

Critical Discourse Analysis: *Jirga* and its Survival in Pakistan

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Abstract

The government of Pakistan has decided to merge Federally Administered Tribal Areas (FATA) with Khyber Pakhtunkhwa. However, this merger is not ceremonial. It would result in the union of two parallel if not contradictory life styles. The tribal people take pride in their age-old traditions and institutions. Among them, *Jirga* system has survived and has offered a forum for the people to resolve their issues as an alternate to the formal judicial system in Pakistan. With the advent of new era after the merger, *Jirga* will lose its colour in the legal framework. The present study examines the transition and investigates perceptions towards *Jirga* System. The argument is guided by Bourdieu's cultural capital and the neomarxist cultural theory that assumes discourses as producing and articulating broader social movements and ideological interests. The focus of the study is the future of *Jirga* system in Tribal Areas and the level of interest of people in this traditional system for conflict resolution. The study is based on qualitative discourse generated in Bajaur Agency. An Interview guide has been used while interviewing a sample of 30 participants aged 40 and above including community elders and female school teachers through purposive sampling technique. The study illustrates that change in the status of FATA will also affect the *Jirga* system in its traditional role. The findings reveal that the hardships faced by victims make *Jirga* system less sought for option. However, the formal judicial courts and the legal procedure are, according to many, costlier in terms of time and money besides access. Following the culturally relevant perspective, the study recommends proactive measures and engagement at all levels for the formal judicial system to deliver and replace *Jirga*.

Keywords: jirga, discourse, fata, future merger, dispute

Introduction

Conflicts are as old as humans are and men have a history of fighting for and controlling various resources and commodities (Talbot, 1999). The *Jirga* system

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has been in practice among Pashtuns for conflict resolution for centuries. It was modified under the Special Provision Ordinance (Criminal Provisions 11) of 1968 (Mahmood, 1994). However, its role is debated in the context of its mechanism and justice system when compared with the usual justice apparatus operative in the rest of the country. Some people also argue that the tribal code does not correspond with the rights available mainly to the womenfolk. Also, human rights activists and international conventions also doubt the equitable distribution of justice through *Jirga* system (Orakzi, 2009).

It is therefore important to gain an insider view about the views and perceptions of people exposed to *Jirga* system. It is also of significant to examine its validity in the backdrop of the socio-political landscape of the country in general and tribal belt as the later has been torn apart by the excesses of Frontier Crime Regulation or FCR which competes with *Jirga* as an alternate provided by the government of Pakistan. The tribal people have a rich history and culture and has regulated their lives and society but there are others who look to other options for justice. It is pertinent to point to the positive contribution of *Jirga* system and instead of implementing an alien system from above, it needs consideration to allow the people to reap the benefits of their culture and traditions. We also need to look at other models of conflict resolution and critically assess whether those would serve the community or not (Attaullah, n.d.).

Theoretical Framework

This paper has been designed under the culturally relative conflict perspectives developed by Marx (1818-1883) and his follower C.W Mill (1956). According this perspective, conflicts in human societies are inevitable, universal and never-ending process. The history of human evolution and change is the history of class struggle and individuals, groups, sects and even larger disputes have occurred on means of production including property, land, money and even power struggles. To have a control over economic resources, one party must rule and overcome the other. However, following the dialectical process as adopted by conflict school of thought, there is always a resolution of conflict if it had occurred both on ideas or economic resources in the form of synthesis which evolve the society into another developed phase (but have the seeds of conflict as well). Similarly, the mechanism of conflict resolution may vary from group to group and society to society and may have different procedural components.

A body of literature had confirmed that relatively in each of the world's society, there has been mechanisms for conflict resolution woven in the relative

cultural set-up (Wardak, 2003). The importance of Panchayat in the Indian context as discussed by Baxi and Gallanter (1979) and Moore (1985) is an important component of conflict settlement. Clark (1989) in his study has identified a Mediation Committees working in China for the resolution of local and regional conflicts. Many of the scholars i.e. Elphinstone (1992), Olesen (1995) as well as Gletzer (1998) have discussed the importance of *Jirga* system in Pakhtun localities of Afghanistan, Baluchistan as well in the present Khyber Pakhtunkhwa. This system is important informal mechanism for conflict resolution and importantly, following the traditional normative orders. In the context of the current study, the culturally approved relative approach has been adopted which also support the philosophical position of the scholars as given above. According to Harris (1968), the study of social phenomena, as well as conflicts must be understood and resolve in a culturally approved pattern because the resolution will then be acceptable to the natives. However, due to modernization and globalization, the nature of conflict and the mechanism for their resolution has been drastically changed and thus the role of *Jirga* has been confronted with many changes as well.

Statement of the Problem

The *Jirga* is a traditional system of justice but has been subjected to debate at crucial junctures. The strongest allegation on the *Jirga* system has been its discrimination against womenfolk during decisions and implementation of its rules and regulations (Shah, 2017). With the changing pattern of life, the views of the people have also changed towards the traditional mechanism of conflict resolution and focus on the formal judiciary system (Chaudhry, 2011). Due to the changes in pattern of life and the demand for merging FATA into Khyber Pakhtunkhwa, the role of *Jirga* will remain critical because after merging the FATA into Khyber Pakhtunkhwa, the people will have access to the formal Judicial system. This study investigates perceptions of local people regarding *Jirga* in this period of transition. The study also attempts to answer the relevance and currency of *Jirga* in comparison to the formal judicial system. It also highlights the conflicting situation that may arise in the popular appeal of the two systems. The study is grounded in the culturally relevant conflict perspective which advocates a localized mechanism for dispute resolution to be acceptable to the local people. Any system that would risk the local identity of a society by imposing an alien or foreign mechanism would not succeed in the long run.

Objectives of the Study

1. To understand the meaning and role of *Jirga* system in Tribal areas
2. To find out the perceptions of people about the status of *Jirga* in comparison to formal judicial system
3. To know about the future of *Jirga* System with the changing status of FATA

Methods and Procedure

The current study is qualitative and co-relative in nature which attempts to know the relation between two aspects of the phenomenon in detail as highlighted by Bialy (1978). *Jirga* plays a vital role in peacebuilding in tribal areas of Pakistan. This study is an effort to know about the *Jirga* system as a conflict resolution mechanism and the future of *Jirga*. The rationale for adapting this method was manifold - Description of field observations, collection and presentation of information and evidences based on literature, careful summarization of data obtained through interviews, observations and other qualitative techniques and analysing results to draw meaningful conclusion and developing new knowledge. Qualitative and descriptive approach has been adopted towards the topic related to *Jirga* system. This study has been conducted in Bajaur agency and the data has been collected through Interview Schedule from a sample of 30 respondents which were selected purposively. The respondents were both male and female above the age of 40 which were community elders and female school teachers of three tribes of Bajaur Agency including *UtmanKhel*, *Tarkani* and *Mamund*. The collected information has been thematically narrated and extracts from interviews have also been given in support of the narrated data. Besides, the interviews are coded as R-1A, (Respondent, Number and Name) and complete confidentiality is ensured for the secrecy and exposure of the data. Finally, the data has been classified and the results have been given in the form of separate headings (for each category) and conclusion has been drawn. The details of thematic analysis have been given in the following passages.

Demographic Information of the Respondents

The data has been collected in Bajaur Agency in which 24(80%) of the respondents were male and only 06(20%) were female which were school teachers. Among them majority 15(50%) were in the age category of 40-50 and the eldest respondents were only 05 (16.5%). In regard of education most of the respondents having middle and metric level of education while very less 6.7% were graduated respondents. Similarly, less than all 26(85.6%) were married while less portion

04(13.4%) were un-married. Further majority of the respondents were in the income category of 21,000-30,000 and 08(26.7%) having more than 30,000 Pakistani rupee monthly income. In regard of family of the respondents, majority 15(50%) were living in joint family system and less 05(16.7%) were living in nuclear system but most interestingly still 10(33.3%) respondents live in extended family in tribal areas which indicate that this type of family system still thrives. Most of the respondents 13(43.3%) belonged to *Utmankhel* tribe which were dominant and peaceful tribe of the area while 10(33.3%) were from *Tarkani* tribe and less of all 07(23.3%) respondents belonged to *Mamund* tribe which were living near Afghan border to Pakistan.

Thematic Analysis

***Jirga* as a Conflict Resolution mechanism in Pashtun Society**

The word *Jirga* in Pashto means a gathering, a consultation (Pashto Descriptive Dictionary, 1978, p.1272) to reach an agreed upon solution to a problem (Atayee, 1979). The word is also frequent in other languages like Persian/Dari. In *Ghyathul-Lughat* (1871:119) is stated the word stems from *jirg*, or a wrestling ring or a circle. Some scholars locate a Turkish origin for the word *Jirga* with a meaning like the one stated above (Faiz-zad 1989: 5). It is safe to assume that there is no dispute over the meaning and interpretation of the word. Culturally, the practice of *Jirga* reflects the deep-rooted traditions of Pashtuns, their rituals and processes and the internal unity they display to reach a solution to social and personal problems in a collective manner. A prominent scholar lauds the institution *Jirga* and commends it for accommodating all adult males and ensures consensus. *AJirga* can be relevant at all levels, from the smallest ancestry to an entire association (Auda, 1968). Rafi (2002: 6) a contemporary scholar critically examines the centuries old tradition of *Jirga* and terms its role decisive in resolution of cultural and socio-economic conflicts by making authoritative decisions (Faqir, & Atta, (2013). This authority has been the outcome of its acceptance for steady economic and social life (Mehsud, 2004). It is, therefore, more commonly and effectively used as a mechanism of conflict resolution among the Pashtuns. In this regard an experience elder of Bajaur Agency revealed:

“*Jirga* is a local interpretation of the collective wisdom of Pashtuns encoded in the principles of Pashtunwali. It is the highest forum for dispute resolution and to ensure brotherhood among the warring tribes” (from field notes R-26H).

Status of Jirga System in Tribal Areas

The findings of the study reveal that most of the people know about the working and operation of Jirga. To them, it is very simple to understand it. The forum is gathered when a problem arises. If it involves two parties, then both are given a patient hearing followed by witnesses. This is the usual process and may be adopted even if the facts are known to ensure that both the parties are given a fair chance. After hearing subjective accounts, the Jirga makes sure to reach an objective solution according to the culture and expectations of the people. The decision and understanding in the process is guided by Shariah or Islamic Law and local customs (Rohan, 2001). In certain cases where it is tricky to reach at a conclusion, the Jirga may resort to ask a party to take an oath on the holy Quran which is the highest form of oath for a Muslim. It is believed that they do not take the oath if they doubt the issue in question. This seal the fate of the issue and the Jirga's decision becomes obligatory upon the parties concerned to honour its verdict (Wardak, 2003). Deriving its power from the people, the Jirga may decide in favour of imposing fine, burning of the house of the disobedient members and to cut off social relations (Atayee, 1979). While commenting on the social relevance and importance of Jirga, one of the respondents stated that:

"I believe that the tradition of Jirga is an effective way to curb social evils. As it very close to the heart of its owners, therefore it may be swift in the delivery of justice than is possible in a formal judicial system" (From field notes R-14R).

Another tribal man believed:

"In Pakistan, the procedure for justice is complicated, long-drawn and expensive, it therefore appeals less to those who are socio-economically weaker and have lesser ties with in the system. On the other hand, Jirga process remains simple and swift. It does not take years for a Jirga to reach at a decision. Any system can absorb changes for improvement and so do the Jirga or the formal legal system. All that is needed is overall acceptance and confidence in a system to remain functional" (From Field notes R-16G).

On the other side one of the participants in the study was not satisfactory from the current status of the Jirga System and expresses his views that:

"At present, Jirga system is not purely traditional as in most cases, it is under the control of people who are more interested in their own selves than in the overall good of the people. It is also not difficult to identify biased decisions"

and manipulation of the institution in the recent years. I therefore strongly feel that a reform package and a look at the working of Jirga is essential to keep it away from the harms of materialism and vested interest groups". (notes R-10J).

Further, one of the educated respondents in the study explains his reservation about *Jirga* system in the following words:

"Normally the Jirga members are illiterate, and their decisions are influenced by ignorance. In some cases, decisions are influenced by politics. Rich and resourceful people dominate proceedings of Jirga. Jirgamembers are generally ignorant of law. Sometimes Jirga fails to execute its verdict. Similarly, there is no fixed criterion exists for nomination of Jirgamembers and members ask for money in return of their favour with one party or the other. Jirgamembers have been performing duty voluntarily, but in recent days some of them have started asking for compensation in form of food, vehicles and for pocket money. Further the biased approach of Jirgamembers promotes social evils and lawlessness in the society" (From the field notes R-09F).

The views of the respondents reveal that the current status of *Jirga* system is not satisfactory due to corrupt and incompatible people in the members of *Jirga* system which leads to decrease the level of confidence on this informal mechanism of conflict in the Federally administrated tribal areas of Pakistan (FATA).

FATA Reforms Movement and Future of *Jirga*

The need for reforms in FATA has been a long-standing political issue in the country's politics. The present regime also articulated its resolve to make the reforms package a part of its National Action Plan in 2014. The package was drafted after meetings and discussions with tribal elders, politicians, businessmen, students, religious scholars and civil society. At present, it is an open secret that the people do not enjoy real independence in the political sense and live in a miserable condition under the political agent system (The Express Tribune, 2012).

The current study highlights that some people believe FATA is to become an independent province (Shinwari, 2011). Many Fata residents are in favour of an independent province for themselves. They want to lead their lives according to their culture, customs and traditions but on the other hand the study also shows that most of the people want merging FATA into KP. In this regard one of the senior respondents said:

“This seems to be the most suitable and feasible option. All tribal agencies are situated adjacent to the settled districts of KP. Even the headquarters of the Orakzai agency is situated in Hangu, a settled area. Even the Frontier Regions can be easily merged with the adjacent districts. Already all KP departments are also operating in the tribal areas. FRs are being managed by the deputy commissioners of adjacent districts. A significant number of tribal people are already living in districts of KP. Almost all the tribal people are Pashtuns, so they share language and culture with the Pashtun-majority KP. To safeguard freedom, culture, customs etc. FATA can be converted to Provincially Administered Tribal Areas (PATA) which will be under the administration of the provincial government instead of the federal government” (From field notes R-17K).

Furthermore, one of the senior elders among the respondents raised some key points in merging FATA with KP and stated that:

“FATA stands almost shattered due to the insurgency and continuous military operations. To rehabilitate FATA, a Marshall Plan like funding is needed. The merger of FATA into KP at this stage will put insupportable economic constraints on KP, which is already a backward and insurgency hit province” (From field notes R-22B).

The major concern of this study is to know about the future of *Jirga* system with the changing status of FATA. As most of the people strongly support the merging of FATA into KP, so there will be question mark on the status of *Jirga*. We have tried to know from the respondents that either the merging will affect this system or not. In this regard most of the respondents were of the view that current structure of *Jirga* system is not satisfactory, and it is totally corrupt because now the *Jirga* is led by incompetent people and they exploit it for their own interest. One of the participants stated that:

“We should not blame Jirga system responsible for widespread offensive practices. Instead, elders who manipulate it and exploit it either in the name of religion or for personal benefit or political gains” (From field notes R-27S).

The respondents were also asked that whether he/she will prefer Formal Judiciary system or Informal *Jirga* system after merging FATA with KP for a dispute resolution. In this juncture majority of the respondents went in favour of formal Judiciary system in contrast to Informal *Jirga* system. Regarding this a respondent stated that:

“I cannot feed up and pay 10 to 20 Lawyers at once. By lawyers he means the Malik or elders which are the member of Jirga system. Currently the Jirgamembers first demands of pocket money before decision and will also feed them best hotels. Without this they will not proceed the Jirga system. That is why it is difficult for a poor man to afford that. So, I will prefer directly to formal judiciary system where I will pay the fees of one lawyer and he will fight my case in Court” (From field notes R-23W).

But on the other hand, we found some people optimistic regarding Jirga system and merging of FATA with KP and among them one of the loyal respondents with Jirga system added that:

“After merger with KP, the system will also become better in FATA. Because currently there is no accountability and transparency in tribal areas where the political administration and the so called Maliks do what they want. Therefore, when we get the rights like other citizens of Pakistan then we will make them accountable and will bring transparency in the tribal areas. These changes will also be felt in the Jirga system and we will eliminate the black sheep from Jirga system and this will increase the confidence of people in Jirga system. This is important because the alternative is a recourse to the formal legal system enforced in Pakistan which for many is slow and expensive” (From field notes R-11M).

The study concludes that most respondents stress the merging of FATA with KP and they were very optimistic about the future of *Jirga* system in the changing status of FATA.

Conclusion

The study concludes from the respondents' views and literature review that *Jirga* is culturally deep-rooted and close to the hearts of Pashtuns. It has served the community at all levels from personal to collective conflicts over centuries and is still a ready platform for addressing the concerns of Pashtuns. Keeping the warring tribes and mountainous people calm need such a system. It would be no exaggeration that the overall peace among Pashtuns owes its existence to *Jirga* System. The norms, process and techniques governing *Jirga* also correspond with the native ways Pashtuns resolve their local, tribal and national conflicts, and is therefore, an important aspect of Pashtuns national identity. On the contrary, those who disqualify *Jirga* as less modern and more primitive need to have a look at its working and mechanism for making peace. History is positive about the fruits of *Jirga* while the elders are

optimistic about its role in the future. It is however a fact that much has changed in the world and the society is in a transition from traditionalism to modernism. More importantly, the beginning of the 21st century and the post 9/11 scenario has drastically changed the outlook of tribal setting in Pakistan and Afghanistan. Global changes and the attention of the world community to transform the tribal belt has also consequences for the local people. There is therefore a dire need of giving a modernized outlook to *Jirga* and to make others comprehend the same. As an alien concept to many, the West seems less convinced and more concerned over the primitive ways that have been regulating life among the Pashtuns.

The study illustrates that there are now serious allegations on *Jirga* system which need removal on emergency basis. Most of the respondents during the study were not satisfied due to corruption, bribe, incompatible, illiterate people and the lineage Malik System which according to them destroy the *Jirga* system and these are the factors which lead to less interest and decrease the level of confidence on *Jirga* system. Further the study shows that majority of the participants favour merging FATA with KP and believe that it will not affect the *Jirga* system at all but will strengthen this system with accountability and transparency and majority of the respondents show their consents that they will prefer to go for *Jirga* system for the resolution of conflicts after merging of FATA with KP in presence of formal Judiciary system as *Jirga* is less expensive and less time consuming. However, based on the findings of the study, there are others who question its manipulation by the politically and economically powerful. With a view to gain ground, the formal judicial system of Pakistan is also suffering from inherent weakness that need to be addressed to make it widely acceptable. Any legal process, it is recommended, must provide space to all parties so that their confidence level remains high. The government must launch dedicated campaigns to educate the tribal masses about the problems associated with the informal system of conflict resolution. The role religious people who support *Jirga* cannot be ignored. They must be engaged in meaningful dialogue for the greater good of tribal people. It is recommended that there should be involvement of Youth and educated people in *Jirga* proceedings because they will decide according to the modern law and time.

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