

# Jirga an Effective tool for ADR

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ADR (Alternative Dispute Resolution) is a new concept in conflict transformation in the present day world. Indigenous systems and the new Restorative justice system are the main vehicles of present ADR system. Indigenous systems with a little bit of modification and alteration to face the modern human rights challenges can be used as ADR to resolve conflict at the community level. After 1970 and especially 9/11 the conflict structure changed its shape from inter to intra state conflict. There is a need for a system that people own and practice and resolve their conflict with less money, time and fatigue. Government system is the priority for no one. The only viable option is for the community to practice ADR to resolve their issues/conflict. ADR also provides support to government systems, minimizes pressure on courts and law enforcement agencies.

In the four provinces of Pakistan there are four different systems, different from each other in dispute resolution mechanisms. Jirga operates in Khyber Pukhtoonkhawa and parts of Baluchistan, Panchayath in Punjab, Faislo in Sindh and Maer or nanawtai operates in Baluchistan. I will focus more on the system of Jirga.

On hearing the word “Jirga”, the first question that comes to mind is what is Jirga? There are many different views on the nature and scope of the term Jirga. Most would describe it as an indigenous institution for dispute resolution in the Pukhtoon communities of Pakistan and Afghanistan. Yes, it is, but it is more than this as well and it also played and, is playing, an active role in development of the community.

It is a name given to the system that operates within a Pukhtoon society, used to undertake issues between individuals and between communities, to address concerns and look for solutions acceptable to all the parties.

As a blue print of Pukhtoon life, Jirga is best summarized as a strategic exchange between two or more people to address an issue through verbal communication. The exchange may or may not

result in an agreement on the issue, but the process itself leads the parties, including the interveners, to maintain a certain level of formal communication, thus ensuring peace.

The system of Jirga is transmitted from generation to generation without any written protocols or written terms and conditions. This is considered a vital customary judicial institution where all are considered equal before the system. Mostly conflicts are resolved in an acceptable manner and everybody regards and accepts the results of Jirga. However, sometimes use of enforcement of the decision is also required to bring justice.

Jirga members play different roles at different times and according to the nature of the conflict. They start pre-mediation first in one-to-one meetings. Within the parties they initiate mediation by contacting the elders, who later take waq (power of decision making from the parties) for a resolution to the issue once and for all.

The Jirga is also considered a jury because of its nature of composition and involvement. The Jirga system ensures effective participation of the common people in administering justice and makes sure that justice is openly carried out. Jirga also gives protection from the stronger oppressor and security to the weaker and oppressed.

The institution of Jirga is still a living institution. However, it is weaker now as compared to the past. This can be seen from the fact that the practice of Jirga as a dispute resolution body in urban areas, where the governmental systems are well in place and people are well educated is not as prevalent. On the other hand, people often voluntarily use the Jirga method. But it is also to be mentioned that in urban areas mostly business and other issues are resolved through Maraka. Maraka are the mediators selected by the parties to resolve an issue, the number varies from two to twelve or even more. Their focus is mostly on the resolution of the issue, they may be not too familiar with Jirga law or follow Jirga rules regulation. While Jirgamar on the other hand are known in the areas for their wisdom, knowledge of tradition, religion and even government law and follow each case with neutrality and on a voluntary basis.

In the urban areas, the market disputes in the transport business class, the vendor's class or the real estate class make use of this institution quite normally. Along with Jirga, one can find other options of dispute resolution based on the legal and administrative framework of the government. The legal framework including the police and lower judiciary recognizes the efforts of Jirga only as an informal institution with little legal value. Government agencies do not honor Jirga resolutions unless the case is built under the regular law of mediation/arbitration or an agreement is turned into a consent decree through a court of law. Therefore, all such activities of the Jirga are finally registered with the government in the prescribed format in order to ensure legal protection.

In this process the elders first start pre-mediation within the Jirga itself to reach a common strategy. Then they approach the elders of the parties involved and ask for their consent. Here the parties involved put forth their options to the Jirga. Jirga members mediate according to the prevailing customs and traditions to establish the demands of the parties. In this process the

elders of the family and tribe discuss the options offered, first among themselves and later with the Jirga members. The Jirga members while dealing put both the customary and religious laws both forth with the parties at stake. At this point they change their role from mediator to arbitrator.

Mediation mostly takes place within the each disputant party with the active help and involvement of Jirga members. Each disputant group first invites its members, friends and relatives and Jirga members help them use the mediation process to develop consensus among themselves. For Jirga members, their customary and religious knowledge, volunteer role, experience and wisdom about the community issues play a crucial role.

When both parties have settled on a demand then the Jirga members do indirect arbitration between the parties to reach a common understanding. They take waq (the power of decision) making and both parties are bound to obey the Jirga decision by giving waq to Jirga. They also arrange the final event when the decision is reached, disarm the parties and bring them together with a big community event.

In addition, after the face-to-face meetings Jirga members do follow-up with the parties to ensure that the relationship between the parties continues, and that there is a cleansing of the hearts and minds of the parties. This can lead to forgiveness and a permanent healing.

Jirga is not doing justice rather doing conciliation or reconciliation, in other word Islah or Sulaha. The decision may be or may not be totally win -win. One party may scarify to put out the fire of enmity. The result of the Jirga process is always very positive; in addition to being cheap, binding and sustainable. Courts decide the case but do not resolve the enmities. The process of Jirga, especially mediation, helps each individual of the parties concerned to express his/her views freely. If the presence of women is restricted due to customary practices of veil, regardless, the say of women is a must in Jirga decision. The Jirga members serve as a link between the two parties which leads to discussion, builds communication indirectly, and provides an arena in which to understand each other's point of view. Religious injunctions and religious leaders play their own role in making the end more binding. The social mores and the code of Pukhtoonwali (Pukhtoon code of life) is another traditional aspect that contributes to the sustainability of the agreements. Conclusions: The Jirga process itself is cheap, accessible, durable and sustainable and it develops communication first. Mediation within the Jirga process makes the process more open when each member of the party within the pre-mediation and mid-arb phases has a say in the process. In the processes victim and offender, secondary victim and even their friends and well wishers are all contacted since the people live in highly contextual societies. The result of the process is also durable as everyone is included in the process and is responsible to abide by the Jirga rules.