

**TRADITIONAL MECHANISM AS AN INSTRUMENT OF CONFLICT RESOLUTION IN CURBING SECTARIAN MILITANCY**

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**Original Article**

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**Abstract**

*The study was carried out with triangulation of methods at Tribal District Kurram and District Hangu of Khyber Pakhtunkhwa, Pakistan. A sample size of 500 respondents was selected through purposive sampling techniques consisting of Maliks and religious clerics. A three level Likert Scale based questioner was developed for collection quantitative data and the same was presented at bi-variate level of analysis via using Chi-Square test application. Study respondents were asked qualitatively about un-cleared quantitative responses and their responses were recorded in black and white and presented in support of the positivistic data. The study concluded that local people considered Pakhtunwali is essential for dispute resolution. Jirga is a consensus institution of dispute settlement in the area and its ensures equal representation from the followers of both sects. Jirga decision is widely respected and acknowledged by the conflicting parties and non-observance of Jirga decision either leads towards burning and demolishing of the offender house or the violators is forcibly migrated from the area. Jirga composition gets altered due to the last wave of Talibanization and they thwarted the Jirga dynamics in the area. Due to eruption of sectarian clashes, well-reputed elders of the area migrated to other parts of the country and resultantly their vacuum was filled by the younger. They are either less equipped with traditional knowledge or decided matters of conflict in unjustified manner. Jirga is being organized both privately and publicly and the role administrative bodies is influential in moulding Jirga decisions. Frequent participation of both sect followers in one another daily life is indicative of social cohesion. The concept of Chagha, Shalgoona, and Salwehtoona, Tiga and Badraga are still in existence in the area without membership from the opponent sect followers. The code of Pakhtunwali should be safeguarded through strengthening Jirga institution and the concept of Khalaat should be strictly banned were presented some of the recommendations in light of study findings.*

**Keywords:** Traditional Mechanism, Conflict Resolution, Legal entities, Jirga, Pakhtun

**1. Introduction**

Formal and Traditional mechanisms are two prominent methods of conflict resolution. The former functioned through official governmental and legal entities of the state while later is based on customary practices and usually conducted by third party mediator or arbitrator or other approved means of communication by traditions. The process of traditional mechanism of conflict resolution is

involuntary and usually extended by recognized individual (s) of a given community that is formulated through geographical, environmental, demographic, chronological, and Sociological factors. Across the globe, societies used indigenous traditional mechanism to resolve and prevent conflicts based on familial relations, communal customs or rooted in intuitional practices side by the formal state sanctioned process (Macfarlane, 2007; Mapara, 2009). In recent years, indigenous conflict resolution mechanisms received increasing attention by the judiciary, civil society and the government (Gowok, 2008).

Just like many other societies, *Pakhtun*<sup>1</sup> society have their own traditional mechanism of conflict resolution know as *Jirga*<sup>2</sup>. *Jirga* in *Pakhtun* society deals with all types of disputes i.e. national, local, tribal social, political, cultural, financial and religious clashes over centuries (Rafi, 2002). *Jirga* as a traditional institution more strongly bound with tribal society and Afghan *Pakhtun* (Dupree 1980; Canfield 1986; Glatzer 1998; and Wardak 2003). *Jirga* operates according to the codes of *Pakhtunwali*<sup>3</sup> that guides all aspects of *Pakhtun* behaviours (Carter and Connor, 1989). In Pakistan and Afghanistan, *Jirga* is strong enough in communal peacebuilding process and widely used as social organization that prepared communities for collective decision making as a forum for settlements of all types of conflicts and disputes. *Pakhtun* code of conduct provides equal opportunities to community members to settle their quarrels and to generate self-confidence among them (Yousafzai and Ali, 2005).

*Jirga* dispensed justice to all and sundry regardless of their social status, wealth and influences (Beg, 2000). Takatoo (2014) contended that *Jirga* reprimands the party that declined its award and in such cases it may opt for punitive actions to enforced its decisions either to fine in cash or to burn the house of the recalcitrant party. *Jirga* in *Pakhtun* society enjoyed an exclusive role of legislature, executive and judiciary (Takatoo, 2014). He further added that disrespecting of *Jirga* decision by any party means turning of face and in such case, *Jirga* has the right to implement its decision by any means including imposition of heavy fines, ex-communication with non-complying party and confiscation of weapons etc. But if still the party refused to respect the *Jirga* decision, then *Jirga* has the right to burn their house by sending a '*Lashkar*<sup>4</sup>'. To make *Jirga* decisions more effective and implementable, surety in form of cash or other kind i.e. weapons, movable and immovable property are deposited by the conflicting parties with the members of *Jirga* in the start and any case who found of violating *Jirga* decision may lost their surety (Wazir, 2010).

Takatoo (2014) disclosed that *Pathan*<sup>5</sup> *Jirga* is custom based judicial institution that deal with the trial of minor or major crimes and civil conflicts between individuals, groups or tribes. Afridi (2003) stated that in tribal areas a very specific methodology of conflict resolution adopted where both the assassin and aggrieved parties were first of all confined to their houses, then after; they were agreed on *Tiga*<sup>6</sup> which means that disputing parties have agreed to decide cease fire till final verdict. With respect of sectarian clash of tribal district Kurram, peace *Jirga* convened at Islamabad under the supervision of Political Agent of Kurram that reached on an agreement which reopened the roads, restored power and dozens of people were released who had been abducted by opposing clans during conflict.

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<sup>1</sup>An ethnicity residing in Pakistan and Afghanistan

<sup>2</sup>Informal institution of conflict institution made of elders of the community

<sup>3</sup>*Pakhtun* codes of conduct

<sup>4</sup> Tribal army of local people

<sup>5</sup>Another word used for *Pakhtun*

<sup>6</sup>Literally means stone and used analogous to ceasefire in *Pakhtun* society

It is evident that both indigenous and exogenous factors are associated with sectarian violence, that enlarged the gap between the opponent school of thoughts. In this connection an urgent need of reconciliation is required to tackle the issue on priority basis by devising applicable strategies to overcome with this sectarian menace. Further, harmony is the only way forward to bring peace and prosperity in the society by eliminating violent discord through mutual understanding and acceptance of co-existence. Similarly, various forces need to be identified to address religious identities while taking support from religious and linguistic motivations (Johnstone and Sampson, 1995). Romera (2002) described that a sustainable peacebuilding process need to be designed while considering an association among different forms of aid such as emergency, post-conflict rehabilitation and development).

It is believed if a conflict is properly managed then there are greater chances of reconciliation among the conflicting parties. Conflict management helps in mitigating crisis danger, lessening actual and potential suffering and creating confidence to some extent while conflict resolution tries to affect the very basic issues and the inconsistencies which direct the warring parties. Amstutz (1999) stated that conflict management managed those issues that can escalate the conflict and it does assure that the conflict is in part beneficial and constructive. Further, conflict management seeks to manage socio-political conflict rather to vanish or disregard its outcomes. Thus, through this approach conflict is resolved without damaging the fabric of free society through responsible and free actions of members by establishing institutions and procedures to settle disputes and resolve conflicts more efficiently and effectively.

Bar-Siman-Tov (1994) believed that conflict management aimed to limit and control the strength of conflict rather to vanish their causes. He argued that conflict management means to contain, limit and control the conflicting behaviors in a manner to make it less violent or destructive. Ahmar (2010) concluded that with reference to sectarianism in Pakistan, both Sunni and Shia communities still have to go through a long way in order to give institutional structure to conflict management process through intra-faith dialogue and religious tolerance for rebuilding sectarian harmony and managing sectarianism in the country. Elias (1969) argued that socio-economic and cultural foundations of rural societies required proceedings that avoid a confrontational approach that increases estrangement and tension between the two groups and their supporters that in return pose a threat to moral cohesion of the community.

## 1.2 Research Methodology

This study was based on triangulation of methods containing both positivistic and interpretative approaches of social sciences. The major portion of the study was consisting upon quantitative data which was also supported by qualitative data where ever required. The study universe comprised of District Hungu and Tribal District Kurram (Erstwhile known as Kurram Agency of Federally Administered Tribal Areas) of Khyber Pakhtunkhwa, Pakistan. A sample size of 500 respondents was randomly taken for data collection with equal representation from both the confronting sects of area i.e. Shia and Sunni through the criteria set out by Sekaran (2003). A comprehensive questionnaire was developed while keeping in consideration the objectives of the study i.e. to determine association between traditional mechanism of disputes resolution and sectarian conflicts. Furthermore, to obtain information in orderly manner, three levels Likert scale tool (Yes, No, and Uncertain) was applied instead of going for other form of questionnaire. Anonymous policy regarding the questionnaire was considered for ensuring confidentiality of the respondents about all those who participated in the study. Further, un-cleared responses received through

positivistic tool were further considered for discussion during the process of data collection. Such responses were recorded on the spot and presented in discussion section of the paper. An appropriate associational statistical tool i.e. Chi-Square test was used for analysing and validation of information. The data was analysed and presented at bi-variate level of analysis, to ascertain the association between independent and dependent variables i.e. traditional mechanism of conflict resolution and sectarianism respectively.

### 1.3 Study Results in Numeric form to draw association between Sectarianism and Traditional Mechanism of Conflict Resolution

Traditional Mechanism	Responses	Sectarianism			Results
		Yes	No	Don't Know	
Equal <i>Pakhtunwali</i> by the local is essential in dispute resolution	Yes	358(92.3)	77(85.6)	12(54.5)	$\chi^2= 42.502$
	No	28(7.2)	10(11.1)	7(31.8)	
	Don't Know	2(0.5)	3(3.3)	3(13.6)	P=0.000
	Total	388(77.6)	90(18.0)	22(4.4)	
Jirga is a consensus institution of dispute settlement	Yes	369(91.3)	62(86.1)	16(66.7)	$\chi^2= 91.285$
	No	35(8.7)	8(11.1)	2(8.3)	
	Don't Know	0(0.0)	2(2.8)	6(25.0)	P=0.000
	Total	404(80.8)	72(14.4)	24(4.8)	
Constitution of Jirga ensures equal representation of both sects for conflict resolution	Yes	332(92.2)	81(85.3)	34(75.6)	$\chi^2= 47.738$
	No	27(7.5)	13(13.7)	5(11.1)	
	Don't Know	1(0.3)	1(1.1)	6(13.3)	P=0.000
	Total	360(72.0)	95(19.0)	45(9.0)	
The composition of Jirga get altered due to the wave of Talibanization in the area	Yes	270(92.2)	123(86.6)	54(83.1)	$\chi^2= 10.471$
	No	22(7.5)	15(10.6)	8(12.3)	
	Don't Know	1(0.3)	4(2.8)	3(4.6)	P=0.000
	Total	293(58.6)	142(28.4)	65(13.0)	
The decision of Jirga is widely respected and acknowledged by the conflicting parties	Yes	335(91.0)	87(86.1)	25(80.6)	$\chi^2= 15.886$
	No	30(8.2)	12(11.9)	3(9.7)	
	Don't Know	3(0.8)	2(2.0)	3(9.7)	P=0.003
	Total	368(73.6)	101(20.2)	31(6.2)	
Non-observance of Jirga decision leads towards burning and demolishing of a house of the offender	Yes	117(92.1)	290(89.5)	40(81.6)	$\chi^2= 28.059$
	No	8(6.3)	33(10.2)	4(8.2)	
	Don't Know	2(1.6)	1(0.3)	5(10.2)	P=0.000
	Total	127(25.4)	324(64.8)	49(9.8)	
Non-observance of Jirga decision result forcible migration of the violator from the area	Yes	140(90.3)	267(90.8)	40(78.4)	$\chi^2= 27.750$
	No	12(7.7)	27(9.2)	6(11.8)	
	Don't Know	3(1.9)	0(0.0)	5(9.8)	P=0.000
	Total	155(31.0)	294(58.8)	51(10.2)	

Talibanization thwarted the Jirga dynamics in the area	Yes	285(89.9)	112(88.9)	50(87.7)	$\chi^2= 10.654$
	No	31(9.8)	10(7.9)	4(7.0)	
	Don't Know	1(0.3)	4(3.2)	3(5.3)	P=0.031
	Total	317(63.4)	126(25.2)	57(11.4)	
Well-reputed elders of the area migrated to other parts of the country due to eruption of sectarian clashes	Yes	392(92.2)	46(71.9)	9(81.8)	$\chi^2= 32.299$
	No	30(7.1)	13(20.3)	2(18.2)	
	Don't Know	3(0.7)	5(7.8)	0(0.0)	P=0.000
	Total	425(85.0)	64(12.8)	11(2.2)	
Jirga is being organized in public and open places without any fear of anti-state elements	Yes	199(91.3)	231(90.9)	17(60.7)	$\chi^2= 57.933$
	No	19(8.7)	20(7.9)	6(21.4)	
	Don't Know	0(0.0)	3(1.2)	5(17.9)	P=0.000
	Total	218(43.6)	254(50.8)	28(5.6)	
The role of administrative bodies is influential in moulding Jirga decisions	Yes	354(90.8)	68(91.9)	25(69.4)	$\chi^2= 57.934$
	No	34(8.7)	6(8.1)	5(13.9)	
	Don't Know	2(0.5)	0(0.0)	6(16.7)	P=0.000
	Total	390(78.0)	74(14.8)	36(7.2)	
Frequent participation of both sects in one another daily life related events is indicative of social cohesion	Yes	378(92.2)	61(79.2)	8(61.5)	$\chi^2= 56.030$
	No	31(7.6)	12(15.6)	2(15.4)	
	Don't Know	1(0.2)	4(5.2)	3(23.1)	P=0.000
	Total	410(82.0)	77(15.4)	13(2.6)	
The concept of Chagha is still in existence in the area	Yes	263(93.3)	171(88.1)	13(54.2)	$\chi^2= 55.313$
	No	16(5.7)	22(11.3)	7(29.2)	
	Don't Know	3(1.1)	1(0.5)	4(16.7)	P=0.000
	Total	282(56.4)	194(38.8)	24(4.8)	
Shalgoona and Salwehtoon prevail in the area	Yes	219(92.4)	209(89.7)	19(63.3)	$\chi^2= 39.420$
	No	15(6.3)	23(9.9)	7(23.3)	
	Don't Know	3(1.3)	1(0.4)	4(13.3)	P=0.000
	Total	237(47.4)	233(46.6)	30(6.0)	
The norms of <i>Kanay/Tiga</i> is key to sustaining long term peace	Yes	303(91.0)	123(89.1)	21(72.4)	$\chi^2= 49.027$
	No	29(8.7)	13(9.4)	3(10.3)	
	Don't Know	1(0.3)	2(1.4)	5(17.2)	P=0.000
	Total	333(66.6)	138(27.6)	29(5.8)	
<i>Badraga</i> still prevails in the area	Yes	277(94.2)	151(86.3)	19(61.3)	$\chi^2= 41.603$
	No	13(4.4)	23(13.1)	9(29.0)	
	Don't Know	4(1.4)	1(0.6)	3(9.7)	P=0.00
	Total	294(58.8)	175(35.0)	31(6.2)	

#### 1.4 Description of Study Results

The aforementioned study results disclosed association between independent and dependent variables at bi-variate level of analysis i.e. sectarianism and traditional mechanism of conflict resolution. These results contended a highly significant association ( $P=0.000$ ) of sectarianism with statements such as essentiality of equal observance of *Pakhtunwali* by local people in dispute resolution, Jirga is a consensus institution of disputes settlement in the area, constitution of Jirga ensures equal representation of both sect's members, and composition of Jirga altered due to the wave of Talibanization. Further, a significant relationship ( $P=0.003$ ) found between sectarianism and Jirga with reference to its decision that is widely respected and acknowledged by the conflicting parties. Moreover, a highly significant relationship ( $P=0.000$ ) observed between sectarianism and the notions such as non-observance of Jirga decision leads towards burning and demolishing of a house of the offenders, and non-observance of Jirga decision result forcible migration of the violator from the area. In addition, a significant association ( $P=0.031$ ) disclosed between the conception that Talibanization thwarted Jirga dynamics in the area and sectarianism.

Further, a highly significant association ( $P=0.000$ ) found between sectarianism and statements i.e. well-reputed elders of the area migrated to other parts of the country due to eruption of sectarian clashes, Jirga is being organized in public and open places without any fear of anti-state elements, role of administrative bodies is influential in moulding Jirga decisions, frequent participation of both sects in one another daily life related events is indicative of social cohesion, the concept of *Chagha*<sup>7</sup> is still in existence in the area, *Shalgoona*<sup>8</sup> and *Salwehtoon*<sup>9</sup> prevail in the area, the norms of *Kanay/Tiga*<sup>10</sup> is key to sustaining long term peace and *Badraga*<sup>11</sup> still prevails in the area.

#### 1.5 Discussion

It is evident that Pakistani society is confronted with different types of evils that directly or indirectly affect the smooth functioning and growth of *Pakhtun* society. Sectarianism is one of them that badly affect the lives of people in various parts of the country. In comparison to other parts of the country, sectarian violence has great effects on the lives of the local people of erstwhile Tribal District Kurram and District Hangu. These two districts passed through a series of sectarian clashes time and again. The occurrences of sectarian violence in the area is multi-faced ranging from local to international involvements. According to Pak Institute of Peace Studies Report (2013), the infrastructure of Pakistani society is badly damaged due extremist's activities in the country. Further, Spotlight on Regional Affairs (2005) stated that after raised in sectarian conflict since 1990s, the growth of the country GDP rapidly slowing down that in turn rise in extreme poverty. Study results disclosed that due to sectarianism and eruption of sectarian clashes, the well-reputed elders of the area migrated to other parts of the country. In this connection, Kreutzmann (2008) concluded that social bound, tribal and ethnic identities which were developed over centuries is more valued in comparison to sectarian affiliations. But the last wave of sectarian militancy in the study areas contributed in negative direction in the form of local migration. Keeping in view the prevailing situation, there is dire need of reconciliation and in this respect traditional mechanism of conflict resolution can play a significant role.

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<sup>7</sup>Whenever an accident took place in tribal areas, resultantly the whole community come out from their homes with weapons to respond unwanted situations.

<sup>8</sup> A group of 20 local individuals having the responsibility to look into the affairs related to communal security.

<sup>9</sup> A group of 40 local individuals having the responsibility to look into the affairs related to communal security.

<sup>10</sup>Its literally mean stone but fall within tribal traditions. Whenever, there is violent conflict between the local people in tribal areas, then for ceasefire this word is used.

<sup>11</sup> People accompanied with a person to safeguard him from his enemies.

In tribal region and its adjacent parts, people are strictly attached with *Pakhtunwali* and their day to day affairs are most often run through their long standing established codes of *Pakhtunwali*. *Pakhtunwalis* defined as the codes of honour, *Pakhtun* ways of life, customs and manner that conglomerate of cultural ideal features endorsed by *Pakhtun* and appeared an all inconclusive cultural codes (Ahmed, 1987; and Glatzer, 1998). The local people equally observed *Pakhtunwali* not only in their routine life but as well considered highly essential in dispute resolution. Khan (2011) concluded that all the affairs of *Pakhtun* social organizations are governed through *Pakhtunwali* which derived both routine matters, major and minor conflicts or issues. *Pakhtun* social organizations operates under *Pakhtun* codes of conduct which are predominantly revolves around courage, hospitality, generosity, warrior oriented virtue and obligations to take revenge, although; defined and written record of these codes are not available but strictly obeyed and regularly practiced (Lindholm, 1996; Naz, 2011; Khan, 2011). In this way, if these customary are strictly observed in true spirit then ultimately it will contribute in mitigating sectarian militancy from the area as both the sect have similar ethnic background.

Sectarianism in the area is not solely a religious phenomenon but it the same time supported by the normative order where revenge occupied an important position and no case wrong doing and opponents are forgiven. The local strongly observed religion but at the same time cultural values always dominate religious teachings in matters related to sectarian conflicts. It is believed that in certain matters connected to honour, *Pakhtunwali* even superseded the teachings of Islam in tribal areas (Bangash, 2011). This shows that *Pakhtun* (s) preferred their own customary practices and considered the same over and above of the religion. In the particular context of sectarianism, *Pakhtunwali* is strictly observed which demand for strict actions against the opponents. Such picture of *Pakhtunwali* is depicted by religious clerics under the shade of religion which is in contrast of *Pakhtun* culture.

Disputes in *Pakhtun* society are brought to Jirga, where the members of Jirga passed its verdict about the issue. Jirga is an important institution of *Pakhtunwali*, which is commonly used for gathering of large or few people and the word is derived from Pashto language (Pashto Descriptive Dictionary, 1978). Likewise, Ghyathul-Lughat (1871) stated that word Jirga is derived from 'Jirg' which means circle or wrestling ring but commonly referred to people gathering. Furthermore, Faiz-zad (1989) believed that some scholars attached the origin of Jirga with a Turkish language. The concept of Jirga is also interchangeably used for *Maraka*, however; Atayee (1979) differentiated between the two by stating that *Maraka* settled micro level problems while Jirga deals with settlement of problems having great importance.

Jirga is a consensus institution of dispute resolution in *Pakhtun* society and decision taken by Jirga is widely respected and acknowledged by the conflicting parties. Carter and Connor (1989) described that Jirga is the product of tribal *Pakhtun* society which functioned according to *Pakhtunwali* dictates. It is a comprehensive code of conducts for guiding all aspects of *Pakhtun* behaviours and often overriding the commands of central government and Islam and settled down almost all issues. Both Islam and *Pakhtunwali* are ideally treated as same but the latter is embedded in long standing historical context and traditions which is in practice among Afghan living in Baluchistan, Khyber Pakhtunkhwa and Afghanistan (Khan, 2011). Further, Naz (2011) concluded that in *Pakhtun* dominated areas, tribal laws are widely practiced being accepted as customary laws while controlling political, religious, economic and socio-cultural activities. This study also disclosed that equal observance of *Pakhtun* codes of conduct by the local people is very much essential for dispute resolutions as both types of conflicts either civil and criminal are brought to Jirga institution for

decision. Likewise, conflicts between different tribes, sects and kin are also decided by such institutions that are supported by customary practices of *Pakhtun* social institutions i.e. Jirga. Without the influence of Jirga, *Pakhtun* social organization might be unjustifiable and unstable that is considered a major political organization and institution (Caroe, 1977).

However, due to the last wave of Talibanization in the area, the composition of Jirga gets altered and its thwarted Jirga dynamics that need to be reconstructed in its original form. In case of non-observance of Jirga decision, the house of the violator is either burned or demolished, or they are forcibly compelled to migrate from their lands. These results show that strengthening of Jirga in the area can help out the local people with respect of disputes resolution including sectarian militancy. In this connection, Jirga needs to be strengthened as it was in the past by the state authorities through developing confidence of Jirga members, as Jirga is the only powerful mechanism in the area that exercised all types of authorities. Wardak (2003) highlighted that over centuries Jirga operated as a significant mechanism of conflict resolution among *Pakhtun* and has delivered to maintain social order either directly or indirectly according to tribal customs. Further, Afghans preferred to solve their conflicts through Jirga exterior to courtroom and avoided to contact the state legal institutions. Even though, theoretically speaking, the conception of authority is depending upon specific social context that what type of authority needs to be exercised. Max Weber (1964) differentiated among three types of authority i.e. Traditional, charismatic and legal rational authority and for Weber traditional authority exists when the process of formal governance either does not exist or not fully institutionalized.

During the field visits it has been observed by the researcher that after Talibanization in the area, the codes of *Pakhtunwali* changed to the extent that currently in most of the cases, members of Jirga try to avoid such actions that are hard to implement. This could be either the reason of increasing state interventions or changing pattern of social institutions. Although, Jirga is a traditional and historical institution that resolved all national, local and tribal religious, cultural, economic, social and political conflicts over the centuries by making authoritative decisions (Rafi, 2002). The study further concluded that the constitution of Jirga ensures equal representation of both sect's members in the area. In tribal areas it is a social fact, that dialogue must be proceeded under the principal(s) of equality otherwise no one can acknowledge its decision. Even though, a Jirga organized by Government is consisting upon equal representation of both the parties. This practice is still prevailing and enacted that is a good sign and as it will help out the conflicting sects in solving their day to day and sectarian issues. These results are also in consonance with previous studies which states that the composition of *Maraka*<sup>12</sup> is from various *Psha/Plarina*<sup>13</sup> of one *Khel*<sup>14</sup>, while Jirga is composed of the member of different *Khel* (Rafi, 2002). It could also be deduced from these results that *Pakhtunwali* demands for equality where both the weaker and stronger are treated in equal manner without any sort of discrimination on the bases of race, ethnicity and religious ideologies.

However, during the process of data collection when a participant was asked about the role of women in Jirga he stated that; "*what is the role of women in Jirga as men are not enough to solve their problems. We represent them in Jirga and we will. Their right will never be discriminated*". These results highlight the subordinate position of women in *Pakhtun* society that is either neglected or less acknowledged. Half of the population i.e. women are invisible in Jirga institution as they do not participate directly in Jirga but their views are acknowledged and respected through their male members and in this way they are influential behind the public spheres (Lelwellyn, 2006). Likely,

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<sup>12</sup>Jirga form organized for small issues

<sup>13</sup>Family

<sup>14</sup> tribe



Mushtaq, Yaqoob and Javaid (2016) opined that Jirga is true representation of social democracy as provided equal chances to all members of society, however; women are lagging behind in their participation and representation even in the official domain of Pakistani judicial system. They adopted various mechanism to take its members but its core purpose is to give equal opportunities to all tribes and areas (Yousafzai and Ali, 2005).

Another participant was asked that either Jirga decide matters contrary to wishes of the conflicting parties or not and if it is decided against the will of the conflicting party then the decision can be endorsed by them or not. The participant replied that; "*Mark-Wall*<sup>5</sup> *try to brings win for their people and not the lost, and even though if they returned with empty hand then it must be beyond their control*". These results described that local people highly trusted their elder who remained in Jirga as member and in all cases they stand with them. It is also believed that Jirga gives equal rights to all to express their view and to influences other opinions with the decision of the majority, however; it is also observed that dominating groups constitute Jirga and they manipulate its decisions (Ambreen and Mohyuddin, 2013). Keeping this in view, the exclusion of any sect of the area is not possible and if they are being excluded than the conflicting parties neither accept nor respect its decisions. Yousufzai and Gohar (2005) and Ahmad and Yousaf (2018) disclosed that the process of Jirga is based on detailed deliberation among widely respected *Speen-Giri*<sup>16</sup> and the senior elders are being responsible for final decisions while the other members played various advisory roles. They further added that Jirga takes its final decision after comprehensive consultation and deliberation with all members of the Jirga and thus its represent a communal consensus. Ambreen and Mohyuddin (2013) stated that Jirga decided blood feuds and disputes under the guidance of *Pakhtunwali* and framed on the principles of relations and equality. They further added that the decision in Jirga is taken with majority and followed by all but in case of non-observance of Jirga decision then the concerned is economically and socially discarded from the community members. Even though if the decision is one sided, but has to obey by everyone.

The study results further highlighted that administrative bodies and state authorities are influential in moulding Jirga decisions. Jirga is functional and effective due to the failure of the state functionary, but still state interferes in the matters related to Jirga and they can do the same to a greater extend. Rubin (1995) stated that Tribal governance structure in Pakistan and Afghanistan filled by traditions as a vacuum is left due to the absence of the state (Robin, 2002). That is why, tribalism based on kinship exist more as a mechanism of social resistance to state control. Keeping in view the respondents' perceptions, it could be concluded that with special emphasis of erstwhile tribal areas, the concept of *Sarkari*<sup>17</sup> *Jirga* exist in area. Mushtaq, Yaqoob and Javaid (2016) viewed that Frontier Crimes Regulation Act (FCR) was introduced by the British in 1901 in Khyber Pakhtunwali previously known as North West Frontier Province (NWFP) that empower the government to regulate Jirga formation and designate its members in tribal areas.

The study further contended that Jirga is organized both in closed place and publically without any fear of anti-state elements even though after the wave of terrorism in the area but the composition and dynamics of Jirga gets altered due to Talibanization in the area. The area passed through a series of conflicts either sectarian or supported terrorist ideologies. Such conflicts not only affected the socio-economic dynamics of the area but as well altered Jirga composition and pattern of its decisions. The decision of Jirga is considered final and its played a significant role in maintaining cohesion (Ambreen and Mohyuddin, 2013). Moreover, Dennys and Marjana (2012) stated that in recent years Jirga has been restricted beside the fact that it was central to challenged militants and essential to informal

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<sup>15</sup>Jirga members

<sup>16</sup>White beard men

<sup>17</sup>Government

provision of justice but still have critical position and legitimacy in people eyes. However, now it is unable to foster and assist justice provision and conflict transformation being historically done by it due to incoherent state policies.

With special emphasis of controlling violence and sectarianism, Jirga has been failed in the area as a participant mentioned during the process of data collection that; *“Taliban do not bear about anyone then what to be done by the Jirga members, and how they can stop wars in presence of Taliban”*. Zahab (2009) viewed that Jirga have failed to stem the violence and Jirga is no more effective in rural areas of Kurram. Further, according to TOLO News dated November 21, 2011, the Taliban who commanded the Jirga in the past, unsurprisingly opposed its recommendations. The President Pervez Musharraf and President Hamid Karzai of Pakistan and Afghanistan respectively called for a grand Jirga where a committee was formed to call for small gathering of tribal elders and Taliban leaders from both sides of the border and most possibly the Hikmatyar who remained the leader of Hizb-e-Islami and recipient of enormous covert assistance from Washington and Islamabad throughout Afghanistan Jihad (Lodhi, 2007). In this way Taliban inclusion in Jirga further influenced Jirga decisions. Similarly, Taliban in its peak era operated their own Sharia courts in tribal district Kurram where they decided the fate of several people as disclosed by a respondents during data collection process. He further added that even though Taliban called the local government officials to their camp i.e. *Shahsoo* situated near to Tehsil Headquarter Sadda, if someone is having complaint against them. Refusal of visiting their camp means to call death for himself. That is why some of the government officials availed leave from duty and went to either Gulf states or other parts of the country. Some of the government officials were also attached by them due to refusal of visiting their camp. Such like situations provide a room for Taliban to interfere in Jirga decisions and mould it according to their wishes and desires.

Due to these reason, the local traditional mechanism of conflict resolution does not fulfil the modern day dynamics of social life and Jirga as local institution has lost faith in its followers due to the partisan character of its members. This could be the reason that with the passage of time and increase in education people attitudes altered and advanced. They become aware about the modern world requirements and institutional framework of the state. Likewise, after military operation in certain areas of Khyber Pakhtunkhwa, the writ of the state extended to unreachable parts of the area as well. In this context a participant disclosed that many of the elders who were the part of Jirga institution either migrated to other parts of the country or side-lined. In turn, a vacuum was created that was filled by the younger generation who are neither equipped with the local traditions nor accepted as elder by the local as a participant added that; *“now people are educated and aware, elders are either killed in sectarianism or migrated to other parts, resultantly younger become the elder and they know nothing about Jirga, that is why Jirga get weakened both in making and implementing decisions”*. According to TLO Program Brief Report (2009), the method of Jirga with respect of conflict resolution has weakened that can be linked with the over erosion. Previously, the work of Jirga was transparent and almost all tribal elders wants to serve their tribes to resolve their conflicts and to bring peace but now currently corruption is associated with Jirga as mostly its members do Jirga for self-benefits and taking bribe in the form of *Khalaat*<sup>18</sup> that lead to making unjust decisions. The *Malik*<sup>19</sup> system has been weakened and now no one accept what the *Malik* says (AVT, Khyber TV dated June 11, 2006).

Lastly, tribal armed groups i.e. *Shalgoona* and *Salwehtoon* is still prevail in the area and in this respect a participant added that both the sects of the area have their own *Shalgoona* and

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<sup>18</sup> A form of Jirga fee

<sup>19</sup>Local elder and prominent people

*Salwehtoon*. The role of these two cannot be avoided with respect conflict mitigation and peace building. But due to its independent existence and absence of the presence of opposing sect followers, it worked as a motor of social change and cohesion within the same sect followers and have nothing to do with the opponents. Likely, *Badruga* have to be organized for opponent as well rather to be limited to the followers of their own sect members. If these customary practices are combined and presence of both sect is ensured, ultimately; it will contribute in a positive way towards conflict resolution between Shias and Sunnis.

### 1.6 Conclusion

The study concluded that equal observance of Pakhtunwali can play a pivotal role in local dispute resolution through Jirga institution, which is a consensus institution of dispute settlement in the Khyber Pakhtunkhwa in general and tribal areas in particular. In the past, the decision of Jirga widely respected and acknowledged by the conflicting parties but now slowly and gradually it is declining both in term of decisions and its applications. The constitution of Jirga ensures equal representation of both sects' followers. But this composition gets altered due to the last wave of Talibanization as they thwarted Jirga dynamics in many ways. Moreover, Talibanization not only effected Jirga institution but they also enlarged the web of sectarianism in the area due to their direct involvement in violent conflict. The non-observance of Jirga decision is lead towards burning and demolishing of the offenders' houses. Likewise, the norms about forcible migration in case of discarding Jirga decision is in practice which contribute strong social control. However, gradually this customary practice gets weakened either due to Talibanization or migration of prominent elders of the community. The state administrative bodies are also influential in moulding Jirga decisions and they manipulate Jirga decisions for achievements of state goals and objectives. These factors weakened the local traditional mechanism of conflict resolution, resultantly; it does not fulfil the modern day dynamics of social life. So that, Jirga as local institution has lost faith among its followers due to the partisan character of its members and its feeble role. A placid approach to reinvigorate the traditional mechanism of dispute resolution can also be blamed for social disintegration and going back to harmonious state is only possible through revisiting the institutional role. The concepts *Shalgoona*, *Salwehtoon*, *Tiga* and *Badruga* are still in existence in the area. The absence of opponent sect followers in these customary orders negatively affect its role in curbing sectarianism and sustaining long term peace in the area.

### 1.7 Recommendations

In light of the study results, the following recommendations were put forward for state authorities and policy makers.

- State authorities and law enforcement agencies should establish their writ via controlling law and order situations and should kept open eyes on those who are working for weakening long standing traditional mechanism of disputes resolution of the area.
- The code of *Pakhtunwali* should be safeguarded not only by the local but by the state authorities as well.
- Jirga institution should be strengthened in the area and state involvement should be discouraged with respect of Jirga domain.
- The concept of speedy courts need to be introduced to punish those who are involved in criminal activities.
- Civil society need to build and promote inter-faith trust and dialogues through various means to reach an acceptable way of living.
- The concept of *Khalaat* should be strictly banned and in no case Jirga members be allowed to take *Khalaat* from the conflicting parties for their disputes settlements.

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