



## RESEARCH PAPER

### Jirga: A Historical Institute

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#### ABSTRACT

Jirga is one of the primitive dispute settlement mechanisms widely used in many parts of South Asia, including Balochistan. The mechanism has been differently utilized with the perspective of every culture. Likewise, in Balochistan, Jirga was flexibly turned with the social and cultural norms of the Baloch. Most of the literature on the topic covers a different aspect of the conception of the Jirga. This study aims to examine the effectiveness of the jirga system in the tribal society. A qualitative and narrative based approach is used to address the issue in question. This study also discusses a general outlook of the Balochi Jirga, which has rarely been the subject of previous research. The paper shows that Balochi Jirga has long roots back. Still, it gained momentum with the establishment of feudalism in Balochistan, and later, Sandeman's policy turned it in favour of the English administrators. However, today it still exists as an informal judicial mechanism with no state sanction and resembles a modern-day mediator. It is recommended to the higher authorities to promote the jirga system around the country where the tribal system exist because it is more effective than the other judicial system because of its effective and timely decisions.

**KEYWORDS** Balochistan, Institution, Jirga, Tribal System

#### Introduction

In Balochistan, gathering people to solve a certain dispute has long roots. However, there is no historical event from which a formal gathering can be inferred to resolve a dispute. Jirga is not a word in Balochi Language and is not used in Balochi widely. In Balochi, the work "Muchchi" and "Diwan", meaning "gathering", is used instead of the jirga. Jirga is a Persian word that means assemblage or circle. In this paper, the origin of the jirga, the introduction of a jirga in Balochistan by Robert Sandeman, the procedure followed by the jirga for the trial, and some historical decisions of jirga will also be discussed. Moreover, the implication of jirga and the causes due to which jirga still exist after the worldwide introduction of the formal justice system is analyzed (Liu, et al., 2022).

#### Literature Review

Sardar Khan Baloch is an iconic author of Balochistan; his book *Baloch a Nation* is an analytical piece of writing where the weaknesses of Baloch society are highlighted. It looks like a critique of the Baloch way of living and theoretical conceptions. It concerns the current study in that it emphasizes the role of the Jirga and that it is the worst form of dispute resolution. He states, "jirga is a system more honored in its breach than obedience" (Baloch. 1947 & Muzaffar, et. al. 2018)). However, his work is not fully legally cover any judicial concept but is a strong opinion on Jirga, which is a separate chapter of the present study.

Prof. Aziz Bughti, a renowned Baloch writer, has a grip on Baloch's history, society, and politics. One of his books *Balochistan: Sayasi Culture aur Qabailye Nizam* (2009), is relevant to the current study because it describes the origin and development of the feudal system in Balochistan. As per his writings, Historically, the Sardars (tribal chiefs) were selected by the tribe, but later, through various developments, these tribal chiefs settled

themselves as the aristocratic class of the tribal society in Balochistan. Moreover, he argues the rapid transformation of this process occurred, especially in the age of British rule. It is, therefore, significant to understand the changing behaviour of dispute resolution or judicial system with the advent of British rule. Another article jotted down by Dr Adil Zaman, Dr Abdul Qadir Khan, and Abdul Qadir, professors of Balochistan University, titled *Change in the Behaviour and Character of the Jirga System in the British Period (A case study of Balochistan)* (2015) also made the same argument of alteration of judicial mechanism within the period of British rule.

Currently, the procedure adopted by Jirga and its various decisions is barbaric and against the constitution of Pakistan. The Institute of Jirga has been under critique. Ali Shan Shah and Shahnaz Tariq, in their article *Implication of Parallel Justice System (Panchayat and Jirga) on society* (2013), mentions that the informal Jirga system has its root in the colonial age but is still functioning in Pakistan. The state is not monitoring it; hence Jirga system is being utilized as an instrument of exploitation by tribal chiefs. Moreover, they commented that it does not only exist in Balochistan but is equally functioning in KPK, Sindh, and Punjab (Irshad, Hussain, Fahim, & Ghias, 2022).

### **Origin of Jirga**

Jirga is a basic institution in most primitive societies. It is a judicial, legislative, and administrative body that regulates the tribe's social conduct in the state of nature; when a conflict arises between two persons, the one with greater physical force dominates the other. To overcome the use of power by one person against another and to end disputes peacefully, human beings took up a dispute resolution system. It was a form of a mutual body set up by every community. This body was composed of the best of the men of that community, who would pass on judicially the matters and resolve the conflicts with fairness and justice. It is recognized by different names in communities like Panchayat, Jirga, Mediation Committees (Bibi & Khan, 2020) and "Muchchi" in Balochistan. Therefore, this simple form of the judicial system was the result of the necessity and once existed in most of the world's communities.

In most of the ancient world, the institute of Jirga existed. In Persia, it was called 'Majlis,' in Arabia as 'Shura,' in Rome as comitia Curiata, and in Greece as 'agora,' while in India and its areas as 'panchayat.' All these institutes of different countries had the same function of mutual consultation in a solution to their problems. Even today, in some areas of Iraq, people have built large houses where they solve their communal problems through mutual consensus. Similarly, Aryans have two councils of, Simite and sabha. Simite comprises the elders and notables, while sabha is a village council. Sultan Behlol Lodhi, and Sher Shah Suri, the Afghan descendants' Indian ruler, had also formed their consultation councils and participated in the proceedings as members. (Bariach, Panezai, & Khan, 2014).

Like in other countries, in Balochistan, the disputes faced by the society were resolved through the mutual consultation process. The name 'Jirga' and its present shape are given to the process of mutual consultation by the British officials, who wanted their interference in the judicial mechanism of Balochistan. In other regions like India, Arabia, Persia, and Greece, it transformed and earned a better and more authoritative structure. Still, it remained as it was and became the most flexible and useful institution of Balochi Tribal society till very recently, when Mr Zulfiqar Ali Bhutto abolished the Sardari system in 1976. Jirga, or the council of elders, worked as a very influential institution in the tribal setup of Balochistan. "It emerged six hundred years ago in the society of Baloch" ... but subsequently, the occupation of Balochistan by the British Empire, the Jirga was transformed by Sandmen reforms and other enactments to match it with their ambitions (Baloch, 2018).

### **Sandeman introduced the Jirga as an Institution**

Sir, Robert Sandeman remained the Agent to Governor-General and Chief Commissioner in Balochistan from 1876 until his death in 1892 in Las Bela. British historiography acknowledges him as the “peaceful conqueror” of Balochistan (Redaelli, 1997) , because he successfully negotiated Mastung Treaty and Jacobabad Treaty; due to these, the British not only became the sole mediator between Khan and its Sardars, but also the controller and power holder in the Khanate of Kalat. He began his career as an infantry soldier in the East India Company, where his father was already serving and retired from the rank of General. Due to his gallant services, he was offered “an honorary place in Punjab’s Commission that he eventually joined hesitantly in May 1859 as a gazette Assistant Commissioner in Punjab State” (Zaib, Dali, Zahoor, & Khan, 2021). he became acquainted with Baloch areas in 1866 when he was chosen as the District Officer of Dhera Ghazi Khan, where he offered conciliation to tribal disputes. He was sent on two missions to the Khanate of Kalat to deal with the Kalat affairs (Ahmad, Alam , Rahmat, Mubarik, & Hyder, 2022).

Robert Sandeman introduced reforms and changes in the administration of the Khanate of Kalat and the tribal system of Balochistan. The primary purpose of introducing the changes was to firmly establish and secure British interest in the frontier of the British-India Empire in Balochistan. Khanate of Kalat was based on a feudal system in which the Khan of Kalat ruled over all the Sardars (tribal chiefs) of the tribes, which in turn ruled over the tribe members. Sandeman wanted a federal state or confederacy, where Khan exercised specific power of external affairs, and internally, Sardars were the real power holders with little control of Khan over them. He introduced certain institutions to implement and achieve his goals and intentions; the prominent one was Jirga (Redaelli, 1997).

According to Sardar Khan Baloch, “Jirga is a Persian word meaning ‘circle’ which has, most probably, the same origin as the Latin circus and the Greek (UVK, LOS)” (Baloch M. M., 1947). As per Riccardo Redaelli, “Jirga is a Pashtun word meaning the ‘tribal assembly.’ Sandeman’s introduced system included (i) local Jirga and (ii) Shahi Jirga.

“Local jirgas (known as Jirga of the Sardars, or Jirga nizam, Jirga of the elders) were set up with the appointment, by the British, of village chiefs, leaders of tribal sections, etc., as judges in all those cases – involving the local population- concerning petty crimes, matrimonial controversies, adultery, and quarrels over the ownership of water or land or cattle. The members of the Jirgas were selected and registered by the office of the Political Agent. Sentences of more than seven years had also to be ratified by the A.G.G.....For the more important cases, including those concerning loyalty to the colonial Administration, there was also the Shah-i-jirga, a sort of Great Council of the main Sardars”(Redaelli, 1997)

“The Shahi Jirga was held at Quetta, Sibi, and Fort Munro once or twice a year” (Baloch I. , 1987) Gul Khan Naseer, in his book Tareek-e-Balochistan mentions the Sandmen’s introduced reforms in the administration of Khanate of Kalat. He wrote that on 1<sup>st</sup> August 1876, Sandeman, on the wishes of Sardars and with the consultation and authorization of Khan, recommended a method and procedure for running the Balochistan administration. Khan authorized it and promulgated orders for its future implementation. As per the new method of governance, the civil administration was divided into four parts (i) collection of taxes, (ii) civil cases, (iii) Criminal cases, and (iv) Aid and assistance of civil officers through the army. In a civil matter, where the parties to the case are from the tribe, then the concerned Sardar or Sardars would have the jurisdiction to decide the case, but where the claimant is a tribesman and the defendant a resident of the Khanate of Kalat. Still, from not a tribesman, then the case would be in the jurisdiction of ‘Naib’ to decide. On the contrary, where the claimant is an alien or non-resident of the Khanate of Kalat, and the defendant is a tribe member, in such a case would be for the concerned Sardar to decide. However, in all situations and circumstances, the appeal would have lied to the Khan and whose decision would be final (Naseer, 2016).

## **The Procedure of Jirga**

There is no fixed procedure for conducting Jirga proceedings. It differs from case to case based on its nature, but certain customs and Riway are fundamental and non-volatile. For instance, the basic rule is that the parties, through mutual consent or consensus, refer the matter to Jirga and promise to accept Jirga's decision at any cost. Still, sometimes the Sardar may take cognizance of a case on the complaint of a single party. However, the procedure of Jirga resembles more arbitration proceedings than a court. Following is the general and basic procedure of most Sarwan House Jirga (Irshad, Husaain, & Qureshi, 2021).

Proceedings begin with the consent of the members of the Jirga to accept its decision. Then the complainant, followed by the defendant, presented their case along with arguments and evidence before the Jirga. If the Jirga cannot reach a decision based on the presented facts and evidence of the parties, it may employ its means of investigation to collect evidence. Mostly, the decisions are pronounced in a few hearings and sometimes in a single hearing where the case is not complicated (Irshad et al., 2021).

The investigation by Jirga is carried out in complicated cases, and Jirga members cannot decide on the arguments and pieces of evidence presented by the parties. Therefore, the hearing is adjourned for another date. The social consensus of the tribe on the Jirga provides Jirga with the legitimacy to investigate the facts of the case. The Jirga examines all the people who are likely to know the facts of the case. Among other methods that have gained importance in the investigation, one is "Raand Janag" or "Paad Gerag", meaning "discovering the footmarks." Some experts perform this special method of investigation. These experts can find out the footmark of all animals, including humans. The experts from the footmarks and the style of walking find out the tribe and sometimes also the required individual (Marri, 2014). This investigation method is utilised in the Jirga investigation and all other aspects of life in Balochistan. In the past, if the theft was committed in a household or a premise, this method was mainly employed first to ascertain the accused then FIR was registered to the police (Khan, Shahid, & Ahmad, 2015).

The Jirga is presided over by a Sardar or water, and a group advises him of speed Reesh (White Bread). They all sit on the ground or at the same height level, and there is no special seat for the presiding Sardar or Wadara. This is equality between the Jirga members and the parties of the case to show equality and to present that they all belong to the same tribe, so they are equal and respectful towards each other. "Gray bread members of a tribe are eligible for the membership of Jirga. Jirga members may differ from case to case based on the importance and significance of the case (Ahmad, Khan, & Shahid, Convergence of Broadcasting and Telecommunication Technology Regulatory Framework in Pakistan, 2014).

Before the abolition of the Sardari system, when Jirga worked as a judicial institution, the method of appeal was legally available. But, after the abolition of the Sardari system in 1976, when the judicial powers of Sardars for holding Jirga were taken away, the appellate system fell on the ground, whereas the informal Jirga remained to stand still (Awan, Ahmed, & Shahid, 2011).

Apart from the Khanate of Kalat tribes, Jirga was also called in for dispute resolutions in British Balochistan in the case of the local population. "Disputes of all sorts including murder, adultery, matrimonial suits, cattle lifting, theft and disputes of all such kind are dealt with by the Sardars". There was no governing law; therefore, previous cases' decisions and local Riway were followed to render the decision. In the dispute between people not belonging to the same tribe, the matter was referred to the Political Agent, who then formed a joint Jirga consisting of members of both tribes. The final award of such Jirga was sent to the Political agent for confirmation through the Extra Assistant Commissioner (Irshad et al., 2021).

The proceedings of Jirga are not regulated by the same procedure and manner all over Balochistan. Various tribes have their peculiar methods of conducting Jirga. The Jirga held in different tribes utilize their unique procedure to discover the guilt and innocence of the accused. "Tribal Jirga uses different strange methods to determine the guilt of the accused. The accused may be asked to walk barefooted on the burning coals; if his feet burnt, then he is considered guilty and punished" (Shah & Tariq, 2013; Muzaffar, et. al. 2021). Dr Shah Mohummad Marri writes that in our various tribes, "water and fire" is a formal judicial institute. From murder to minor theft, an accused can disprove his guilt by walking barefoot on the fire without being burnt or not being a drone in water. In Baloch society, this method of judicial adjudication is mostly and popularly utilized in the Bughti tribe. To perform this ritual, a long ten-hand trench is dug out, filled with burning coals. On both sides of the trench, a stone is placed, and certain types of plant leaves are thrown on the coals; a clergy goes around the trench four corners three times and finally recites that if the accused has committed, the offence may burn like the burning leaves thrown on the burning coals. After that, two goats are sacrificed, and their blood is stored in a container. When the accused walk through the burning coal and does not quiet in between, the blood is applied to the foot of the accused to ascertain the conditions of his foot, whether it is burnt or not. He further states that it is also a fact of historical importance that no Baloch Sardar or waddera family member was ever forced to walk through burning coal, whereas most of the people being so forced to do so are poor (Marri, 2014).

### **Sardari System and Jirga different or the same**

In easy and simple terms Sardari system is the executive body in the tribe, whereas Jirga was the judicial one. Both bodies are part of one another and were advanced and developed through British policy called the 'Sandeman system.' Jirga is a component of the greater whole, the Sardari system (Ahmad, Rahmat, Mubarik, Alam , & Hyder, 2021).

### **Sardari System in Balochistan**

The Sardari system is built on the framework of the society in which a tribal chief is the head of the tribe and has all the administrative, judicial, and legislative powers in his sole hands. Dr Shah Muhammad Marri writes on the status of Sardar in the tribal hierarchy. He mentions that Sardar sits in the top position. There is no one equal to Sardar in the tribe. He maintains authority in the tribes through his subordinate 'wadderas' (Marri, 2014).

Prof. Aziz Muhammad Bughti has divided the evolution of the Sardari system into various phases in his book *Balochistan: Political Culture and Feudal System (2014)*. He writes that in primary Balochi literature based on Balochi classical poetry, the Sardar, as the head of the tribe, has no mention of the Balochi leader recognized by the word 'Meer.' (Bughti, 2009).

The origin of Sardar can be traced to the age when due to civil war central power of Baloch society became weak and national unity was divided. In this state of anarchy, Meer lost authority over the population. The population was divided into groups, who turned towards various areas and became settled therein. In these times, every group prioritised survival; therefore, they chose the bravest and most able men to be safe and protected under his leadership. This chosen man was called to be the Sardar of his tribe. In this way, the civil war and division of Baloch unity were the first and primary causes of establishing the Sardari system in Balochistan (Bughti, 2009).

In the initial time of the system, Sardar's status and power were subject to the well and consent of the tribe. At that age, Sardar was chosen by the tribe, though he was not elected; if a Sardar could not discharge his duties, another person from the tribe was chosen as Sardar. There were basic characteristics that were necessary to be present in a Sardar. He was required to be courageous, brave, intelligent, just, and hospitable. In case of a fight, he was expected to defend his tribe against other tribes, and in case of a conflict was estimated

to impart justice. The Sardar undertook the administrative, judicial, and military duties on his head, and further, every guest of the tribe was to be hosted by him. Therefore, the tribe members provide monetary assistance to the Sardar. This monetary assistance was not a fixed amount but voluntary goodwill towards the Sardar (Bughti, 2009).

### **Some historical Jirgas of Balochistan**

#### **Mir Yousuf Ali Khan Aziz Magsi Case**

Mir Yousuf Ali Khan Magsi was the second son of Nawab Kaiser Khan Magsi. He was born in 1907 in Jhal Magsi. When his father was suspended from being Sardar by the British administration, he, along with his father, lived in exile in Multan from 1923 to 1929. From there, he became impressed by the Indian National Congress and decided to motivate the Baloch nation toward a movement. At this time, he also made good relations with the journalists of Lahore, and Molana Zafar Ali Khan became his friend. During his exile, he was fully aware of Balochistan's situation and circumstances (Bughti, 2009).

To accomplish his dream of motivating the Baloch nation towards greater reform and autonomy, he authored an essay in a Lahore newspaper 'Humdard' by the title of 'Faryad-e-Balochistan' meaning 'Plea of Balochistan' on 17<sup>th</sup> November 1929. He addressed the Baloch nation and wrote, "Today the entire world is towards the way to development, but Balochistan is as sleeping that it will wake up on the Day of Judgment. My humble request to Balochistan is that, for God's sake, do not let the world laugh at us. Break down the chains of slavery and become an example for other nations." In reaction to his essay, the Prime Minister of Kalat Shams Shah reached Balochistan Agent of Governor-General (AGG) and issued a warrant of arrest against Yousuf Magsi for spreading mutiny in Kalat State. He was eventually arrested in 1930 and imprisoned in Mustang to be tried for mutiny (Naseer, 2016).

#### **Deposition of Khan Khudad Khan**

The Jirga for the deposition of Khan Khudad Khan formed because, in the reign of Khan Khudad Khan, the British got full control of Balochistan. The first AGG of Balochistan, Sir Robert Sandeman, died on 29 January 1892 in Las Bela. In his place, Mr Brown was opted by the British Government to be the AGG. He soon becomes in conflict with the Khan over ascertaining his greater role and powers in the affairs of the State. He wanted to intervene in Kalat affairs, but Khan prohibited him. Due to his enmity with Khan, he soon selected Mustoni Faqeer Mohammad, a member of Khan's Court, to plot a conspiracy against Khan and replace him with his elder son Mehmood Khan (Naseer, 2016).

When Khan became aware of this conspiracy, he killed Mustoni Faqeer Mohammad and his son. Mr Brown cashed the moment and ordered the arrest of Khan over the murder of Mustoni Faqeer Mohammad and his son. Khan was soon arrested and forced to resign but resisted the coercion again. Meer GulKhan Naseer, in his book *Tareek-e-Balochistan* pg.no 348, mentioned the Jirga. When this method of taking resignation from Khan Khudad Khan become fail than, Mr Brown received an application from Sardars of Sarawan (upper lands) and Jalawan (lower lands), which prayed for the removal and suspension of Khan Khudad Khan from being Khan of Kalat.... the AGG of Balochistan Mr Brown put this application of Kalat Sardars before a Jirga, which was also comprised of Marri and Bughti Sardars. This Jirga, as it was directed, recommended the deposition of Khan Khudad Khan and appointed Prince Mir Mehmood Khan as the Khan of Kalat (Naseer, 2016).

#### **Rigorous Imprisonment of Abdul Aziz Kurd by Shahi Jirga**

Abdul Aziz Kurd was the Secretary-General of Anjuman-e-Itahad-e-Balochistan when he authored various political essays in the daily newspaper "Azad." He primarily focused on motivating the people of Balochistan to the constitutional struggle against British Government and Sardari System and called for a united Balochistan. These essays made the

British administration angry; thus AGG of Balochistan asked Khan of Kalat the arrest Abdul Aziz Kurd. On the decline of Khan, Kurd, a resident of tribal areas, was not in his jurisdiction; the AGG of Balochistan directly ordered the Political Agent of Kalat and secured his arrest in January 1934. A Shahi Jirga tried him in Sibi, where Jirga punished him with three years of rigorous imprisonment.

### **Baloch-Pashtoon National Unity Jirga: (21 March 2021)**

On 21 March 2021, under Nawabzada Haji Lashkari Raisani, a Baloch-Pashtoon Unity Jirga was called in Sarawan House, Quetta hosting most of the Baloch and Pashtoon Sardars, with the chief Guest being Prince Agha Musa Ahmedzai. It was convened after the Balochistan High Court judgment of rendering all the unsettled lands of Balochistan to their respective tribes in which these are situated. The tribal chiefs accumulated and got together to pressure the Government of Balochistan and restrict it from filing an appeal against the decision of the Balochistan High Court to the Apex Court. Haji Lashkari Raisani, on announcing the message of the Chief of Sarawan, said, "whatever the Jirga will decide, not only the Chief of Sarawan will support it but also all the Sardars and chiefs of Sarwan too." (official, 2021)

### **Implications of Jirga as a Judicial Institution**

Jirga, as an institution, has its advantages and disadvantages. While it is effective in solving matters of civil nature and safe parties from long of court, it is equally found to have made cruel and barbaric punishments. It has adopted unreasonable methods for ascertaining the guilt of the accused, whereby caused injustice. However, as an institution, its negative implications have been far greater than their positive impacts on Balochistan.

### **Why does Jirga still subsist?**

The weak state machinery to provide justice to all promptly is the prime cause of Jirga's subsistence. The long and costly procedure of dealing with a civil matter, such as land disputes by the formal court structure, compels the tribe members to solve their disputes by the Jirga. Jirga has no court fee and gives their decisions within a single hearing or in a few hearings. The other cause is illiteracy. Most people are not aware of court benefits and their procedures. They see the court and state structures as an exploiter (Irshad, Khan, Akhlaq, & Hussain, 2022).

Judiciary in Pakistan has an image of a biased institution, not an independent one. It is also ranked among the most corrupt institution in Pakistan after Police. In constitutional history, in most instances, the top judges have shown dishonesty and disloyalty to the cause of the administration of justice. Judicial history is dark and unreliable, from the Moulvi Tamizuddin Case in 1954 to the recent Nawaz Sharif Disqualification Case in 2017. The poor and weak hardly get justice, and the rich and strong remain unchecked. Moreover, in Balochistan, there have been various rebellions against the State of Pakistan from time to time. In these rebellions, various tribes have been involved. The State has crushed them by use of force; in that case, various tribes faced state military operations and use of force. Therefore, tribe members are hostile toward the state and want to sort out their disputes mutually rather than involve the State judicial system (Khan, Ahmad, & Irshad, 2022).

### **Conclusion**

The concept of Jirga is universal. Jirga has existed and functioned all around the world societies. In Balochistan, it existed long ago, but systematically, it was introduced in a modified form by Sir Robert Sandeman and other British officials. From then on, it was rigorously used as the legislative and judicial organ of the tribes. However, in the contemporary era, it is known for its harsh penalties and biased decision. In Balochistan, various tribes have adopted the peculiar procedure of their Jirga, but mostly, all the tribes claim that their decisions are based on Islamic laws and principles. Despite various efforts

by social activists and the formal judicial system, Jirga is still functioning as the judicial organ in most tribes because it is cost and time effective.

### **Recommendations**

It is recommended to the higher authorities to promote the jirga system around the country where the tribal system exist because it is more effective than the other judicial system because of its effective and timely decisions.



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