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## The Role of Dispute Resolution Council in Dispute Resolution: A Case Study of Khyber Pakhtunkhwa

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**Abstract:** *Abstract* Jirga is an ancient institution of conflict settlement in Pakhtun civilization. Its effectiveness declined throughout the course of time, which led to the widespread skepticism among the general populace over their ability to depend on it. This study explores all of the elements that contributed to the unacknowledged and questionable status of the Jirga institution, which in turn created space for the development of alternative dispute resolution (ADR) mechanisms. Data gathered from primary and secondary sources in order to conduct an analysis of the alternative dispute resolution system that is currently functional in Khyber Pakhtunkhwa. Because of the character and environment of the people who live in this area, it was impossible for them to maintain a traditionalist viewpoint towards the aspects of culture and traditional institutions that make up the Jirga political system. A modified version of the traditional Jirga was introduced in KP in 2012 under the name "Dispute Resolution Councils" (DRCs). This was done in an effort to close the gap that existed in the original framework. Since then, DRC has been operational in a number of districts of KP, and residents' perceptions of its effectiveness in settling local conflicts at the doorstep of the parties involved have been generally favorable.

**Key Words:** Jirga, Pukhtunwali, Alternative Dispute Resolution (ADR), Tradition, Conflict Resolution

### Introduction

Since the beginning of time itself, people have always had arguments and disagreements with one another. Human beings fight with one another and disrupt the peace in society for a variety of causes that may be broken down into many categories. According to this rule, there is a process for settling each and every kind of conflict that has arisen over the whole of human history. This law holds true throughout all eras and during all of humankind's interactions with one another (Agarwal, 2014). According to research by the UNDP from 2006, alternative dispute resolution is responsible for the resolution of

80% of all disputes in the rural areas of Pakistan; yet, in many instances, this raises severe doubts and concerns surrounding the violation of basic human rights. People of many different faiths and ethnicities coexist peacefully inside Pakistan's borders, despite the country's official status as an Islamic republic.

### Constitution of Pakistan

According to the constitution, every single person has the same rights. Because disagreements are built into the very fabric of society, cultivating an atmosphere that is conducive to cooperation is an endeavor that

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is fraught with difficulty. It is based on dynamic engagement amongst the victimized subject and the offender as well as the community for hunt of reconciliation by adopting a fair approach tending to the needs of the three by a process that ensures the security and dignity of Masses. The Dispute Resolution Council is the system where disputes are resolved. Jirga is an ancient tradition that has been carried on for a long time, and it is of tremendous significance in the process of settling disputes. However, recent acts of terror and war have not only destroyed the peace in the world, but they have also had an effect on this ancient institution.

### **Methods of Conflict Settlement**

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The idea of using several methods to settle legal disagreements is present in practically all of Pakistan's four most prominent cultural traditions. "Parya" and "Panchayats" In rural areas, the caste and village-level arbitration bodies are very efficient and successful in resolving disputes (Ahmad, 2013). Despite the checkered history of arbitration in Thailand, various types of alternative dispute resolution are used throughout the whole of Asia. Arbitration as a means of conflict resolution is not fully recognized by Thais; instead, they prefer the more traditional approach of mediating disagreements. (Winckless, M. L. 2004). [Citation needed] Issues are sorted out in alternative dispute resolution without litigation. ADR is the abbreviation. Arbitration and mediation are the two forms of ADR. Alternative dispute resolution, or ADR, is an informal way to settle a disagreement. People can negotiate, or work with a mediator or arbitrator. Mediation, arbitration, and negotiation are different types of ADR. In familial cases, no one can be forced to opt one of them (Bear, L. S. 1992).

The idea of using several methods to settle legal disagreements is present in practically all of Pakistan's four most prominent cultural traditions. The vital role of caste played in the overall cultural set up can also be seen in the urban settings. People in the country are more assured about their caste memberships as it obliges many resolves reaching from the pool for

matrimonial associations, resettlements of inter-caste conflicts, making a nexus of social linkages for spreading the web of social collaboration and as a source of credits and demanding social esteem liked by a specific caste in Punjabi culture. (Ahmad 2013). In Pakistan and Afghanistan, the ethnic authority structure has orthodoxly occupied the vacuum left by the nonexistence of the state. It may be that tribalism today is more as a plan of social struggle to state switch that as a culture based on kinship (Rubin 1995).

The Khyber Pakhtunkhwa province is characterized by Pakhtunwali. Such code has preserved its traditions and culture for long. The tradition of resolving disputes amicably through intervention of elders has been old age and it's quite a revered one. But the wave of militancy and terrorism not only disrupted the law and order situation but also destroyed a strong tradition of dispute resolution through reconciliation. To revive such tradition of dispute resolution, and give speedy justice to the community, The KP police has taken the initiative of dispute resolution council. Such initiative was first launched in Islamabad during 1999-2000, and proved a huge success. Looking to successes of program and to revive such tradition, the inspector general of police Nasir Durrani decided to launch dispute resolution council. So, he started it from City Division of Peshawar, and due to successes it was then extended to all over KP districts.

### **History and Composition of DRC**

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Arbitration as a method of dispute resolution is not unheard of in India. It was something that had been done ever since the beginning of time. People in India often adhered to the belief that arguments should be settled inside the confines of their own homes because they felt that doing so was the best way to preserve their honour and sense of self-worth within the larger community. As a result, the mechanism has been given importance in India dating back to ancient times.

### **Ancient India**

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is not unfamiliar with the procedure of arbitration. Since the beginning of time, people have been following this custom.

People in India often adhered to the belief that disagreements should be resolved inside the confines of their own homes. This was because many people in India felt that doing so would help them maintain their honor and sense of self-worth in the community. Because of this, the mechanism has been given significance in India ever since ancient times.

### **Pre- Independence: British Rule**

During the time that the British ruled India, a great number of new laws were enacted, and there was a significant shift in the way that India was administered. The courts were given the authority to submit contested matters to arbitration in 1772, and they might do so either at the parties' request or at their own discretion. Then, after another decade had passed, in 1859, the Code of Civil Procedure was passed into law. Parts 312 to 327 of the act addressed arbitration; however, in 1882, the sections of the legislation dealing to arbitration were abolished.

In order to implement a different kind of conflict resolution process in India, the Indian Arbitration Act of 1899 was passed into law in 1899. The measure was modeled after similar statutes in English law.

The Civil Procedure Code was revised once again in 1908, and this time it was altered such that section 89, along with the second schedule, provided the courts broad authority to refer controversies to alternative dispute resolution mechanisms. Two effective pieces of law that dealt with arbitration at the time were the Indian Arbitration Act of 1899 and section 89 of the Code of Civil Procedure of 1908, when read in conjunction with the second schedule.

After that, in 1937, India became a party to the Geneva Convention by signing it and adopting it. At the same time, a comparable piece of legislation known as The Arbitration (Protocol and Convention) Act, 1937 was passed. The Indian Arbitration Act, which had been in effect since 1899, as well as Section 89 of the Criminal Procedure Code, were both abolished and replaced by the Arbitration Act of 1940. The Panchayats that were held in the villages throughout India were quite

successful in mediating conflicts at the grassroots level.

### **Jirga System in Khyber Pakhtunkhwa Pakistan**

The Jirga system is a traditional gathering of leaders that is meant to arrive at decisions via the process of reaching agreement and in accordance with the Pakhtunwali teachings. In Afghanistan and Pakistan, a tribal cultural system that predates modern written or fixed laws and is conducted to settle disputes among the Pashtun people but to a lesser extent among other nearby groups that have been influenced by Pashtuns (historically known as Afghans) in Afghanistan and Pakistan. The Pashtun people were historically known as Afghans. Its principal objective has been to quell hostilities between various tribes. The majority of Jirga's take place in Afghanistan, but they are also held among Pashtun tribes in the neighboring country of Pakistan, particularly in the province of Khyber Pakhtunkhwa (KPK).

The Alternative Dispute Resolution Act, 2017 of Pakistan was enacted by the government of Pakistan in 2017, with the intention of incorporating Jirga's within the conventional legal system of Pakistan. In response to a petition submitted by the National Commission on the Status of Women (NCSW) in January 2019, the Supreme Court of Pakistan placed restrictions on the ability of Jirga's to act as arbitration, mediation, negotiation, or reconciliation forums between parties involved in a civil dispute. This came as reports continued to surface of widespread violations of constitutional norms and human rights. According to *The Economist*, "barbarism has become associated with Jirga's" as a result of their employment of penalties like as burning the home of a criminal, despite the fact that other people see such punishments as uncommon and as having originated from ignorant backwaters.

According to an editorial published in the early part of June 2020 in the Pakistani daily newspaper Dawn, illicit Jirga's are not confined to tribal districts but rather operate over the whole of Pakistan with no consequences. While the Supreme Court of

Pakistan issued a ruling in January 2019 against unconstitutional conduct in Jirga's and Panchayats, the Prime Minister of Pakistan, Imran Khan, emphasized his government's determination on continuing the Jirga system in July 2019.

### **Composition**

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There is no upper limit on the maximum number of members that may be on the dispute resolution council, which has a minimum of 21 members. This group of people is then broken up into three separate panels.

### **Membership**

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Taking into consideration the individual's history Some members are recruited by the district police officer, but anybody who is interested may join the DRC of their own will and become a part of it or a member of it. It is possible for him or her to enroll in the panel after submitting an application to the DPO, which will then be subject to verification and eligibility requirements.

### **Tenure**

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There is no restriction on how long a person may serve on the council. The membership will be in a state of fluidity, which means there will be no permanent members and new members may join and leave at their discretion. Additionally, there will be no set age requirement for joining. If the council is of the opinion that any of the members are not giving their full participation, they might make a request to the DPO to replace them.

### **Eligibility**

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All persons who come from non-political backgrounds are considered qualified. An individual must be mature, have experience, and exhibit a personality that is well-balanced. It is necessary for him to have a high level of renown and respect in his society.

### **Areas/Domain of DRC**

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Any person who does not have a political history may apply for the position. An individual has to be mature, have experience,

and have a personality that is well-balanced. It is necessary for him or her to have a good reputation and command respect in the community.

### **Functions of the Council**

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The council will make every effort to settle all of the concerns that are brought to their attention by the DPO in an amicable manner, and their judgments will be made keeping the law and the Constitution in mind at all times. In the event that one of the parties that was determined to be at fault does not choose a peaceful settlement, the members of the DRC will forward their findings to the concerned SHO so that they may pursue further legal action.

### **Code of Ethics for the Council Members**

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No council member would ever utilize their position for personal gain or political gain. Members of the council who have a personal interest in one or more complaints must declare their conflict of interest and refrain from acting on a panel or becoming an office-bearer of a political party.

### **Proceedings**

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It is expected that both parties will contact the DRC reader in advance to confirm their attendance at the scheduled hearing. Parties will be heard by a three-member panel. If they reach a decision, they'll either make a decision or move the hearing date forward. Both sides will be listened to by the members in order to find a solution.

### **Decision Making**

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The decision-making process in the Dispute resolution council (DRC) is fairly easy, unlike the court. Three people make up each panel. Consequently, if they wish to make a choice, all three members will provide a combined decision rather than a two- or three-member one like 2,3 or 3,1. It's likely that the members of the panel will come to an agreement and rule in favor of someone.

## Public Sentiment

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The most dependable DRC mechanism, tailored to meet the specific needs of the local community. When it comes to making decisions, all sides are represented in the DRC's procedure, they claim. In addition to listening to both parties, their investigators conduct an in-depth examination into the facts of the case. A special investigating group made up of people from the area where the conflict happened is formed. It is up to these committees to make the ultimate judgment on any disagreement once they gather all the information. In terms of the time period, the mechanism of justice, the speed with which it is delivered, and the public's faith in the system.

As a result, more and more individuals are turning to the Dispute resolution council (DRC) to settle their disputes rather than going to court.

The general public is free of force.

He/she has the option of going to court if they so want.

Those that like to handle their conflicts via council should use DRC.

According to the Chairman of the DRC, the public's faith in the DRC is increasing day by day, and this can be witnessed in examples where the DRC has solved unforeseen issues.

## Discussion and Findings

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Members are picked by DPO after a thorough examination, and they are put on a panel by the DPO. The study found that there are formal criteria for selection. One problem, however, is that there is no pre-involvement training before they participate in the council for conflict settlement. District police officers study complaints and look at the facts of the case before deciding whether they are persuaded, at which point they mark the case and submit it for resolution to Dispute Resolution Council with a stamp and signature, as part of the council's procedure. Divorce matters were often directed to the courts due to the ineffectiveness of the Dispute Resolution Council. There were a number of hurdles ahead of the conflict resolution council, including the fact that

there were no mufti or Islamic theologian experts to deal with family disputes.

The most difficult part of the Dispute Resolution Council was getting the claimants and witnesses to show up. Civil disputes sometimes dragged on for months or years because the parties insisted on taking the panel members to examine the disputed region, but the panel members refused. Respondents were overwhelmingly pleased, and they lavished praise on the conflict resolution panel. As far as I'm concerned, this alternative to the traditional legal system is significantly better for us since it is completely free of charge and far faster than the traditional legal system. People's descriptions of the judges were similarly diverse. When the nature of the cases changed, the researchers were surprised to find that the satisfaction of the parties in monetary cases and civil cases was different, as was the satisfaction of the parties. In monetary and civil matters, the clients were happy, but in family situations, they were less so. Besides this, the panelists expressed to the researcher their need for more legal protection since they are so content helping their community.

## Conclusion

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For lower-level cases, dispute resolution councils are particularly successful since they are fast and convenient for the public to employ. All legal measures must be taken into consideration while resolving the matter under the DRC. On the other hand, "Early justice is burned at the stake of fairness; delay justice is denied the right of redress." Even if everything has pros and cons, the Democratic Republic of the Congo has a lot of them to draw conclusions from. The arbitrator may not have full knowledge of the legal issue, may not have proper specific qualifications like a judge and may have affiliations that could influence the decision of the case if the arbitrator is from the locality. It is because of these grounds that the appellate courts have set aside or remanded several of the arbitrator's findings. This technique does not need a lot of time or money to settle the case, and it also gives the parties a chance to address their differences. The general public's

interest in the dispute resolution council is increasing. A few things are working well, but there's still room for improvement. There was a disagreement among the members of the Dispute Resolution Council about this judgment. A lack of expertise in Islamic theology meant that the Dispute Resolution Council was less effective in divorce cases than it might have been since one of the parties was almost always absent. As a result, attempts to resolve the dispute were often unsuccessful. It is possible that some interest groups are attempting to exert pressure on the panelists; therefore, providing greater legal protection to the Dispute Resolution Council will not only increase its effectiveness, but will also relieve pressure on law enforcement and the court system, leading to an improved speed of justice overall.

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