

## Ethnography of Panchayat: Cases of Khul'a from Mandi Baha-Ud-Din

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Abstract

*Panchayat is the epicenter of local Politiology that serves as a traditional and indigenous system of conflict resolution at the village level in Pakistan. Khul'a (divorce) is one of the social issues that are mostly handled by the panchayat besides the presence of a legal system: both institutions stay anonymous to each other. The study is conducted in Mandi Baha Uddin to understand the significance of Panchayat as a local level trusted institution meant for arbitration using qualitative approach. The methodology of the study was descriptive where case study and in-depth interview methods were used. The study findings endorse that Panchayat is an indigenous powerful political institution that can adjoin with the development sector in providing justice about agriculture, forestry, and welfare projects. It can serve more efficiently with the support from the legal justice system. Execution of decisions by the traditional justice system can only be effective once streamlined for better and owned decisions at the community level politics.*

**Key Words:** Biradari, Conflict Resolution, Khul'a, Local Level Politics, Panchayat, Politiology, Traditional Justice System.

### Introduction

*Panchayat* is an indigenous political system of South Asia practiced mainly in India, Pakistan, Bangladesh, and Nepal. In order to understand the local level Politiology of the region, this institution needs special attention. It is the oldest system of local government in the Indian subcontinent. The word "*panchayat*" literally means "assembly" (*ayat*) of five (*Panch*) wise and respected elders chosen and accepted by the local community. People generally take up their familial and community level issues to this institution. People prefer to resolve family dissolution matters to Panchayat rather than courts to avoid wastage of time, resource and protect family honor. Separation and divorce are cursed cultural practices however, when circumstances become unavoidable, people tend to approach *panchayat*. Mostly the right of divorce is entrusted in men, however, the women do reserve the right to *Khul'a* in extreme circumstances. *Khul'a* is the right of a woman to seek divorce from her husband. Mostly *panchayat*, *jirga* or the family courts are involved in their reunion or separation. The role of *panchayat* in the arbitration of family as well as in civil matters largely serves for the welfare of masses.

There were different forms of assemblies in the past. Traditionally, these assemblies settled disputes between individuals and villages. Meetings and consultations of elderly and powerful people to find out the solution of family issues like property, inheritance, divorce, *Khul'a* and the settlement of other conflicts of the sort which is known as *Panchayat*. In *Panchayat*, there are some respectable and experienced elders to lead the process.

According to Muslim philosophers, *Khul'a* cannot be made without the will/consent of the husband. However, a wife has the right to demand *Khul'a* from her husband in cases where compromise on living together cannot be made. According to *Maliki* School of thought in Islamic jurisprudence, with the authority of the state,

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a *Panchayat* or the Arbitration Council can try to resolve the dispute between husband and wife. *Panchayat* disposes off the cases in the shortest possible time and dispensation of justice is not lingered on.

The state entrusts the court to resolve the familial issues pertaining to husband and wife. However, in cases where *panchayat*, *jirga* or court acknowledges the decisions of partners, whether they are ready to reunite or part ways; *Khul'a* becomes valid without the consent of husband. This system is practicing more of Islamic justice embedded in traditional values and normative order. The headman of a *Panchayat* may be a “*Masher*” (elder) or if he is young then he is regarded as “*Maliki*” (Chieftainship) (Ahmad, 1977). Generally, a group of five senior and distinguished people from the community are nominated by the locals to serve this public institution where recruitment is based on an honorary basis.

The legislation on *khul'a* also endorsed the views of the Maliki school of thought. Most of the verdicts of the appellate court are based on Maliki school of thought. In this way, both the legislation and precedents of case laws for divorce and *Khul'a* are in the light of Prophet's precedents. The *Panchayat* is more effective in areas where there no legal system and formal laws are in practice. The *Panchayat* system serves for conflict resolution in all domains either it be criminal or civil in nature. Formal laws are necessary for the regulation of societies and their existence serves as a symbol of justice. The amalgamation of Islamic law and Panjabi tradition thus values *Panchayat* as a traditional justice system in village cosmology.

### **Panchayat; Functions and Structure**

*Panchayat* in the village was considered as an assembly of five respected, wise and reputable seniors and experienced people who were eligible and acceptable for the whole community. The *Panchayat* being an assembly and institution of justice was a trustworthy means of justice for the villagers where their conflicts and feuds were settled at the village level by speedy trial. It was comprised of more than three persons who were considered to be judges for the conflicting matters.

In cases of family dissolution; divorce and *Khul'a* woman has to wait for three menstrual cycles to complete to confirm any conception, if unknown. In this way, her husband has the time and option for reconciliation, if he wants to. In *Khul'a*, the same is being expected by a wife, when she does not want to live with her husband, she has the right to get separation using her legal and *Sharia* right of *Khul'a*.

Historically, *Panchayat* gained its popularity for the settlement of conflicts at the village level to avoid bloodshed. The challenge was taken up well by *Panchayat* and proved its worth by providing timely and speedy justice to the people; the decisions were accepted without any hesitation by the people of the district Mandi Baha ud Din. There are different types of *Panchayat* in different areas of Punjab functional in diverse positions:

1. Intra-village or village *Panchayat*;
2. Inter-village *Panchayat*;
3. *Biradari Panchayat*;
4. Local *Panchayat*;
5. *Log Sabha Panchayat*;
6. Gram *Panchayat*;
7. *Kath* of villagers;
8. *Paryah*;
9. Folk Islamic committee;
10. *Hawaili/Daara Panchayat*;
11. *Baithak Panchayat*;
12. Family *Panchayat*;
13. Political *Panchayat*;
14. *Jirga/ Grand Jirga*;
15. *Tharra Panchayat*;
16. *Bathha Panchayat*;

## Review OF Literature

Islam puts mutual assent in line with other religious obligations, which denotes its importance in the social life of mankind. The Aryan tribes came down from Central Asia to Afghanistan and then moved to India (5000-150BC). These Aryan Tribes used *Panchayat* system with two types of councils *Simite* and *Sabha*. Sultan Bahlol Lodhi and Sher Shah Suri, famous Afghan rulers in India used the *Panchayat* system as an administrator for the territory. They formed *Panchayat* which consisted of elders and reputable people of the society. The kings also took part in the meetings of conflict resolution as a member of the *Panchayat*. As per the views of Syed Fida Yunas about *Panchayat*, it is an assembly of people where more than one person is eligible to give the judgment by the mutual consultation of members and suggest a solution of the issue, however its decisions are individualistic and situational.

In *Paktia*, Afghanistan, the *Panchayat* system formed a village-police called "*Arbaki*." *Arbaki* was to execute the judgments of *Panchayat* and the laws and orders given by the *Panchayat*. With the passage of time, *Arbaki land Panchayat* expanded its network and area and then, the *Panchayat* system is practiced in different parts of the country along with other political bodies of the country (Ahmad, 1980).

With the new *Panchayat* system in India, women were able to walk in every sphere of life. A woman as a leader was a new phenomenon with the new Panchayat raj institution where the women get more rights. Before that, they were not enjoying much high status in the different fields of life (Jain, 2005). In the study "The *Panchayati raj* in Rajasthan" Chaturvedi focuses on the resources of *Panchayats* and also their contribution to the development of the villages (Chaturvedi, 1969). The way he used ideas and described the Panchayat raised many questions for the Pakistani Panchayat system. As per the views of Esther Duffo (2005) 'In West Bengal, after 1977, the women made a platform to gain power at the local level where the *Panchayat* system was organized to handle the matrimonial issues as well as husband and wife related issues with a *Panchayati* electoral system and the first elections were held in 1978'.

*Khul'a* or the divorce was the issue between husband and wife where husband mostly does not allow his wife for a divorce. And wife tries to get her right through the legal way or involving the *panchayat*. *Panchayat* often tries handling such type of affairs with wise consultation and arbitration between both parties. Mainly *Panchayat* derives its resources from the grants, taxes, fees, donations, contributions, and funds from higher authorities which vary according to the circumstances. But usually, the income of *Panchayats* is a little lower than its need which affects its functionality and unfair utilization of resources affects the output of *Panchayats*.

## Methodology

The locale of the study was district Mandi Baha-ud-Din. This place has a very strong and most renowned justice system of *Panchayat* in the past and its decisions were implemented in line with the traditional values. The idea was to study the phenomenon of the traditional justice system and its impact on the villagers and surroundings of the community. The data was qualitative in nature. The research methodology was descriptive. Case study and in-depth interviews were used as the primary methods of research. The research tools were case study checklist and interview guide. The data was recorded alongside for later transcription.

## Results and Discussion

Each society has some norms and values where certain institutions exist for the proper functioning of their cultural practices. The institution of *Panchayat* is also playing its role in different countries and different areas of Pakistan and India. The child is encultured when he learns his own culture and grows up to see the world through the spectacles of his culture. *Panchayati Raj* offers self-governance which means that people of the village community coordinate and play their effective role with the local administration to gain social and economic development" (Mishra, 2011). People from this district are strong adherents of this traditional justice system especially when it comes to resolution of familial matters. It is more attached to the notion of honor and prestige to keep the issues of marriage and dissolution community bound. There are some cases of *Khul'a* dealt by the *Panchayat* in the following section.

## Case of *Khul'a* Dispute

Haleema Bibi has two sons and a daughter Sadiya Yousuf belonged to Mangat, District Mandi Baha-ud-Din. Saudiya Yusuf got married in 2015 to her first Cousin Mr. Zulifqar Ahmed. After a long series of marital issues, her husband started yelling at her. Zulifqar demanded that her parents should have given her a huge dowry at marriage. Sadia always consoled and calmed him by not being equally hyper. Zulifqar was a laborer and served as a farmer as well. He used to get back home late every day. She always tried to please her husband but there was an element of dissatisfaction from the husband that persisted. The matter of dowry between husband and wife became a bone of contention and dragged with the passage of time. There was a persistent rift that resulted in a frequent quarrel between Zulifqar and Sadia. Zulifqar started getting agitated from his wife on menial issues and taunted her parents on the amount of dowry they presented to their daughter.

One day, he started beating his wife getting a meal five minutes late as he got back from work. He had beaten her so recklessly that she got seriously injured. She went back to her parents' home and finally shared with her parents the entire series of happenings and abuse at her in-law's house. Her mother (Halima) decided to discuss the matter with Sadia's husband. Halima called him at her place and appealed him not to be harsh with her daughter. Moreover, she explicated that since Sadia is her only daughter, she loved her very much and she can do anything for her daughter, other than dowry as well. Zulifqar refused to accept anything from his in-laws. Halima sent her daughter with Zulifqar again.

After a few days, Zulifqar continued to shout at his wife; this time reminding her about that entire thing she shared with her mother. A serious heated argument grew between husband and wife. He insisted as to why Sadia shared their personal matter with her parents. He tortured his wife physically and asked her to leave his house since he wanted to marry someone else. Sadia was injured a lot. Her left hand was fractured as she was beaten with the iron rod by her husband cruelly.

Sadia decided to seek *khul'a* from her husband. She requested her mother to send someone to Zulifqar as she did not want to live with him anymore. Zulifqar stated that he would never give her divorce at any cost. She was suggested not to seek *Khul'a*, since the label of divorce is stigmatized in our society, but she was not ready to prolong living in an abusive marriage. Studies on the *jirga* system in tribal life also endorse the role of a *jirga* in marital life (Taizi, 2007). The same was done by the village *panchayat* system of Mangat. The *panchayat* called both parties in the village at the *panchayat* place. They asked them both to speak up whatever issues they had with each other. *Panch* tried its level best to handle the issue as an arbitrator and give time to both parties to think and decide before going to decide for resolution of marriage as an ultimate solution. Sadia flatly refused to live with this man anymore. Though, Zulifqar was not agreeing to give her divorce. *Panchayat* decided that Zulifqar should her divorce when he cannot keep her happy. They suggested not approaching the court for *Khul'a* since both parties need lawyers and incur a lot of expenditures. Zulifqar was made to sign the divorce papers which he did after taking two months' time for reconciliation. The *Panchayat* tried its best for mediation and resettlement of husband and wife but since both of them were not interested to get along anymore, the local *Panchayat* honored the request of Sadia by ordering Zulifqar to divorce her.

## Case Study of Shared Property Resulted in *Khul'a*

Sana Ullah a resident of *Phalia* city was living in *Mohalla Phalia Meer*. He owned a double-story house of 10 *marlas*; half of which he gifted to his wife as *Haq-Mehar*. In this way, 5 *Marlas* of land and the half building was transferred in the name of Tehmina Batool, his wife accordingly. Once, he shared with Jamil Ahmed Mughal that he wanted to sell his house. Sana Ullah and Zafar Ullah, with the help of Jamil Ahmed, negotiated the price of that house and it was fixed at Rs. 2.3 Million back in 2002.

In May 2002, both parties gathered for the transfer of the property. Sana Ullah came with the property documents and told Zafar Ullah Khan that the half of the house was in the name his wife Tehmina Batool who was pregnant and was staying at his parent's home; she would get back within 10 days and then the rest of property would be transferred to him. His wife was unaware of the house sale which was going on in her absence. Zafar Ullah once learned about this situation, visited Sana Ullah's in-law's house and told them the whole story on a house sale. Sanuallah's wife did not know anything on that matter. She told that neither she was pregnant,

nor she wanted to sell her share in the house. She got back to her home and got annoyed at her husband for selling the house.

A clash started between Sana Ullah and his wife over selling the house. She requested Sana Ullah multiple times to return the money to Zafar Ullah but he refused to listen and started a business with that amount. Zafar Ullah requested the neighbors and relatives of Sana Ullah to persuade him to fix his damages. All relatives and in-laws tried to convince Sana Ullah to pay back the money he took for selling the house but all in vain. His in-laws felt insulted; also, it led to clashes in the relationship between husband and wife. In those 10 years of period, Sana Ullah started a business of clothes in *Phalia* city with the amount of 2.3 Million and expanded his business worth 9 Million Rupees. The clash between Sana Ullah and his wife persisted. The issue continued between them. Meanwhile, she was beaten by her husband twice and then she went back to her parents' house. Both families were already not on speaking terms due to Sana Ullah misleading act of deceiving Zafar Ullah.

Tehmina demanded *khul'a* from her husband Sana Ullah. The local *panchayat* tried to play its part in arbitration but was not fruitful. She filed a suit in the family court where she faced a lot of difficulties. During that time, the local *panchayat* served as an arbitrator to reunite husband and wife which could not happen. Tehmina stood with a single demand; to pay back Zafar Ullah. Sana Ullah did not agree to it. Finally, she got *Khul'a* from the court after three months. Zafar Ullah Khan went to the *Panchayat* for justice where Panchayat gave its final verdict based on the following decision:

1. Sana Ullah wanted to sell his house in 2002 which was equally shared by him and his wife. He approached Jamil Ahmed for selling this property.
2. There was a flaw in selling the house; since half of the house and land was in the name of his wife.
3. Zafar Ullah was supposed to be the owner of the complete house from the dual owners. He paid 2.3 Million rupees as both parties agreed over the decided amount.
4. Sana Ullah had the intention of deception since he kept his wife unaware of this deal and sent back his wife to her parents during the deal. He retained both the house and the money and kept on silencing his wife who was neither interested to sell the house nor wanted to be her counterpart in deception.

Resultantly, *Panchayat* constituted a committee to execute its decision which was taken in twenty days. Sana Ullah was made to pay back the actual amount to Zafar Ullah with a fine. The matter was solved by the *Panchayat* in a short time.

### Case Study on *Khul'a* and Elopement

Ashfaq Ahmed was a *Mirasi* living in *Bekho Mor*, *Mandi Bahaudin* who worked as laborer, *Seipi* in the village. Abida was the fifth daughter of Ashfaq Ahmed. She could use the cell phone for the She was well versed with the cellular technology and kept contact with the family members and relatives through mobile phones. Ashfaq had no cellular device at home other than that of his daughter's phone.

In August 2013, Ashfaq demanded the cell phone for an urgent call and talked to a *Mistri* named Khizar Hayat who was a carpenter. He was approached for the preparation of furniture for the dowry of his daughter Tahira. Khizar Hayat assigned his apprentice Shehzad, the task of making furniture for Ashfaq's daughter. After some days, Shehzad called back on the number which was responded by Abida. He asked for the design of the dressing table required. Since then, Shehzad and Abida came in to contact with each another and their communication started.

On the night of 21<sup>st</sup> February 2014, Abida Parveen eloped with Shehzad Ahmed with the help of a boy from the neighbor's village Tariqabad. The boy named Ali Raza came with a car as he was a driver in the village *Bekho Mor*. Both of them had tied up tied to be on the road where they were picked up at 2 am by Ali Raza in his car and they ran away.

In the morning, the family of Abida tried to search out Abida everywhere but they could not get any information about Abida from the village and their relatives within and outside their village. Finally, they found both from the Dera of Sarfraz Ahmad in Tehsil Kot Momin. Shehzad was taken in the custody of police from where he was sent to jail. He faced litigations for his immoral and unlawful act. Meanwhile, Abida's family engaged her to her cousin Atif Amjad. She got married on the 12<sup>th</sup> of June 2015. Asim was happy to have her in

his life but Abida was not. She did not accept him as her husband. After three months of marriage, she contacted one of Shehzad's cousin in Kot Momin. She got to know that Shehzad came back from jail and went twice to her village. He was very upset since he learnt about Abida's marriage.

Shehzad contacted her again and they both planned to get united once she sought *khul'a* from Atif. She was convinced by Shehzad to get a divorce from Atif and marry him. Once she was caught by her husband Atif talking on phone with Shehzad. Since then, she started asking for a divorce from Atif telling him that she only loved Shehzad. Atif got too upset. She went to court with the help of Shehzad to file a case of *khul'a*. Atif tried his best to make get her back but he failed to save their marriage. The local *panchayat* of the village served as an arbitration council for the sake of maintaining the relationship. They tried to handle the case by calling Shehzad and his family in the village to ask him either he wants to marry Abida or was just trying her get astray. *Panchayat* conditioned Shehzad's family that if they wanted to take Abida in marriage, Shehzad has to give her two-acre land in *Nikah* and case of divorce, he has to give his house to Abida as a safety measure to ensure her future. Shehzad refused to accept both conditions of *Panchayat* and finally got exposed in front of Abida. The arbitrary council tried for reconciliation of Abida and Atif to continue as husband and wife. Abida, heartbroken from Shehzad and his fake promises, consented to reunite with Atif and withdraw her case for *khul'a* from the court. Thus, *panchayat* played a vital role in social reintegration for the continuation of a family life.

## **Conclusion**

The researcher tried to unearth the role of the *panchayat* of *Khul'a*; its socio-cultural implications on society and *Panchayat* as an arbitrator according to the traditional norms and values of the society. There were different traditional systems in different areas. All these were to provide justice to the villagers. At the village level, the chieftain of the village and those people who were thought to be respectable, honorable, experienced, visionary and considered wiser selected by the villagers as a member of *Panchayat*.

There is a clear-cut distinction of the two justice systems; the legal justice system is working under the constitutional provisions and according to country law without regarding the cultural values and traditions, while the traditional justice system follows any law but respects the traditions for the expected settlement among the masses. There is a gap between both the system that has not been filled by the government and any other institution. Both systems are working on their own lines where the *Panchayat* institution has no legal recognition in Pakistan. The *Panchayat* system should work with the final consent of villagers within an elected body of justice. There must be a collaboration between the *Panchayat* system and the legal justice system. This system must have recognition in the legal justice system as well as some provisions and powers by the governmental bodies. It is the need of the hour to get benefitted from this traditional justice system since it has more ownership. Like the neighboring countries, Pakistan should have to develop an act by amending the constitutional provisions and establish the *Panchayat raj* institution. *Panchayat* is a neglected local social institution which needs to be streamlined and legitimized under the legal provisions.

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