justice to the litigants, when compared with contemporary formal litigation.

Criticism on *Jirga*

There have been negative aspects of dispute resolution through *jirga* as well. One of the main complaints about *jirgas* is the unequal treatment of disputing parties. It is normally complained that the mighty and influential figures and government officials making part of the local administration exploit and abuse this tradition.

Kinds of *Jirga*

There are various types of *Jirgas* that exist in the contemporary tribes. Most notable among these are:

1. Tribal *Jirga*

Tribal *Jirgas* are those which are held in tribal area i.e. non settled area where custom prevails.

2. *Majlis* or *Shura*

Majlis is a Persian and *Shura* is an Arabic word, both with meanings similar to that of the *Jirga*. In order to give anti-communist struggles an Islamic touch, the term *Shura* was applied exclusively to councils at various levels among the mujahideen and muhajireen in Pakistan since 1978.

3. Local *Jirga*

The local *Jirga* / *shura* in a tribal setup is called by an elder of a tribe for settling local affairs within the family, clan, sub-tribe, and tribe. This term was used in special and local laws of different tribal areas.

4. Sarkari *Jirga*

This type of *jirga* is established under the Frontier Crimes Regulation (FCR) 1901. A political agent, his assistant or another official of the political administration exercising the powers of a magistrate can designate a group of elders to try a criminal or a civil case.

The FCR authorizes settlement of civil and criminal disputes by this *Jirga* that arise out of blood-feuds, relating to *zan*, *zar*, *zamin* (women, wealth and land) and all other questions affecting the Pakhtoon honor and way of life. This *Jirga* can inflict a maximum penalty of up to fourteen-year imprisonment.

5. Qaumi or *Ulusi Jirga*

Ulasi Jirga is an assembly of the elders comprising each household of a certain village or community. It is convened to discuss matters such as collective property, rights and distribution of irrigation water, or common concerns, like selection of a site for a school, etc.

6. *Shakhsi Jirga*

This *Jirga* is formulated in disputes between two individuals or families. The *Jirga* members are chosen from both the parties to arrive at a just settlement acceptable to both sides.

7. *Loya Jirga* (Grand Assembly)

A *loya jirga* is a type of *jirga* regarded as "grand assembly." A *loya jirga* is a mass meeting usually prepared for major events such as choosing a new king, adopting a constitution, or discussing important national political or emergency matters. It is also used for resolving disputes amongst Pakhtuns in Afghanistan, Balochistan, Khyber Pakhtunkhwa and FATA. In Afghanistan, the *loya jirga* was originally attended by the Pashtuns, but later included other ethnic groups. It is a forum unique among the Pashtun tribes in which, traditionally, tribal elders meet together.

Methodology

This research paper is based on archival research. The researchers collected various case laws regarding *jirga* in Pakistan and even before partition of British India in 1947. The cases were recorded from Pakistan Criminal Law Journal (PCrLJ), Pakistan Law Digest (PLD), Pakistan Law Journal (PLJ), Supreme Court Monthly Review (SCMR), Monthly Law Digest (MLD), All Pakistan Law Decisions (APLD), and others.

Status of *Jirga* in Pakistan

The National Commission on the Status of Women (NCSW) filed a petition in the Supreme Court thereby seeking a declaration that the *jirga* system in the country being inhuman and against the fundamental rights of citizens be declared unlawful. In that case, the Supreme Court has already issued notices to the Secretaries of law of all the four provinces and Gilgit Baltistan. Similarly, another petition has been filed by Samar Minallah against *Swara*, a custom in which girls and women are exchanged to settle disputes through *jirga*. These two petitions have been clubbed together for hearing by the Supreme Court. Some of the darkest decisions by the *jirga* were referred to in this petition, such as decision to parade naked, decision to kill a wife by her own husband on suspension of illicit relations with his brother.

In the Haripur *Jirga* Trial of June 7, 2011, the NCSW petition has cited an inhuman and immoral decision by the *jirga*. In this decision, the *jirga* orders were against a middle-aged woman, Shehnaz Bibi, who was ruthlessly dragged out of her home and forced to parade naked on the street as punishment for an alleged crime of her sons.

Similarly, on an ex-parte *jirga* decision at Bari Kot village in Swat, Ms. Shazia was murdered by her husband Muhammad Saeed and others on the suspicion of his wife's alleged illicit relationship with his brother.

In the above two petitions, the petitioners have requested the court to declare the *jirga* system unconstitutional for being a parallel judicial system having assumed the powers of civil and criminal courts. It has also been prayed through the said petitions that actions taken, proceedings conducted and orders passed by any *jirga*, *panchayat* or similar bodies be declared *void ab initio*, and appropriate action be taken against those who participated, aided or abetted these illegal activities.

Now the question arises that whether the institution of *Jirga* is in conflict with the fundamental rights guaranteed by the Constitution of Pakistan?

Article 4 of the constitution of Pakistan guarantees the *right of equality before law* and *to be dealt with according to law*. The newly inserted Article in the Constitution in the shape of 10-A guarantees the *right to fair trial*. In the course of proceedings before a *jirga*, the above mentioned two rights are violated in a way that normally no defence opportunity is given to a party before it. Likewise, some members of a tribe may get preferential treatment, which militate against the principle of equality before law and equal protection of law. However, the same may happen in our formal judicial system.

Jirgas are usually convened when things become too violent between two families or tribes and nobody agrees to any documentation. It is the code of honour that everyone abides by the verdict of *jirga*. Ironically, in tribal areas there is no civil or criminal court to resolve a dispute between the parties and the affairs of the area are directly governed by the Political Agent, Assistant Political Agent and Tehsildar etc., who are the government employees. In *Jirga* laws there are provisions to the effect that a dispute may be resolved through the *jirga* for that, they are seeking permission from the concerned authority on the ground, because the people still believe that the tribal justice system is better and there dispute can be resolved through *jirga* expeditiously.

Some people have different views about the *jirga* system that it creates an imbalance. It is a parallel judicial system with no legality or constitutionality. There is no standard of evidence to be recorded, no right of appeal is given to aggrieved person, some time no opportunity is given to the person who committed wrong, not asked for the doing of his act, on many occasions some are punished for the wrongs of others e.g. in a murder case *swara* (given female to the choice of aggrieved person by the aggressor party to prevent both the parties from future enmity) and in the case of Shazia Bibi of Haripure (who was punished to parade naked for the crimes of her son). Zaheer Abbas considers *Jirga* as gender-biased because women are given no representation in *jirgas*, even as witnesses. Likewise, there is no system of appeal in *jirga* system. There are still some other disadvantages of *jirga*; in many cases, for instance, the *jirga* members favor one party either due to their relation, bribes by

the party, or even political influence. In any case the weaker party suffers. Of course, formal courts do these things as well and we have no evidence about which institution does them more frequently, or do we?

Case Law Studies of *Jirga* in Pakistan and Views of High Courts and Supreme Court of Pakistan.

It will not be out of place to mention that all those *jirgas*, which are conducted with the permission of the court are acceptable to the courts and have binding effect in PATA and FATA i.e. Provincially Administered Tribal Area and Federally Administered Tribal Area. All matters are resolved through *jirga* with the consent of parties and both parties assign *jirga* members. After *jirga* decision, the same is placed before the Political Agent (PA) and it is his discretion to confirm the same or constitute a second *jirga*. The whole process is regulated under the Frontier Crimes Regulation 1901. Similarly, in another law, the Arbitration Act 1940, the parties seek permission from the court to settle their dispute outside of the court. For that purpose an arbitrator is appointed, who thereafter gives his report. His report is subject to confirmation by the court, and when the court confirms the same it becomes an award. The litigants are bound to follow the same, it is pertinent to mention that section 89-A of the Code of civil Procedure 1908 also provides Alternate Dispute Resolution in which the parties decide matters outside the court for speedy justice.

1. Punishment by *Jirga* is Not an Award

On the other side the *jirga* has its own procedure and decisions which cannot be called an award e.g. in a case cited 1994 SCMR 38 titled “Maj, (Retd.) Mian BADSHAH-versus Major (Retd.) BAHADUR SHAH, in Supreme Court of Pakistan.” It was held by justice Nasim Hasan Shah, Actg. CJ., Muhammad Afzal Lone and Sajjad Ali Shah, JJ that

“---S.2 (b)---Award---Parties referring their dispute for decision to *Jirga* in accordance with custom prevailing in the society---Decision of *Jirga* did not qualify to be an award within meaning of S. 2 (b), Arbitration Act, 1940”.

2. *Jirga* as Against the Provisions of the Constitution

Similarly it was declared in the landmark judgment by the Sindh High Court which declared the *jirga* system in Sindh unlawful, illegal, and against the provisions of the Constitution and law of the land in a cited case 2004 P Cr. L J 1523 [Karachi] in a title case Mst. SHAZIA Versus STATION HOUSE OFFICER and others. Moreover, it was also held by Justice Rahmat Hussain Jaffer, J

“---*Jirga* system is not a creation of the Constitution or law ---*Jirga*, therefore, is not a Parliament and they cannot declare a valid marriage contracted under the provisions of the relevant law as invalid or unlawful”. Whereas it was further held that *jirga* is “not protected by any law---functions, which are exclusively to be performed by the Courts of law are being performed by the *Jirgas* thereby usurping the power of the Courts ---*Jirgas* as such are a parallel judicial system which by themselves are unlawful and illegal and are not protected by any law---Decision of *Jirgas* being final, no appeal is filed against them which is also against the principle of natural justice”.

3. *Jirga* and Protection of the Law

It is the function of the *jirga* by seeking permission from both the parties in dispute to settle the matter whereas for such it is necessary that if the matter is before the court then the permission of the court is necessary e.g. justice Rahmat Hussain Jaffer held that

“ ---Compromise effected by *Jirga* has no protection of law---Matters referred to a *Jirga* to settle the dispute or effect a compromise between the parties without the permission of the Court will not be protected by the law as such *Jirga* will not be having blessing or backing of the Court. ”

It was further held that *Jirgas* are against the tracheotomy powers of the Constitution and are exercising the power of Legislature, Judiciary and executive enshrined therein and in this way are undermining or attempting to undermine the provisions of the Constitution.

Here a question rises regarding constitution itself. Does this decision of Justice Jafferri mean that any practice, which does not fall within the ambit of the constitution, should be eradicated?

4. **Jirga Decisions under FCR and Revision by the High Court**

It was held in the other cited case P. L. D. 1950 Lahore 126 by Justice Muhammad Jan in the case titled “Langar Khan versus the Crown” in the Criminal Miscellaneous petition No. 1287 of 1946, decided on 1st May, 1947, under sections 491, 498 and 561-A., Criminal Procedure Code, praying that the petitioner may be set at liberty and the judicial proceedings may be quashed. It was held by him that Order of reference to *Jirga* by Deputy Commissioner-Order is an executive act that is not open to revision by High Court. The order of reference to a *Jirga* by the Deputy Commissioner, in places where the Frontier Crimes Regulation applies, is an executive act and such an order is not open to revision by the High Court. It was further observed that person detained under - Criminal Procedure Code (V of 1898), S. 491-whether can be invoked. Under S. 491, cl. (b), Criminal Procedure Code, the High Court can set a person at liberty only if the person is illegally or improperly detained. Since an order of reference to a *Jirga* under the Frontier Crimes Regulation is not open to revision by the High Court, the High Court is not in a position to determine whether the reference to *Jirga* was illegal or not and consequently it could not be held that the detention as a result of the decision by the *Jirga* was illegal or improper.

It was unanimous held by Justice Muhammad Ishaq Khan and Nazir Ahmad Bhatti, in the cited case P L D 1989 Peshawar 211 titled “MOAMBAR--Petitioner Versus Additional Secretary Home for Government of the N.-W.F.P.,” that the Deputy Commissioner is bound to accept the unanimous or majority findings of the *Jirga*. Similarly the Commissioner would not have the power to discard the unanimous or majority findings of the *Jirga* when deciding an appeal unless he was of the opinion that there was any defect in the proceedings. This shows the binding effects of *jirga* and its importance.

5. **Jirga in PATA Acts Like a Court**

It was held by Justices Basal Ilahi Rhan and Muhammad Azam Khan, in cited case PLD 1989 Peshawar 86 titled “Taj Malook Versus E. A. C. I, SWAT” that Circumstantial evidence can support a case as much as direct evidence if it is

is substantial evidence and on this analogy setting aside previous award of *jirga* and directing fresh trial, it was observed that new *Jirga* would not be bound to record fresh evidence--Such observation was wrongly construed to have created a bar to recording fresh evidence as it had been left to discretion of new *Jirga* whether or not to take fresh evidence--*Jirga* was free to record fresh evidence if it wanted and could also rely on previous evidence if it found it adequate and acceptable for reliance--Circumstantial evidence on basis of which accused was originally convicted by previous *Jirga* admittedly not being substantial and no attempt having been made during fresh trial to collect fresh material, without recording fresh evidence, it was meaningless to hold fresh trial and *Jirga* in relying on already rejected evidence had acted unfairly--High Court remanded case for re-hearing by another *Jirga* to decide afresh after collecting fresh material. All of this shows that the *jirga* has powers even to convict or acquit the accused from the charges and through this was acting like court.

6. *Jirga* and Grant of Bail

Sher Ali Khan, whose case was referred to council of elders and in meanwhile he applied for bail but Justice Jamil Hussain Rizvi held in a cited case P L D 1963 (W. P.) Lahore 281 that when the case is referred to the council of elders then even the High court has got no jurisdiction to grant thus bail and the aggrieved person cannot apply for bail before the district magistrate while observing the case he also referred:

"Although it is the Deputy Commissioner who refers the case to a Council-of-Elders, he does not, while doing so, take off his magisterial functions as if these were pair of trousers. He does not strip himself of all other powers. He can exercise them when necessary. He even passes orders of bail while the case is pending with the Jirga . He does not say to the prisoner when referring his case. Because I am referring the case as a Deputy Commissioner, I am also detaining you as a Deputy Commissioner."

It is contended by the learned counsel for the petitioners that the ratio of the authority is that the Magistrate continues to exercise his magisterial functions and is, therefore, competent to pass an order of bail subject to the Superintendent of the High Court. This contention of the learned counsel has no force, as section 20 of the FCR gives the powers, to the Deputy Commissioner to pass orders of bail or otherwise of the accused. Though, the Deputy Commissioner may exercise his magisterial powers but he does not do so under the Criminal Procedure Code. He exercises those powers under the

authority of section 20 of the, F. C. R. The learned counsel for the State has cited Noor Muhammad and others v. Emperor (A I R 1944 Lah. 896) in which the High Court, while considering the forfeiture of the bonds taken by the Deputy Commissioner from the accused in a trial before his case was referred to a *Jirga*, held that “*the High Court had no power to interfere in the order as the bails were confiscated by the Deputy Commissioner under section 20 of the F. C. R.*” I am in respectful agreement with the remarks in this authority. It has been remarked in this authority :-

“The Deputy Commissioner is competent to grant or refuse bail to the petitioners in exercise of the powers under section 20 of the F. C. R. His order is revisable by the Commissioner. In those circumstances, I consider that the High Court will have no powers to grant bail to an accused person if the case has been referred to the Council-of-Elders by the District Magistrate.”

Sind Crimes Regulation has similar provisions and in the case of Imperator v. Ghulam Kadir Walad Faiz Mahomed (12 Cr. L J 568) the Chief Court held that

“there was no power of bail under section 498, Cr. P. C. to Chief Court in a case which had been referred to the Council-of-Elders. I would, therefore, pass no orders of bail in these petitions. The petitioners may apply for bail in these petitions. The petitioners may apply for bail to the District Magistrate.”

Here is the situation that once the matter is referred to the *Jirga* under the FCR then the High Court is reluctant to exercise its powers.

Feudal lords, politicians, police, bureaucracy and parliamentarians, all seem to join hands to keep the *jirga* system alive and flourish, because there is no law regarding the non holding of *jirga* nor condemn the same. Likewise, the reason d'être may be that the informal system is speedy and does not cost any fee to the disputant parties. Some argue that this parallel judicial system has strengthened feudalism, as the elders of the *jirga* are usually the feudal (politicians or other influential figures) of their respected area.

Despite severe criticism and identified shortcomings, people in Pakhtun society trust the *jirga* more than any other system. In a survey finding, Naveed Shiwari found out that more than 70% respondents preferred *Ulas Jirga* or the informal *jirga* (non-FCR or Taliban) for their dispute resolution. It is a further astonishing finding that more than 70% of the respondent who choose *Ulas Jirga* over FCR *jirga* were educated respondents.

Conclusion

To sum up, constitutional status of *jirga* is not clear. Or we would rather say that the *jirga* is unconstitutional because in *jirga* the right of hearing and the right of appeal is not available to the parties (constitutional rights). Moreover, it is also against Article 4 and 10 A of the constitution of Pakistan, 1973. The other flaws in the *jirgas* are that in majority cases the decision of *jirga* does not reflect justice, as in the case of Shazia Bibi of Haripure who was punished to parade naked in front of the crowd.

It is parallel to the judiciary where the judges are well equipped with the legal theories and jurisprudential matters etc and they, after recording pro and contra evidence, provide proper opportunity to both the parties to decide the case on a matter, which is subject to appeal, review, revision etc. meaning thereby due to this check and balance the judges mostly administer proper justice. However, the question arises, are they always more competent than those sitting in the *jirga*? Are some judges worse than incompetent, even systematically corrupt? It needs further research.

On the other side where there is no check and balance on the decision of the *jirga*. Courts should be a check and balance on their decisions. Law reforms could easily give the courts that function in a clearly defined way. The fact that the law has failed to do so is not an argument for abolishing *jirga*.

The other aspect that in *jirga* especially when they decide *swara* is against the constitution of Pakistan. Again, when this happens it is the job of the police, prosecutors and courts to ensure that *jirga* comply with the law. When this does not happen it is as much a failure of the courts as it is a failure of the *jirga*. And the failure of both to ensure compliance with the law at times is not an argument for abolishing either courts or *jirga*.

End Notes

¹Syed Abdul Quddus. (1990). *The Northwest Frontier of Pakistan*, "The Jirga System," Karachi: Royal Book Company. pp. 174-180.

²Sulaimaan Khan. (2013) Jirga That can bring Peace. Unpublished Student Essay.

³Bush delivers ultimatum. (September 21, 2001). In *CNN*. Retrieved July 17, 2013 from <http://archives.cnn.com/2001/WORLD/asiapcf/central/09/20/ret.afghan.bush/>

⁴'Rights' activists urge SC to ban jirga system. (May 31, 2012). In *The Express Tribune*. Retrieved July 17, 2013 from

<http://tribune.com.pk/story/386606/parallel-courts-rights-activists-urge-sc-to-ban-jirga-system/>

⁵Chapter III of Frontier Crime Regulations 1901

⁶Loya jirga. (2013, April 15). In *Wikipedia, The Free Encyclopedia*. Retrieved 16:11, July 17, 2013, from http://en.wikipedia.org/w/index.php?title=Loya_jirga&oldid=550487860

⁷SC to hear petition against jirga system. (March 16, 2013). In *Daily Dawn*. Retrieved July 17, 2013 from <http://beta.dawn.com/news/703254/sc-to-hear-petition-against-jirga-system>

⁸Waseem Ahmad Shah. (March 25, 2013). 'Superior courts focus on helping swara, vani victims'. In *Daily Dawn*. Retrieved July 17, 2013 from <http://beta.dawn.com/news/705527/superior-courts-focus-on-helping-swara-vani-victims>

⁹National Commission on the Status of Women. (March 10, 2012). PAKISTAN: Supreme Court takes petition against Jirga system for regular hearing. In *Asian Human Rights Commission*. Retrieved July 17, 2013 from <http://www.humanrights.asia/news/forwarded-news/AHRC-FPR-013-2012/?searchterm=>

¹⁰Ibid

¹¹Ibid

¹²Zaheer Abbas. (March 29, 2013). Jirga System and the Plight of Women. In *Daily Dawn*. Retrieved July 17, 2013 from <http://x.dawn.com/2013/03/29/jirga-system-and-plight-of-women/>

¹³Ibid

¹⁴Ibid

¹⁵Ibid

¹⁶Ibid

¹⁷Zaheer Abbas. (March 29, 2013). Jirga System and the Plight of Women. In *Daily Dawn*. Retrieved July 17, 2013 from <http://x.dawn.com/2013/03/29/jirga-system-and-plight-of-women/>

¹⁸Irfan Ghauri. (May 04, 2007). Corrupt Judicial System Losing Credibility. In *Daily Times*. Retrieved July 18, 2013 from http://www.dailytimes.com.pk/default.asp?page=2007%5C05%5C04%5Cstory_4-5-2007_pg11_2; and see also

“Pakistani judicial system groans under corruption, volume of cases”. (February 03, 2012). In *Public Radio International*. Retrieved July 18, 2013 from <http://www.pri.org/stories/world/asia/pakistani-judicial-system-groans-under-corruption-volume-of-cases-8268.html>

¹⁹Zaheer Abbas. (March 29, 2013). Jirga System and the Plight of Women. In *Daily Dawn*. Retrieved July 17, 2013 from <http://x.dawn.com/2013/03/29/jirga-system-and-plight-of-women/>

²⁰Naveed Ahmad Shinwari. (2011). *Understanding Jirga in FATA*. Peshawar: CAMP.

References

Abbas, Zaheer. (March 29, 2013). Jirga System and the Plight of Women. In *Daily Dawn*. Retrieved July 17, 2013 from <http://x.dawn.com/2013/03/29/jirga-system-and-plight-of-women/>

Ali Rehman Versus Additional Secretary, Home Department. (1985). *Pakistan Criminal Law Journal*. 445 Peshawar.

Badshah, Maj (Retd) Mian, versus, Bahadur Shah, Major (Retd). (1994). In *Supreme Court Monthly Review*. 38

Bush delivers ultimatum. (September 21, 2001). In *CNN*. Retrieved July 17, 2013 from <http://archives.cnn.com/2001/WORLD/asiapcf/central/09/20/ret.afghan.bush/>

Chapter III of Frontier Crime Regulations 1901

Frontier Crimes Regulation 1901

Ghuri, Irfan. (May 04, 2007). Corrupt Judicial System Losing Credibility. In *Daily Times*. Retrieved July 18, 2013 from http://www.dailytimes.com.pk/default.asp?page=2007%5C05%5C04%5Cstory_4-5-2007_pg11_2; and see also

Imperator v. Ghulam Kadir Walad Faiz Mahomed (12 Cr. L.J 568)

Jan, Justice Muhammad. (1st May 1947). Langar Khan versus the crown. *Criminal Miscellaneous petition No. 1287 of 1946*.

Jirga. (2013). In *The Free Dictionary*. Retrieved July 18, 2013 from <http://www.thefreedictionary.com/Jirga>

Khan, Sulaimaan. (2013) Jirga That can bring Peace. Unpublished Student Essay.

Loya jirga. (2013, April 15). In *Wikipedia, The Free Encyclopedia*. Retrieved 16:11, July 17, 2013, from http://en.wikipedia.org/w/index.php?title=Loya_jirga&oldid=550487860

- National Commission on the Status of Women. (March 10, 2012). Pakistan: Supreme Court takes petition against Jirga system for regular hearing. In *Asian Human Rights Commission*. Retrieved July 17, 2013 from <http://www.humanrights.asia/news/forwarded-news/AHRC-FPR-013-2012/?searchterm=>
- Noor Muhammad and others v. Emperor (AIR 1944 Lah. 896)
Pakistan Legal Decisions, 1950 Lahore 126
- Pakistan Legal Decisions. (1963). Lahore: West Pakistan 281
- Pakistan Legal Decisions. (1989). Peshawar 86 titled Taj Malook Versus E. A. C. I, Swat.
- Pakistani judicial system groans under corruption, volume of cases”. (February 03, 2012). In *Public Radio International*. Retrieved July 18, 2013 from <http://www.pri.org/stories/world/asia/pakistani-judicial-system-groans-under-corruption-volume-of-cases-8268.html>
- Quddus, Syed Abdul. (1990). *The Northwest Frontier of Pakistan*, “The Jirga System,” Karachi: Royal Book Company. pp. 174-180.
- Rights' activists urge SC to ban jirga system. (May 31, 2012). In *The Express Tribune*. Retrieved July 17, 2013 from <http://tribune.com.pk/story/386606/parallel-courts-rights-activists-urge-sc-to-ban-jirga-system/>
- SC to hear petition against jirga system. (March 16, 2013). In *Daily Dawn*. Retrieved July 17, 2013 from <http://beta.dawn.com/news/703254/sc-to-hear-petition-against-jirga-system>
- Shah, Waseem Ahmad. (March 25, 2013). 'Superior courts focus on helping swara, vani victims'. In *Daily Dawn*. Retrieved July 17, 2013 from <http://beta.dawn.com/news/705527/superior-courts-focus-on-helping-swara-vani-victims>
- Shazia Versus Station House Officer and others. (2004). Pakistan Criminal Law Journal. 1523: Karachi
- Shinwari, Naveed Ahmad. (2011). *Understanding Jirga in FATA*. Peshawar: CAMP.
- Taizi, Sherzaman. (April 2007). Jirga System in Tribal Life. In *Central Asia*. Peshawar: Tribal Analysis Center, Cultural & Geographic Research Study Centre (Russia, China and Central Asia). University of Peshawar
- The Arbitration Act 1940

The Code of Civil Procedure 1908

The Constitution of Pakistan 1973

The author Barakatullah Advocate is a highly respected lawyer of the Peshawar High Court. He is an LLM from London. He can be reached at barakatuk2000@yahoo.com

The author Imran Ahmad Sajid is a PhD Research Scholar at the University of Peshawar. He is serving as the Assistant Editor, Pakistan Journal of Criminology since January 2012. He can be reached at imranahmad131@gmail.com