

**Jirga and Sharitization: An Analysis of Maraka in District Karak**

Wajid Mehmood\*

Syed Imran Haider†

Rashid Ali‡

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**Key Words:**

Jirga, Maraka, Conflict Resolution, Shariatization, Karak, Pukhtunwali.

**Abstract** *This paper aims at analyzing the traditional processes of conflict resolution in Pukhtoon society. The institution under study is Jirga an essential element of Pukhtunwali. By using Karak district in Khyber Pakhtunkhwa as a case study, this paper explores Maraka a form of Jirga that dispenses justice at a local level on the basis of Pukhtunwali and Shariah. This study found that the current conflict in the region has significant implications for the institution of Maraka in terms of its structure, composition and dispensation of justice. In most of the Jirgas Ulama (religious clerics) are considered to be an essential part of it. The inclusion of Ulama is making this institution vulnerable to shariatization. A significant number of decisions are taking place on the basis of locally interpreted Shariah law. The paper argues that this trend of shariatization of this institution leads to the weakening of the social relations in the area.*

**Introduction**

Conflict is inevitable in human society. It is a natural part of human interaction. Men have conflicts over money, land, power, and ideology. Some conflicts are merely disagreements, but some turn violent. There are certain procedures and processes for avoiding conflicts and peacefully resolving in every society. Pakhtuns constituting a major ethnic group in Pakistan and Afghanistan possesses a significant quality of adaptability to an alien environment. Their social structure, tribal organization, centuries' old traditions and customs sometimes force them for disputes and conflicts. However, Pukhtunwali, the traditional code of life of Pakhtuns has the ability and mechanism to respond to any such situation and peacefully resolving it. On the one side it provides equal opportunities to the members of the community for peacefully resolving disputes and disagreements, and on the other side strengthens the social bonds among the members and increase their self-confidence in their way of life (Yousafzai & Gohar, 2005). There are different reasons for conflicts and disagreements within Pakhtuns which may be summarized as Badal (revenge), Ghairat (honor killing), Animosity, Taunt, Property disputes, Swara and Chagha etc. All these reasons cause conflicts in the Pakhtun society, but on the other hand, a traditional institution of Jirga has been active in removing the strife among the members of the community. Jirga, a unique and distinctive feature of the Pakhtun society is a council of elders that intervenes in the time of disputes, listens to the disputing parties and passes judgments. The decisions are considered binding on the parties of the dispute and the stakeholders. Only the male can take part in the proceedings of Jirga which are carried out in a mosque, Hujra (guest house) or under the shade of a tree. There is no hierarchal organization or systemized mechanism and criteria for the selection of jirga. Mostly "noble" elders of the locality (Speen Geeri) are chosen for this purpose. They have known repute for their honesty, wisdom and a firm understanding and knowledge of Pukhtoonwali and Shariah.

\*Assistant Professor, Department of Political Science, FATA University FR Kohat. KP, Pakistan. Email: [wajid.mehmood@fu.edu.pk](mailto:wajid.mehmood@fu.edu.pk)

†Assistant Professor, Department of Sociology, Social Work and Population Studies, Allama Iqbal Open University, Islamabad, Pakistan.

‡Associate Professor, Department of Sociology, Abdul Wali Khan University, Mardan, KP, Pakistan.

Different scholars defined jirga in different ways. For J. W. Spain it's a group of Pakhtuns who are considering a matter of common interest in a locality (Spain, 1972). For Qayum it is like a court whose judges are being nominated by the disputing parties among the noble elders in a particular locality/area (Afridi, 2003).

Jirga is of different types and nature. Its types, powers, and functions depend on the cases it is dealing with. It is broadly divided into four types.

### **Koranay or Family Jirga**

As the name suggests, this jirga dispenses intra-family disputes. The disputing parties select the member of the jirga with their mutual consent. The scope is limited only to the family. The disputing parties if failing to resolve any issue amicably, approach the influential elders of the society for the jirga. The elders listen to both the parties' statements and points of view. After analyzing the statements of the parties, the jirga announces its verdict. If the disputing parties have granted waak (mandate) to the jirga, they are bound to accept the verdict. However, there is no executive authority with the jirga to force any of the disputing parties for its decision. The pressure of the society and Pakhto (Pakhtun code of life) ensures the application of the verdict. However, in some cases with the mutual suggestions and agreement of the disputing parties, jirga takes with them some surety (cash, weapon or any immovable property) for the smooth implementation of its verdict. The surety may be confiscated if any of the disputing parties violate the verdicts and refuse to accept and recognize it (Wazir, 2010). If the case is of some severe nature and parties are involved in violence, the first thing the jirga has to do is ensuring a ceasefire known as Tigga (fixing a stone). Both parties are confined to their houses and the elders start a dialogue. The parties after Tigga are responsible not to violate the cease-fire and shall wait until the decision of the jirga (Afridi, 2003)

### **Olas Jirga**

The scope of this kind of jirga is higher than Koranay jirga. It has to take up the issues of the collective importance of the tribe or community. Every household sends a member to it. The whole community or the tribe decides on the issues of collective nature such as disputes with other tribes, distribution/allocation of different families' shares in the natural resources and forests of the locality, discussions on developmental projects for the tribe and distribution of irrigation water. During the jirga, every individual has the right to speak. Different aspects of the issues are discussed in detail. Decisions are made in mutual consensus (Yousafzai & Gohar, 2005).

### **Sarkari Jirga**

Though jirga is a traditional system of dispute resolution, the process of modernization has significantly affected it by paving a way to state interference. In the Pakhtun belt in Pakistan, this interference started with the introduction of Frontier Crimes Regulations (FCR), a hybrid administrative system by the British Administration in 1901. FCR formalized the traditional jirga (Chapter III, section 8 to 20). Such a jirga under FCR is convened by the Deputy Commissioner and presided over by a magistrate. The commissioner selects the jirga members from within the community. Sarkari jirga has to tackle different issues of public importance. The government officials also intervene in cases where other jirgas failed. It has the power and authority for the execution of its verdict.

### **Loya Jirga**

As its name indicates (Loya in Pashto means grand), this type of jirga is the biggest of all. This jirga is an assembly of all the Pakhtun Tribes. It is convened in a situation when the whole Pakhtun nation faces some critical situation such as interracial or tribal disputes. In Loya jirga Ulama, ruling elites and chiefs of all the

tribes participate. Its domain is much larger so it can only be convened in the time of need and when the consent of all the tribes is needed for a matter of common interest.

Jirga has different shapes in different parts of the Pakhtun region. It functions in Karak district of Khyber Pakhtunkhwa like other Pakhtun regions. However, in Karak, it has a more localized shape known as *Maraka*. This paper sheds light on the process and procedure of Jirga in conflict resolutions according to the Pakhtun code of life (Pukhtoonwali) and locally interpreted Shariah in District Karak.

### Statement of the Problem

The decade long conflict in the surrounding areas of District Karak has produced new religiopolitical elites in the society. The study is significant in the sense that District Karak is a no-conflict zone, if there is still any transformation and transition occurring in the traditional institution of *Jirga (Maraka)* due to the ongoing conflict in the adjacent areas, it is contributing to weakening the family and social relations of the people, thereby, affecting the social fabric of the society. In the wake of the emergence of new elites in the society, the paper focuses on the questions "what transformation is taking place in the institution of *Maraka* in Karak?" And "how does such transition and transformation affect the traditional dispute resolution mechanisms?"

### Methodology

Methodologically the study is based on empirical data collected through semi-structured interviews from people related to different segments of the society through snowball and purposive sampling technique. The respondents included *Marakeez* (those who participate in Jirgas as mediators), elders of the locality, religious clergy, journalists, social activists, and lawyers. Non-Structured Interviews and informal discussions were held with the respondents in four Union Councils (UC) of Tehsil Karak. These UCs are adjacent to each other and normally the *Marakeez* of one UC take part in other UCs *Maraka*. A total of 17 interviews were conducted and respondents were selected on the basis of their experience and age (those people were selected who have more experience in conducting *Maraka* in the area).

### Jirga in Karak

Jirga is an important and informal judicial institution and an essential component of *Pukhtoonwali* in Karak. It comprises of two or more people. The elders of the locality (*speen geree or masharaan*) commonly known as *Jargaez* (the mediators) take part in the decision making of the Jirga. Authority and competence of the members depend on the nature of the problem a *Jirga* has to tackle. It performs both judicial and executive roles to settle disputes pertaining to the distribution of land, feuds, blood money and other important inter-tribal and inter-families affairs on the basis of tribal conventions, traditions, and principles of justice i.e. *Pukhtoonwali* (Taizi, 2007). *Maraka* is like a Jirga which has to tackle conflicts at its initial stages (Yunas, 1997) (Yousafzai & Gohar, 2005). The main difference between the two is the (some kind of) executive authority of *Jirga*, while the scope of *Maraka* is limited to mediation only. It is a kind of reconciliatory body of the elders in a locality (Wardak, 2002).

### Composition of *Maraka*

*Maraka* in Karak is normally comprised of four *Marakeez* (elders who have experience in disputes settlement) and two middlemen (one from each party) called *Mianzmonri*. Middlemen play a very important role in the whole process of *Maraka* from the very beginning till the end. These two are given full authority (*waak*) for the arrangements of *Maraka*. These arrangements include:

- Selection and convincing of *Marakeez* (mediators) for *Maraka*
- Selection and arrangement of place where *Maraka* has to sit
- Refreshment in the shape of tea and food
- Providing pick and drop facility to the *Marakeez*

- Ensuring that the parties give honor to *Marakeez*
- Ensuring that both the parties do not misbehave with each other in the presence of *Marakeez*.

For the selection of *Marakeez* middlemen normally take the consent of both the parties. However, in some cases, the disputing parties are not informed about their *Marakeez*. It is because of the reason that none of the two can approach the *Marakeez* before the *jirga* convene. The setting place for *Maraka* is also decided in consultation with both the parties. However, it normally convenes in some neutral place (a *Hujra* of someone usually). For refreshments, food and pick and drop, middlemen take some money (in equal shares) from both parties.

### **Decisions of *Maraka***

Many of the conflicts of severe nature are settled through the formal conflict resolution mechanism i.e. in the courtrooms. However, many lawyers and even judges in Karak consider the informal mechanisms and traditional institutions more appropriate and successful in the resolution of conflicts. *Maraka* in Karak normally decides disputes by using four approaches. These are

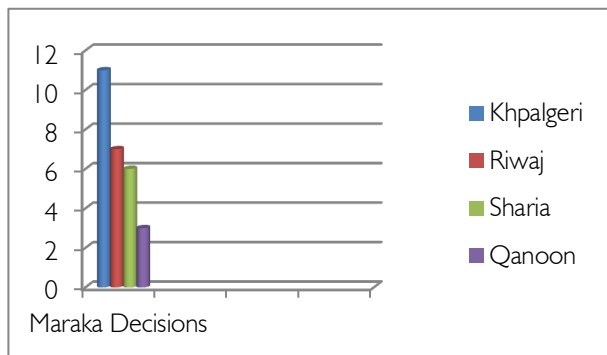
- *Khpalgeri*
- *Riwaj* or *Pukhtunwali* (the socially accepted code of conduct of the locality)
- *Qanoon* (the law of the land)
- *Shariah* (the locally interpreted Islamic law)

Before starting the formal proceedings of the *Maraka*, both of the disputing parties are asked about on what approach they would like the *Marakeez* to decide their case. It is thus the mutual consensus and understanding of the parties for the selection of an approach to the *Maraka*. However, many *Marakeez* and middlemen themselves look into the matter and the issue of dispute. If it is related to some intra-family issue, they decide the case on *Khpalgeri*. If it is related to some inter-families and close neighbors, the approach of *Riwaj* is adopted. The other two approaches are adopted if the disputing parties ask for it. These are normally avoided because of their non-flexible nature and the rigid procedure. If any case is to be decided through either of these, it is done either in accordance with the law or Sharia. Hence, there are very few chances of making consensus and compromise between the disputing parties.

During the fieldwork, I was told by many elders that a significant number of disputes are nowadays decided on the basis of *Shariah*. Previously if any of the party desired their case to be decided on the basis of sharia, the *Marakeez* had to seek help and advice from an *Alim* (religious expert), however, today they (*ulama*) have become an important part of *Maraka*. Many of the prominent *Marakeez* in different parts of Karak are *Ulama*.

### **Increasing Role of Shariah in Maraka**

The institution of *Maraka* is excessively being *Shariatized* in the wake of the emergence of new elites in society. For finding the nature and extent of such *shariatization*, the researcher focused on two aspects of *Maraka*. First how many cases are being decided on the basis of locally interpreted *sharia*? And how many among the *Marakeez* are *Ulama* or their close associates? Data were collected from four union councils in Tehsil Karak. A total of twenty-seven cases were studied, which showed that six out of twenty-seven were decided through *Sharia*. Eleven cases among the close family members were resolved on the basis of *Khpalgeri* and seven through *Riwaj* and three on the basis of law.



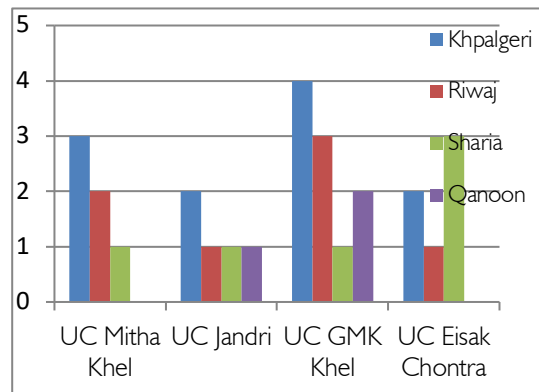
One of the most important reasons for the shariatization of Maraka is the inclusion of Ulama in this traditional conflict resolution mechanism. The role and number of *Ulama* in *Maraka* increased significantly in the wake of the conflict in the Pak-Afghan borderland. Before the Afghan conflict in the early 1980s, *Ulama* did not have any significant position in society. However, Afghan Jihad made them the new socio-political elites. They got social and political recognition and position in society because of the excessive religious socialization of the masses (Ruttig, 2010). Furthermore, due to the involvement of Ulama in politics in the locality, their politico-social status in the society also enhanced. They became prominent figures and influential people in the locality. They were given the status of local elders (*Masharaan*) who have to take part in the *Marakas* and resolve the disputes of the people (Sami-ur-Rehman, 2013).

Due to the Afghan Jihad and state Islamization policy, the number of *Madaris* (religious seminaries) also increased. For example, in the early 1980s, there were only two Madrassas in the whole district which had a formal kind of structure i.e. teaching faculty, classrooms and boarding house (Abn-i-Amin). However, today one can see Madrassas in every village council. These Madrassas graduate the local youth with Islamic knowledge. Many of the students are also enrolled in Kohat, Peshawar and Akora Khattak in different Madrassas. The majority of the graduates of these Madrassas after completion of their education provide their services in the local mosques, schools, and Madrassas. They also get actively involved in the affairs of the community and establish an important position and respect for themselves in society. Due to their acknowledged position and respect, many of these graduates (though at a young age) are involved in resolving the disputes in the locality (Jan, 2013).

*Maraka* is all about compromise. One has to compromise if he wants to end and resolve any dispute peacefully. If an aggrieved party is not ready for compromise and thinks that its demands can best be achieved through *Shariah*, it prefers to go for *Maraka* based on *Shariah*. For example, in the other approaches i.e. *Khpalgeri* and *Riwaj*, there might be chances of compromise for one or the other party to arrive at the resolution of the conflict. Therefore, they can decline the decisions of *Maraka* if they don't want to compromise. The optimum choice they have is to go for *Maraka* based on *Shariah* as it does not involve any compromise on incentives the aggrieved party expects. Also that it has a (religious) binding force on the disputing parties to accept the decision of *Maraka* under any circumstances (because of the general perception and religious socialization of the society) (Alam, 2013).

Corruption and favor for one party in *Maraka*, based on *riwaj* and *khpalgeri*, is also making it *Shariatized*. Although in the majority of the cases *Mainzmonri* (the middlemen) use to select the *Marakeez* and keep their names secret, however, sometimes the disputing parties approach the *Marakeez*, bribe them and influence them for deciding in their favor. This, if on one hand making the traditional institution weaker, on the other hand, provides space for the Ulama to replace the common *Marakeez* and *Masharan*.

The issue of the *Shariatization* of the traditional institution is resulting in the weakening of the traditional approaches of *Khpalgeri* and *Riwaj* to conflict resolution. As *Khpalgeri* and *Riwaj* include compromises and respect to sustain and maintain family bonds and social relationships, one of the major consequences of the shariatization of *Maraka* can be the weakening of family and social relationships in the society.



Union council-wise distribution of decisions

## **Advantages of Maraka**

Jirga or Maraka plays an important role in Pakhtun society. It helps in maintaining inter and intra-tribal relationships. It dispenses justice at the initial stages of the dispute and does not let it extend. It provides speedy justice which is much needed in view of the peculiar social structure and nature of the Pakhtuns. As they don't wait for years for the formal judicial process in the courts to decide their cases, jirga/Maraka saves their time and energies.

Maraka/jirga besides resolving family disputes also imparts positive social norms in the members of the community. It enhances the sense of responsibility of the people, makes them aware of the rights of another fellow being, promotes an attitude of reconciliation and respect for justice and social norms of the society.

Maraka in Karak negates the class division and social status of the people. It dispenses justice irrespective of the social status of the disputing parties. It does not take into account the influence and wealth of any party.

Along with the custodian of Pakhtuns's social code, Maraka in Karak is also the guardian of the concept and principles of social justice of Islam. The Marakeez upholds the basic principle of Islamic justice as per the Shariah law in the cases they decide in Maraka.

## **Disadvantages of Maraka**

Though Maraka dispenses justice speedily and resolves conflicts amicably, yet, it has many defects. The most important is the bribe. Marakeez in Karak performs its duties without getting any fee. However, sometimes any of the disputing parties approach them and offer them bribe in return for their favor in Maraka decisions. This aspect of Marakeez is weakening the importance of the centuries-old traditional institute. It is also decreasing people's confidence in the traditional mechanism of conflict resolution.

The two approaches of Maraka Shariah and Law in Karak are also considered problematic by the locals. Many of the respondents consider Maraka a reconciliatory body whose basic purpose is reconciliation between the disputing parties. In the majority of cases it does not declare the oppressor and the oppressed (particularly in those cases which are decided on the basis of Khpalgeeri). It just asks both parties to reconcile and save their family relations and bonds. Many of the respondents consider this aspect of Maraka significant and important. In their opinion, it thus brings a durable solution to any intra-family dispute and transforms enmity into friendship. However, in the opinion of some others, this is the denial of the very essence of justice. The other two approaches (Shariah and Law) are rigid and fixed. Decisions based on these two approaches though satisfy the principles of justice, yet, the family relations and social bonds may not remain intact after the verdicts of Maraka. In such cases, justice is dispensed but social relations and family bonds are lost. The disputes are settled but the enmities are not transformed into permanent friendships. Furthermore, the local culture and way of life are ignored, which weakens the social fabric.

## **Conclusion**

Jirga in Pakhtoon society plays a vital role in conflict resolution. The institution of Jirga is a part of their rich cultural and traditional values. The composition and procedure of Jirga in Karak is a bit different from the traditional institution of Jirga in other parts of Khyber Pakhtunkhwa. It is locally called *Maraka* which is more advantageous than the adjudicative processes in conflict resolution. It has much flexibility in its proceedings, decision making, and implementations. It is economical in terms of low cost and time consumption. *Maraka* has an important feature of speedy justice deliverance. However, the ongoing conflict on the Pak-Afghan borderland has considerable impacts on the traditional institution with respect to its composition and decisions. The locally interpreted sharia is becoming one of the main sources of decision making. Religious clergy is also becoming an important member (Marakeez) in Maraka. These factors if on one hand indicate the increasing level of religiosity in the area; on the other hand, it also shows the people's mistrust on the traditional institutions and mechanism of conflict resolution. This may have severe implications for the Pakhtoons in general and the people of Karak in particular.

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