



FINAL APPROVAL

It is certified that we have read dissertation submitted by Ms. Mehnaz Khan Registration No. 57-FSL/LL.MMFL/F14 on “Customary Practices Regarding Nikkah and Jirga System of North Waziristan, in the Perspective of Islamic Laws & Family Laws” in the Department of Shariah, Faculty of Shariah & Law. We have evaluated the dissertation and found it up to the requirements in its scope, and quality by the International Islamic University, Islamabad, for award of LL.M Muslim Family Law Degree.

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Dedication

"Not even a leaf falls but by will of your Lord" (Al-Quran)

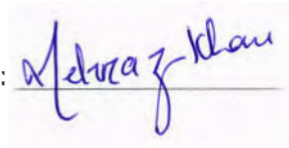
Without Allah's will and support my goal remained a wish and I could not have accomplished my task. This work is dedicated to ALLAH ALMIGHTY who is the most Merciful and the best supporter.

I would love to dedicate this thesis to my parents especially my mother, to my husband to my supervisor Dr. Muhammad Mushtaq Ahmad and to International Islamic university being the cradle of education for many years.

Declaration

I, Mehnaz Khan hereby declare that this dissertation is original and has never been Presented in any other institution. I, moreover, declare that any secondary source used in this dissertation has been duly acknowledged.

Signature: _____



Date: _____

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Praise be to Allah, the sustainer of the worlds, the merciful, the compassionate! And may His everlasting blessings and peace be on Muhammad (P.B.U.H) the last of his Messenger.

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List of Acronyms

AC	Arbitration Council (AC)
APA	Assistant Political Agents
APWA	All Pakistan Women Association
CAC	Chairman Arbitration Council (CAC)
CAMP	Community Appraisal and Motivation Programme
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEFM	Child, Early and Forced Marriages (CEFM)
CMRA	Child Marriage Restraint Act
CNIC	Computerized National Identity Card
DMMA	Dissolution of Muslim Marriage Act
FATA	Federal Administrated Tribal Area
FCR	Frontier Crimes Regulations
GoP	Government of Pakistan
GWA	Guardian-Wards Act
HQO	Hadd-e-Qazaf Ordinance
KPK	Khyber Pakhtunkhwa Province
LJCP	Law and Justice Commission of Pakistan
NCSW	National Commission on the Status of Women
NGOs	Non-Governmental Organizations
MFLO	Muslim Family Laws Ordinance
MFLR	Muslim Family Law Rules
NADRA	National Database and Registration Authority
NSA	Non-State Actors
NUC	Nazim Union Council
NWFP	North West Frontier Province

OHCHR	Office of the UN High Commissioner for Human Rights
PATA	Provincially Administered Tribal Areas
PWHRO	Pakistani Women's Human Rights Organization
RCO	Reconciliation Courts Ordinance
RT	Razi Allah Taalialah Anhu (Males)
RT	Razi Allah Taalialah Anha (Females)
SABSC	Shari'ah Appellate Bench of the Supreme Court
SAW	Sallaho Alaihe Wassallam (Peace Be Upon Him)
SJA	Sindh Judicial Academy (SJA)
SRHR	Sexual and Reproductive Health and Rights
SWT	Subhanahu Wa Ta'ala (Glory to Him, the Exalted)
TWWA	The Tribal Women Welfare Association
UNDP	United Nations Development Programme
USAID	United States <i>Agency for International Development</i>
WPFA	West Pakistan Family Courts Act
WPFCR	West Pakistan Family Courts Rules
WPMLSAA	The West Pakistan Muslim Personal Law, <i>Shariah Application Act</i>

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ABSTRACT

The current study is based on descriptive and qualitative method about customary practices regarding Nikkah and Jirga system of North Waziristan, in the perspective of Islamic and family laws. The aim of this study is to investigate customary marriage practices in North Waziristan are unfamiliar to shariah law and Pakistani legislation and the adjudication of family cases by a Jirga system is not effective in providing solutions and especially to the issues of family affairs regarding women's that are not treated equally due to no justice and serve as servant having no right. A unique institution that exists in Pukhtoons social organization is called as Jirga which is a Pashtu word that means circle. In this study, the writer has dwelt upon origin and evolution of Jirga. The methodology of the current study is based on interviews, case studies, Holy Quranic verses, Hadiths, news reports and websites. Apart from consulting published materials, the writer reached out to eighty respondents in North Waziristan to interviews some questions. Hence, the current study contains latest information and communal critique rather than review by a single writer. The finding reveal that customary practices regrading Nikkah and Jirga System in North Waziristan does not value the shariah law and legislation of the country regarding family issues like contract of marriage, divorce and inheritance due to which unfortunately many has to compromise only to survive without justice because customary practices are not according to shariah and country law and there are various obstacles in ways of local women of North Waziristan for advancement of justice in family issues regarding customary practices and *Jirga* system is not so compatible with human rights standards and best alternative of family courts are

not available. Perhaps, customary practices regarding Nikkah and Jirga System in North Waziristan does not value the Shariah law and legislation of the country regarding to family issues like contract of marriage, divorce and inheritance. It is highly recommended to build court offices, police stations, municipal committee and NADRA office for record keeping of Wazirs in North Waziristan in order to handle disputes, crimes, robberies and other wars among tribes to resolve issues.

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Chapter 1

INTRODUCTION

1.1 Background of the Study

North Waziristan is the 2nd largest agency in Pakistan that have area of 4,707 square kilometer and population is round about 361,000. There are two main tribes in Waziristan such as Dawars and Wazirs. There are two agencies known as North and South Waziristan agencies situated at the border of Afghanistan. The acronym of North Waziristan (Urdu: شمالی وزیرستان *Shomalee Waziristan*), is the NWA and located in northwest of the Pakistan which is a hilly area. The political agent can administer the agency in many cases such as illegal, revenue and civil which are according to Frontier Crimes Regulation and Customary Laws. In 1910, North Waziristan agency was created as a complete agency and it's headquarter is situated in the Miranshah.

The social structure of tribal society is sub-divided by various clans (or khels), sub-clans and then extended families, each tribe with uniform and consistent characteristics but connected with interline linkages that unite families, clans, and tribes. The family structure is the most complex feature of the tribal society and underpinned by family honor, property, and intra-family relationship. According to traditional society, a male member of the family should head each family. That head of the family is well-respected, and his decisions are expected to be obeyed by the entire family. Outside of the immediate family, each tribe is headed by a malik¹ who occupies the major place in the society.

They are holding final authority in own and sub tribes and esteemed by the whole society i.e. local and official administration. Furthermore, resident ulemas (religious leaders) and maliks are typically members of Jirga system and are the part of the forum for making collectively making the decisions for whole tribe. The Jirga system is often used to manage critical local issues, such as land disputes. There is own mosque in every village in North Waziristan that must have a pesh imam. The pesh immas, maliks and ulemas having a significant effect on resident views. Many resident peoples are following sermons and

¹ USAID, "Kurram Tangi Dam Construction for Environmental Mitigation and Monitoring Plan", 2013, p.6.

directions of religious and prayer leaders. The district's administration is mainly considering and giving weight to the decisions of the fatwas (declarations by the ulemas) and Jirgas.

1.2 Problem Statement

As in the region of North Waziristan, where natives strictly preferred and follow the customary practices in the name of Honor such as Baramtha² and marital customary practices which is deeply rooted in their hearts. The supremacy of their laws are their customary practices, and doesn't value the Shariah rulings and legislation of the country regarding to family issues like contract of marriage, divorce and inheritance due to which unfortunately many has to compromise only to survive without justice. But the question is whether these customary practices are according or it's in contradiction to Shariah and Pakistani family laws?

The people of area have always faced problems regarding legal setup and insufficiency of laws. A burning and crucial issue is the non-implementation of family laws in the region. The females are regardless of her status of marriage that has the right for honorable living. However, lack of laws, addressing enigmatic problems of families but regrettably the policies which are prevailing the area and their implementation in the Pakistan are unclear regarding divorced women's right. The family laws have not been extended to 'north Waziristan, as an outcome that there is unavailability of family courts, legal female officers and barristers that's leads to difficulty in accessing the justice for women in tribal area. Justice system depends upon Jirga system which is more male dominant institute.

The Islamic law and Pakistani legislation on marriage, divorce and inheritance offers a comprehensive code for regulating the conduct of individuals and society. Shariah and Legal experts has provided best of its legislation to provide case to people for the solutions of many complications arises in their lives through Islamic law and legislation of a country but there are some states which still doesn't follow the Shariah and legislation of the country in proper manners rather they preferred the customary practices of that area which is not enough to provide justice to the natives of that state.

² Abid Latif, and Musarrat Razia, "Socio-political issues of Fata, a historical and contemporary perspective." *Journal of Public Administration and Governance* Vol.2, No. 4, (2013): 202-218.

The Author of the Paper Ginsburg³ who is professor at University of Chicago Law School and studied the enigmatic issues of law in an anarchic setting which is backed by previous literature. Furthermore, the Jirga and pashtunwali's norms are analyzing the logic of revenge and its solutions which are providing by Jirga system in tribes. The Pashtunwali are providing rough standards that can determine an authentic subject of disputes that are resolve by Jirga; once they are arising in tribes. On the other hand, the Pashtunwali are providing the comprehensive rules for each possibility that are happening in tribes and is considered as understandable code of honor instead of lawful code. The two standard issues are injustices of gender and comparatively higher level of violence. However, it reflects a simple approach for acquaint with extra consistency to the pashtunwali that can upgrading the disturbing characteristics regarding morality which is a clear signal to expand literacy level. Although, it is not a solution in such regard but improved education's level can possibly help the clear substantive norms and better quality of life for females of North Waziristan. The following problem statement is identified from literature;

In North Waziristan, some of the customary marriage practices are something alien to shariah law and Pakistani legislation and the adjudication of family cases by a Jirga system is not effective in providing just remedies, especially to the female of area regarding the issues of family affairs.

1.3 Defining Customary Practices

Currently, various advocates who are saying that there is no relevance of customary practices for them and there are not various up-to-date scholars that their echo can receive a greater interest. But based on numerous influential and up-to-date accounts, the customary practices are mainly depending on a symbol of insufficiency. In fact, to accept the customs of tribal area is less and provisional but subsequently is not reflective to customary conducts of reasoning is unfriendly regarding political harmony and practical thought. The recent social order and their lawful systems are not depending on need regarding customary laws and traditions but on rational principles and doctrines. Furthermore, customary laws rise in those areas where the

³ Tom Ginsburg. "An Economic Interpretation of the Pashtunwali." (USA: University of Chicago Law School. Vol.89, 2011): 1-19.

lawmakers completed an inferior job, sendoff a prerequisite for to statutory structure and filling of judicial gap.⁴ The framing of his reasonable work of elements regarding the customary practices in the medieval laws of continental Europe and England in his study the uses of notion of the tradition. His goal is to give suggestion regarding medical law that have dissimilar sense of tradition. In short, authors emphasize in order to treat this principle that are unable to consider as variations in the customary practice but as succeeding and uttering appropriate variations in the practices.⁵

1.4 Jirga System as an Old Part of Customary Practices

The Jirga word is Turkish language by few researchers, whereas others researchers said that it in a Pashto word, a language which is spoken in the NWFP province of Pakistan and Afghanistan have a same phonetic feature with Dari which is a dialect of Persian language.⁶ The Jirga word is comes from the word *Jirg* that means a circle/wrestling ring. But in Persian language, it is extensively agreed that Jirga means gathering/collection of people. The history of Jirga such as pre-colonial, colonial, and post-colonial will assess the changing aspects of Jirga system as a procedure of judicial privilege which means meant to resolving the conflicts of tribes in general and for vulnerable groups such as children in specific.⁷

The justice's access is not being limited to absence of lawful illustration and capability of individual to afford cost of court case. But, it is quite clear that it is the ability to get a timely base solution about violating human's rights, powers and right to equal access to the high courts which are set according to nationwide and worldwide standards and norms. Informal systems in tribes that includes a variety of customary, traditional, religious and informal normative outlines and methods that can handle and resolve conflicts in tribes. The Baluchi and Pukhtun are using Jirga, Panjabi are using Panchayat and Sindhi ate using in Sulh and Fasilo which are famous for non-institutional methods to resolve disputes and other enigmatic issues among tribes in Pakistan.

⁴ Ibbetson David, *Role of customary practices*, (UK: University of Cambridge, 2006), 34.

⁵ *Ibid.* 3-10.

⁶ Muhammad Faiz-zad, *Jirga Hai Bozorge Millie*, (Afghanistan :1989), 5.

⁷ Muhammad Ibrahim Atayee, *A Dictionary of the Terminology of the Pashtun Tribal Customary Law*, (1978). 1272.

1.5 Judicial Structure in North Waziristan

The FATA's legal system is protected in the FCR (1901)⁸, which is a mixture of colonial-era lawful agenda that are mixing old-style traditions and standards with managerial decision. The British government formed this strict law to achieve and administer their Indian territory. Initially press-ganged in 1872, the FCR was broadcasted with modifications in the year 1901 and Republic of Pakistan applied in the NWFP in the year 1963 and in Baluchistan in the year 1977. Dissimilar to the FATA, FATA are focusing on the power of Pakistan's high court system. But in remaining republic, there are district and sessions courts from which requests are perceived in the provincial Supreme Court and High Court of Pakistan. But during 2006, there is little justification for a parallel lawful system that was designed to assist the ends of overseas and remains external to the purview of judiciary of Pakistan. Since its inception in the nineteenth century, the primary concern of legislation of the country has been to regulate the affairs of states and individuals and provide them with full justice and ease. The channel through which the conflicts and problems should be solved is courts which is not present in Waziristan. Therefore, the marriage affair is still not handling with justice.⁹

1.6 Significance of Research

The significance of the current study is broadening in nature. Firstly, the current study will aware Pakistani people regarding the implementation of Jirga System in North Waziristan. Secondly, the analytical study of customary practices regarding family affairs and Jirga system, will help human rights in the implications of such process regarding Jirga system which is mainly linked to women's right in north Waziristan where presence of institutions regarding state judiciary is either weak or absent. Thirdly, this study can be used as a model for improving the family system of the people of Waziristan. The main concern of this study will help the people to acquire the justice regarding the marriage issues because family laws are not extended to North Waziristan. Finally, the findings will also be useful to policy makers about the extent of regulation and supervision in North Waziristan regarding the Jirga and Nikkah system.

⁸ Prominent laws which are confer widely spread powers on the colonizing official are the Frontier Crimes Regularuions (FCR) enacted in 1901 and other laws during colonization era.

⁹ *Ibid.*

Furthermore, this study would be an eye opener to the government of Pakistan on how certain issues regarding undeveloped area will also be deeply analyzed and investigated.

1.7 Research Objectives

1. To highlight the procedure of Nikkah, practice in North Waziristan as in the name of customary practice.
2. To highlight the conflicts of marriage practices and its impact on family system.
3. To highlight the nature and characteristics of *Jirga* system and its binding strength of decisions.
4. To examine the systemic features and problems in connection with nationwide frameworks and informal justice systems and processes.
5. To examine rights of human and implications of *Jirga* processes related to the children, women and other disabled persons in north Waziristan (where the presence of judiciary and law imposing agencies is either weak or absent).
6. To examine the scope in order to improve the respect for human rights principles and practices in *Jirga* system that can probably monitor and accountable the procedures that will need to be recognized.

1.8 Hypotheses

The current study focused on testing the customary practices regarding Nikkah and *Jirga* system of North Waziristan, in the view of Islamic and family laws. Furthermore, the customs, traditions are not Islamic thus, violated the teaching of Quran and Sunnah. It was challenged in current study with counter arguments by different groups of researchers. Three possible hypotheses can be drawn from this analytical study which is given as under;

1. Whether the Natives of North Waziristan practicing their marriage customary practices are partially or fully the following Shariah rulings?
2. Whether the customary practices of North Waziristan along with insufficiency of laws are obstacles in way of local women for advancement of justice in family issues?
3. Whether the *Jirga* system compatibility with human rights standards and best alternative of family courts or not?

1.9 Limitations of the Study

1. The current study is just limited to Nikkah and *Jirga* System of North Waziristan.

2. The current study is just limited to primary and secondary data and excluded the tertiary data.
3. To accomplish this work by researcher, a lot of money was invested on sourcing of various texts which could not be found in the library. Money was also needed for transportation, browsing, printing and binding of valuable materials.

1.10 Literature Review

A brief overview of the literature available about the present research is given below:

In line with book, "Imperial Frontier, Tribe and state of Waziristan"¹⁰, written by Beattie Hugh who mainly focused on the strength and impact of traditions and customary practices of people of Waziristan regarding the property and hospitality of people but family issues are lacking. *Art and Culture*¹¹, In this book the writers in 2006 is expressing the status of customary practices in which he says that when statutory laws ignore and try to stamp out conflicting customary practices they fail to have an impact and remain as a dead letter. It discusses the tribes but ignores the customary practices regarding family issues.

The Wardak, Author of the article,¹² "Building a post-war Justice System in Afghanistan." *Crime, Law and Social Change*, studied Jirga, its kinds and diverse social frameworks regarding Jirga are used to resolve conflicts in Afghanistan. The Jirga as an old institution of Afghani peoples which is connected with economic and social authenticities of everyday living of Afghani peoples and is extremely deep-rooted in history and ethos of individuals of republic. The Pashtun model is the main focus of analysis in his study which is are further explained and matched to changing degrees by non-Pashtun Afghans. In line with Yousafzai and Gohar,¹³ who worked on article to understand the Pukhtoon Jirga. They said that

¹⁰ Beattie Hugh, *Imperial Frontier Tribe and State of Waziristan* (UK : Richmond, Surrey: Curzon Press, 2001), 1849-1983.

¹¹ Victor A. Ginsburgh and David Throsby, *Art and Culture* (Macquarie University: Sydney, NSW and Australia, 2006).

¹² Ali Wardak, "Building a post-war justice system in Afghanistan, *Crime, Law and Social Change.*" *Journal of Justice System.* Vol.41, No.4, (2004), 319-341.

¹³ Hussan M. Yousafzai and Ali Gohar, *Towards Understanding the Pukhtoon Jirga System*, 1-55. Available at :www.gu.edu.pk/new/gujr/pdf/junc-2013/87-95.jarga.pdf "Last accessed, 20 June, 2016".

Jirga is native institution for resolving conflicts in tribes. It is backed by the history of Puktoons that Jirga is an ancient tradition with unparalleled possibilities for resolving disputes among tribes in Afghanistan and Pakistan. In short, the Jirga in Pukhtoon life is best explained by planned conversation between two or more persons in order to talk a problematic issue through the oral communication.

In this book Pushtunwali; Honor among them,¹⁴ the writer has discussed in an article about the traditions regarding dressing, food and hospitality items and their customary practices regarding pride and honor. According to Khusal Khan Khattak he said that currently dusty villages of Pushtun and limited bearded individuals are not a signal of approval. The purpose his work is to examine the social and economic changes¹⁵ that have been focused and observed in tribal areas in the year of 2008, but impact of these changes upon marital practices has not been discussed.

In this book, Walks in Waziristan,¹⁶ the writer in 2010 has discussed its time spent in Waziristan in beautiful manner and also had observed some of their traditions and customary practices. Prior to Al-Qaeda arrival in Waziristan that has continued unconquerable to the military powers of world such as British, Soviets, and even Greeks in antiquity, under Alexander the Great. Currently, the American official of intelligence said that the tribal area is the most unsafe place in world. The nature of people, their bravery but lacking the family affairs and dealings. The author of the article Tapper¹⁷ studied the states and tribes in Waziristan; *In Conflict of Tribe and State in Iran and Afghanistan* which is about states and tribes and their distinct nature but does not discuss marital traditions of tribes of Waziristan.

Fakhr-ul-Islam, Faqir and Atta¹⁸ studied in his article "The conflict resolution regarding institution in Pukhtoon society". They said that Jirga is a Pashto word which means circle. The methodology of their study is based on survey regarding community's view about Jirga which is

¹⁴ Kuchi Afgani, "Pushtunwali; Honour among them", Peshawar university, (2006).

¹⁵ Akbar Ahmed, "Social and Economic Change in the Tribal Areas," Oxford University Press Karachi, (1977).

¹⁶ Graham F. Reed, "Walks in Waziristan. Authorhouse," US, (2010).

¹⁷ Tapper, Richard, "The Conflict of Tribe and State in Iran and Afghanistan", *New York: St. Martin's Press*, (2010).

¹⁸ Fakhr-ul-Islam, Khan Faqir and Malik Amer Atta. "Jirga: A Conflict Resolution Institution in Pukhtoon Society," *Gomal University Journal of Research*, Vol. 29, No.1, (2013), 1-9.

conducted among selected respondents of FATA and KPK area. Seven questions are asked from eighty respondents to know the significance and utilization of Jirga. The result of the study reveals that 97.8% respondents agree about Jirga system and its continuation in Pukhtoons society and only 2.5% respondents disagree about Jirga system and its continuation in Pukhtoons society. Furthermore, 2.5% respondents support official Jirga, 90% respondents support Olasi and 7.5% respondents support other Jirga system. However, the same respondents when asked that kind of Jirga is working in their zone. Only 3.75% respondents no Jirga system existed in their respective area, 8.75% respondents preferred both types of Jirga in their area and 87.5% respondents preferred Olasi Jirga which is functioned in their areas of domicile. In short, Pukhtoons or Pathans are the noteworthy and foremost traditional group that is alive in Afghanistan and tribal area Pakistan.

Khalid¹⁹ studied traditional mechanisms of conflict resolution by analyzing the Jirga in Pukhtoon society. The prevailing discourse that one can find is either bent upon proving the Jirga as an obsolete way of dealing with the conflict, or, on the other extreme, glorifying it as the only feasible option in tribal society. The reality, however, lies somewhere in the middle. A cursory look at the researches conducted in this regard shows that Jirga has both positive and negative aspects. There is another same study done by Shams-ur-Rehman²⁰ who studied the dispute of authority in old society of Pukhtoon by examining the Pashtunwali and Islam. The aim of their study is to analyze those reasons about the conflicting authority in among tribal areas. By tradition, tribes are following the elements of Pashtunwali based on their social code of conduct for resolving daily affairs.

Khayyam²¹ studied the Waziri culture and Pashtun tribal governance system. Ultimately, the Wazir tribes were dealt with skillful tactics of presenting due respect to local tribal social customs. It was followed by recognition of their tribal governance system and empowerment of

¹⁹ Fehmeedah Khalid, "Traditional Mechanisms of Conflict Resolution: An analysis of Jirga in Pukhtoon society," *Proceedings of International Conference on Local Representation of Power in South Asia held at GC University, Lahore* Vol.12-14, (2014), 27-31.

²⁰ Ghulam Shams-ur-Rehman, "Pashtunwali and Islam: The Conflict of Authority in the Traditional Pashtun Society." *Pakistan Journal of Social Sciences*, Vol. 5, No.1, (2015), 297-307.

²¹ Umer Khayyam, "Waziri Culture and Pashtun Tribal Governance System: A missing link to halt the deadliest war in wild Waziristan." *Asian Journal of Social Sciences & Humanities*, Vol.5, No.1, (2016), 144-158.

the tribal elders to indirectly administer the wild frontier, which has resulted in victorious regional control for decades and peace prevailed in the region. In short, resolving conflicts in the kinship relation, this society can unite under their hierarchal relationships within glimpse. So, king other than the Wazirs themselves is merely a dream. Likewise, any order other than Pashtunwali, influenced by Islamic law, remains a delusion.

In short, all the above articles, and books are not enough to give detailed information about the customary practices of Waziristan regarding the Nikkah, divorce and inheritance, such type of family issues. I have been reading about North Waziristan from books, internet and newspapers and took a lot of time for a decent collection that gave real information and most of such data collection sources have filled with case studies from people of North Waziristan.

1.11 Data and Methodology

The primary data is used in the current dissertation. The data is first hand and collected through face-to-face meetings from peoples of North Waziristan in year 2016. The population of current study is focused on the whole tribal belt of Pakistan, which may include FATA, Baluchistan and other areas. The sample of current study consists of North Waziristan from Khyber Puktoonkhwa (KPK). In the current study, eighty people of North Waziristan are interviewed in year 2016 in order to investigate significance of Jirga and Nikkah in Tribal belt of KPK, Pakistan. The current dissertation is a descriptive and qualitative method towards the events and issues concerned with Islamic rights of women and its defilement in Jirga system. I have ethnographically chosen North Waziristan as a sample from for current study.

Using multiple subjects and anthropological research, I have collected and analyzed data which is obtained from numerous sources such as historical and current. In addition, the author of current study also examines the issues relating to literature of community, international literature regarding culture of *Pakhtun* and the Holy Quranic verses and *Hadiths* related to rights of women. The data collection has been analyzed qualitatively and debate of both *Pashtunwali* and religion and that are violating the right of women that is perform in detail while keeping the idea regarding the type of Islam and Jirga system into the consideration.

The methodology of the current study is based on a qualitative and descriptive in terms of objectives. The current study is based on two methodologies such as interviews and case studies

(Ginsburg, 2011; Naz *et al.*, 2012; Fakhr-ul-Islam *et al.*, 2013). The interview is a focused conversation between two or more persons (Kahn and Cannell, 1957). The interviews are based on collecting the authentic and consistent data that are appropriate to questions and goals of study.²² The interview will be conducted from people of North Waziristan is to examine the analytical study of customary practices regarding Nikkah and Jirga system of North Waziristan, in perspective if Islamic and family laws. The below questions will be asked from eighty respondents of North Waziristan in year 2016;

1. Is *Jirga system* inevitable for Pakhtoons in North Waziristan?
2. Do you support continuance of the *Jirga* system?
3. What is the main functional form of the *Jirga* system you can mainly support in North Waziristan?
4. Are *Jirga* system is used to resolve conflicts in the North Waziristan?
5. Is Nikkah (contract of marriage) and divorce is registered in North Waziristan?
6. Is Nikkah perform in your area after 1-month to 1-year period after *Waleema*?
7. Is there any payment received on marriage of female?
8. Is *Jirga* system appropriate after attack of 9/11 and rise of the Taliban?

The methodology of the current study is also based on a case studies which is a strategy for doing research involving a practical examination of a specific and present-day phenomena within context of real life based on using several sources of verifications given by Robson in 2002. The current study also examines some issues and uses some case study to see the possible solution of *Jirga* System and to compare with legal Court System.

1.12 Framing of the Issues

Following are some of the important issues which will be analyzed in this dissertation:

1. What are the important lacunae in the marital customary practices of North Waziristan?
2. What is the impact of non-existence of family courts on natives of Waziristan?
3. What are the difficulties in recognition of contract of Nikkah, Divorce and Inheritance due to lack of paper work (no registration)?

²² Mark N.K. Saunders, *Research Methods for Business Students* (India : Pearson Education India, 2011), 318-320.

4. What are the effects of human rights consequences regarding the transfer of justice through informal ways for females, children, and other disabled persons?
5. What are the community perceptions regarding *Jirga* system?
6. What are the efforts on the part of govt., national and global organizations that are supporting functionality of *Jirga* system and its consistency with standards of human rights?

1.13 Conclusions:

In short, current study not only uses interviews and case study in order to examine the analytical study of customary practices regarding *Nikkah* and *Jirga* system of North Waziristan, in perspective of Islamic and family laws but also uses Quran Pak Verses and Hadiths and other Islamic books, published reports and news. The current study is organized in five chapters. Chapter no. one is about the Introduction, Chapter no. two is about the customary practices and shariah rulings. Chapter no. three covers the basics of *Jirga* system and *Nikkah*. Chapter number four is about the legality of customary practices. Chapter no. five includes fieldwork regarding results of interviews, case studies regarding *Jirga* and *Nikkah*. At the end of the current study, conclusions, recommendations, policy implication and directions for future research are given.

Chapter 2

THE CUSTOMARY PRACTICES AND SHARIAH RULINGS

2.1 Historical Background of Study

Waziristan is the homeland of Wazir tribes; the violent folk and their independence, who owe allegiance to no one, most warlike and turbulent, brave, tough, liberal, patriotic and exceptionally (socially) conservative with a vicious reputation as warriors (Hussain, 2000; Hussain, 2012; Rashid, 2004). Moreover, the cruelest people, tougher – spiritually and physically, and the finest fighters in the world, who seldom allow any tactical error to go unpunished (BBC, 2009b). Subsequently, ever vengeful, vigilant and courageous, yet detected from their eyes (Ahmed, 1983). The irascible folk, never taxed, never surrendered to anyone and didn't allow outsiders to capture their land (Hussain, 2000), ultimately, declared as *Wolfs* – the Mehsud tribes and *Panthers* – the Wazir tribes.²³

Wazir tribes of Waziristan are democratic, aephalous and organized society of kinship, which is divided into several tribes and are sub-divided into clans, sections, sub-sections and families. Unlike other Pashtun tribes of the Pakistan's frontier region, Waziri inherit good sense to avoid any internal feuds. They are generally hospitable and remain united inevitably with little control of their masters; the *maliks*.²⁴ They do not accept any permanently established and working of authority in kind of central govt. and other informal authority within their tribal structure. They rather believe in retaining maximum level of separate freedom along with acknowledgement of their belonging to a main group in the society for regulating inter-tribal and intra-tribal relations.²⁵ Through this intellect, Wazir tribes have practiced their independence over the decades, after migrating in the 14th century from Khost Province (Afghanistan) to current: Federally Administered Tribal

²³ Louis Dupree, Afghanistan 2nd edition (UK: Oxford University Press, 1980).

²⁴ Harold Carmichael Wylly, From the Black Mountain to Waziristan: Being an Account of the Border Countries and the More Turbulent of the Tribes Controlled by the North-west Frontier Province, and of Our Military Relations with Them in the Past. Macmillan, (1912).

²⁵ Olaf Caroe, The Pathans: 550 bc-ad 1957, MacMillan: St Martin's Press, (1958).

Arcas-FATA.²⁶ They are perfect followers of the Pashtun culture/social code; '*Pashtunwali*' and its fundamental ingredients; Respect (to their independent status and tribal governance system), Nanawatai (refuge granting) and Badal (revenge) – against any disrespect to redeem the Pashtun pride – *Ghairat*. These themes are the sum total around which Wazirs retained their sovereignty for decades and these three are the cores of this whole discussion.²⁷ Jirga system is a sole establishment that are existing in Pukhtuns society in tribal belt. Jirga is a word of Pashto meaning a circle. The circle of Jirga is shown below in Fig. 1.1.²⁸



Figure 1.1: Jirga System in North Waziristan

The area of Waziristan is 5,200 sq. miles and situated in southwest corner of the NWFP province. Waziristan agency splits into 2-parts i.e. North and South Waziristan. South the southernmost but is famous and largest tribal agency of FATA region. It has an area of 6,620 sq. km and segmented into 3 subdivisions such as Ladha, Sarwakai and lower form of Wana which

²⁶ John Briggs, *History of the Rise of the Mohammedan Power in India*: Calcutta (New Delhi: Adam Publishers, 1966).

²⁷ Khayyam, 146.

²⁸ Yousafzai and Gohar, 1.

is an agency capital. The Figure 1.2 shows the geographical location North and South Waziristan.²⁹



Figure 2.1: Geographical Locations of North and South Waziristan

It is clear from above Fig. 1.2 that the North Waziristan covers an area of 4,707 sq. km, having borders with Paktia and Khost provinces of Afghanistan. Both the agencies resided about one million inhabitants, located geographically at a distance of five hundred kilometers from the Islamabad which is stretched between Kurram and Gomal rivers. Waziristan is the city of Wazirs tribes (Wazir: Ahmedzais and Utmanzais and Mehsud: Alizais, Bahlolzais and Shaman Khels) living in Tochi Valleys, Khaisora, Shawal, Shakai and Wana that covered all the three sides of Waziristan. Waziristan is broader terminology which covers both the North and South Waziristan agencies through genuine boundaries.³⁰ The cultural investigation of Wazir tribes shows that Waziri tribes, unlike other Pashtun tribes in the tribal FATA region, are evolved into unique tribal culture; *Da Waziro Narkh* (customs and tradition to Wazirs), by which they preserve concord and unity among themselves (MPI, 2005). Wazirs tribe are strict in practices regarding ostracism to secure protection of Pashtun tribes and their independent status.

²⁹ Khayyam, 145.

³⁰ Khayyam, 146.

Furthermore, such tribes are zealously and eagerly guard their liberation and independence under the code of honor in Pashtunwali.³¹

2.2 The Shariah Law

Otto³² written in his book, "Shariah and National Law in Muslim Countries" about Shariah which is the God's eternal and immutable will for humanity. This ideal Islamic law is expressed in the Quran and Mohammed's example (sunnah) and developed by jurisprudence (fiqh). However, numerous interpretations of shariaH can be found in laws, scholarly literature, and the media and in popular perceptions. Wajahat and Duss³³ said that Shariah is special spiritual law and ethical guidelines for Muslims. In such regard, Islamic researchers agree historically regarding central values of the Shariah ruling that is based on ethical and theological instead of political.

Center for American Progress (CSP)³⁴ stated that Shariah is a legal and political military based principle. But, Muslims will not identify such definition of Shariah. The Islamic societies are continuing to debate internally about how to practice Islamic teachings such as to guidelines for right way of living and religious practices. The Islamic researchers are struggling from periods that how better we can comprehend and practices their faith. In addition, experts are agreeing and stated that Shariah is not stationary. Wajahat and Duss³⁵ stated that Muslims should reflect an understanding of Shariah which is legal because it can protect and advocate us in many ways such as family, life, property, intellect and faith. The Islamic customs overpoweringly accepting the changes of view that lies external to such core values; that is why Shariah has lasted for centuries. Shariha has assisted Islamic peoples who have lived in each community all around the world. Oba stated that Law of Islam comprises of secondary and primary bases such as Holy Quran and the Hadiths. The Holy Quran is believed to be heavenly revelation. The Hadith means an actions and words of the *Holy Prophet Muhammad* (PBUH).³⁶

³¹ Akbar Ahmed, "Millennium and charisma among Pathans: A critical essay in social anthropology," London: Routledge, (1976).

³² Jan Michiel Otto, "Sharia and National Law in Muslim Countries. Tensions and Opportunities for Dutch and EU Foreign Policy," Leiden University Press, (2016).

³³ Ali Wajahat and Mathew Duss, "Understanding Sharia Law Conservatives' Skewed Interpretation Needs Debunking," (2011), 2.

³⁴ <https://www.americanprogress.org/issues/religion/reports/2011/03/31/9175/understanding-sharia-law/>

³⁵ Wajahat and Duss, 3.

³⁶ AA Oba., "Islamic Law as Customary Law: The Changing Perspective in Nigeria," (2002), 817-850.

Allah (SWT) connected obedience to Prophet Mohammed (PBUH) as respect to him. He is for Muslim peoples and a perfect human being to be followed. Henceforth, his actions and words constitute authorized guides for all humanity.³⁷ Widely held definition of Ijma is the whole learned Islamic peoples of a specific age who have accomplished the Ijtihad rank; the individual's capability regarding juridical understanding of such enigmatic problem after passing of Prophet Muhammad (PBUH).³⁸ Qiyas is analogical judgements by means of the evidence found either in the Holy Quran, hadiths or Ijma.³⁹ Pakistan, similarly afflicted by political turbulence since independence in 1947 came into existence as a state for Muslims, putatively a *dar al-Islam*. For much of the period immediately following, however, it continued to be governed by Anglo-Muhammadan Law.

A clause in the first Constitution, in 1956, retained in all subsequent constitutions, specified that there is no law commanded or continue to be unaltered. It was offensive to the commands of the Quran and sunna (a rather neat inversion, though not intended as such, of Sir Roland Wilson's earlier dictum, stating now that Pakistani statesmanship determines from time to time how much of Anglo-Muhammadan precept is to be treated as law in the Islamic sense). Mehdi⁴⁰ stated in his book "*The Islamization of the Law in Pakistan*" that sets out in detail the statutory Islamic law measures adopted during the first five decades of independence. One in particular, the *Muslim Family Law Ordinance* of 1962, together with some related legislation, reinforced the abolition of the legal authority of customary law stipulated in the colonial *Shariat Enactment of 1937*.⁴¹ Notwithstanding this, as Mehdi notes, citing the work of the anthropologist Richard Kurin and others "folk law,"⁴² as she terms it, continued, to provide legal norms and juridical practice at the level of much village society.⁴³

³⁷ Surah Azhab 33: 21: 'Ye have indeed in the Messenger of Allah, a graceful pattern (of conduct) for any one whose hope is

in Allah and the last day and who engages much in the praise of Allah.

³⁸ Ahmad Hasan, "The Classical definition of Ijma: The Nature of Consensus, (Islamabad: Islamic Studies, Vol.14, No. 4, 1975), 261-270.

³⁹ Oba, 820.

⁴⁰ Rubya, Mehdi, "The Islamization of the law in Pakistan," Richmond: Curzon, (1994), 123.

⁴¹ Riazul Hasan Gilani, "A Note on Islamic Family Law and Islamization in Pakistan," (2010), 341.

⁴² Mehdi, 54-55.

⁴³ William R. Roff, "Customary law, Islamic law, and colonial authority: Three contrasting case studies and their aftermath." *Islamic Studies*. (2010), 455-462.

Hallaq⁴⁴ stated in the book named as "*An Introduction to Islamic Law*" that the ruler of state has whole control of provinces. In addition, by sending militaries and government officials and their maintenance cost are not covering from the taxes they are charging from the inhabitants under their command. So, if there was no state to regulate society and the issues that arises regarding how does people manage their affairs? The small response is the self-rule. Those societies, who are living in city or villages, controlled their own activities. If the inhabitants of public feeling about the need of a head of state, it was due to actual necessity of protecting from the external foes. They are attacking the peoples of tribes, robbers of highways or overseas militaries who are creating ferocity and playing a destructive role with them. But, the Inhabitants of public don't need the leader to control their own and inside dealings. Since, such guidelines are afforded by a diversity of interior procedures developed over eras by their own native societies. The customary law is a clear basis of self-regulation, but Shariah law is equally significant.

2.3 The Legislation of Pakistan (MFLO, 1961)

The foremost regulation in the part of family law is Muslim Family Laws Ordinance (MFLO), 1961. It signifies a reasonable understanding of law of Muslim family law, utmost significantly, limiting the rights of men in area of polygamy and divorce. Section no. 6 of MFLO is about the husband who wishes to marry a second wife must need to get the approval of Union Council, which can judge planned extra wedding is needed and fair (MFLO, Section-6(3)). True and legal motives for a second wife are desolation, physically ill and unfit for matrimonial relationships, deliberately escaping from announcing for restitution of conjugal rights, or absurdity in present wife.⁴⁵

The Section-5(a) and Section-5(b) of MFLO states that If the husband enters into a polygamous wedding lacking the approval of Union Council, an initial wife can seek a divorce and husband is liable to be punished with a fine or custodial verdict. Section-7(1) of the MFLO be familiar with the old-style unilateral repudiation (talaq) by husband, but subjects of a male using this type of divorce to an obligatory procedure, if unfollowed strictly will leading to cancelation of talaq.

⁴⁴ Wael B. Hallaq, "*An Introduction to Islamic Law*," (Cambridge University Press, 2009), 8.

⁴⁵ Mehdi, 56-60.

Refusal is legally effective more than 90 days after mandatory notification to the Council of the Union or to a comparable organization of the native government and to his wife. Failure to comply with this responsibility is punishable by a custodial verdict of up to one year or a fine of five thousand rupees. After the divorce announcement, the Council of the Union creates a mediation commission charged with trying to reach a solution between husband and wife. Divorce becomes effective only after the expiration of ninety days, if reconciliation between husband and wife is not possible within this period. In the absence of such a divorce notice to the Council of the Union or a spouse, divorce shall be deemed unacceptable. Section no. 8 of MFLO accepts that at time of marriage ceremony, husband has the right to divorce his wife.⁴⁶

Protecting the rights of the women involved, juries are dealing in such cases frequently decided that divorce had been legal, despite non-compliance with the MFLO, thus failing compulsory character of obligatory announcement. Therefore, some people have demanded that the right of males for negation is once again administered by the classical shariah instead of the MFLO.⁴⁷ Furthermore, an analysis of current lawful verdicts indicates that the Section-7 is being upheld in many cases that is related to family and not related to matters of criminal law. The Protection of Women Act 2006 are providing that it is sufficient for females in order to believe herself in valid wedding and to avoid a charge of infidelity. Therefore, even if the divorce taking place her wedding once again that turns out to be unacceptable and will not face charges if she can convince the law court to give proper reasons to be certain of that divorce and her following wedding is legal.⁴⁸

2.4 The Rule of Law & Legal Empowerment in Pakistan

In Pakistan, as in many emerging countries, outside funded of justice sector reforms and initiatives have emphasized on solidification of lawful institutes i.e. administrative, courts, law enforcement agencies and human rights concerned with capacity building for their workers.⁴⁹

⁴⁶ Werner F. Menski, "South Asian Muslim law today: An overview," (Sharqiyyat, Vol. 9, No.1, 1997), 16-36.

⁴⁷ Ibid. 35.

⁴⁸ Martin Lau, "9 Sharia and national law in Pakistan," (Paper: Sharia Incorporated, 1973), 1-10.

⁴⁹ Asian Development Bank (ADB), "Report and Recommendation of the President to the Board of Directors on Proposed Loans and Technical Assistance Grant to the Islamic Republic of Pakistan for the Access to Justice Program." Manila. (2001).

The efforts of lawful reforms of state are incorporated lawful empowerment of marginalized groups in a limited extent and non-citizens are not included in Pakistan. The aim of current studies done by the CAMP emphasizing the correction of inequality by drawing the framework of rule of law and legal empowerment and to use them to evaluate an existing laws and institutes. In addition, it can also plan and suggest the future involvements from vantage point of specific class of non-residents. Yet, one individuals must accept rule of law is itself a queried concept that is confidential into practical outcomes, formal features or useful attentions.⁵⁰

The proper explanations of rule of law tends to focusing on virtuously formal features that a lawful system essentially hold, and tends to shy away for the purpose to impose a necessity regarding the satisfaction of exact laws. In addition, the laws must be prospectively instead of retroactively applied, by a fair and independent courts which are publicly declared and have a feature of generalization and equivalence. Alternately, to learn the rule of law is through the functional method, which is opposed to the rule of man, that is, in countries where state officials are making a big decision in the exercise of their public powers. It would be considered a low level as a rule of law, while companies where the local actors' decision is particularly limited would be a higher level of rule of law. But, to counter the balancing rule of law's state-centered paradigm, a context of lawful enablement such as using lawful services for raising the deprived inhabitants are controlling their survivals.⁵¹

Such alternate paradigm regarding human rights is supportive for humanity. Subsequently, it is frequently the performer are better located in order to improve the lawful measurements and control of marginalized. It can also report the reality that laws protection of laws are considered as drawbacks. For example, the Constitutional ban of giving pain or stress to somebody in practice are not obligatory and followed except the downgraded or their associates push for this to occur. The following are the existing pros that are derived from popular lawful authorization which are against the regulation of law tactic, which are given as under:

1. The authorized experts working together have a demerit of partners, as a replacement for standing above them as honored experts.

⁵⁰ Matthew Stephenson. "Rule of law as a goal of development policy," (Paper: World Bank Research. 2008).

⁵¹ Stephen Golub. "Beyond rule of Law orthodoxy: The legal empowerment alternative." (Paper: Carnegie paper, rule of law series, Issue 41, Washington, D.C. 2003), 1-10.

2. The downgraded groups are playing a major role in setting their priorities instead of national bureaucrats and supporters uttering the outline.
3. To address such priorities frequently contains illegal policies such as society based answers or politically aware actions for achieving results.
4. The organized law is a part of united strategy that may including other progress oriented events.

In short, shariah law and legislation of country is not compatible in many cases such as Nikkah, dispute resolution, by giving legal rights to women which are against teaching of Quran and Sunnah which is prevailing in North Waziristan.

2.5 Inheritance Law

The MFLO (1961) stated Pakistani law is a regulation of Maliki law⁵² and the inheritance law remains prevails in tribal belt of Pakistan which are governed by traditional sharia guidelines. However, such customs are not really codified into lawful codes. Whereas, discriminating women in tribes is a universal rule inherited and because of man it is partially governed in tribal area. In addition, Islamic law of inheritance is a vital enhancement on tribal norms in pre-Islamic era in which a woman is inheriting slightly or not at all. Currently, majority Pakistani women are underprivileged from inheritance rights under the Islamic law since majority kin are favoring the customary laws are followed that frequently excluded women folk from inheritance in many areas of Pakistan.⁵³ Justice and Law Commission of Pakistan in 2003 claimed for an improved monitoring for the execution of Islamic law of inheritance. The commission observed in report that children and women are frequently steal from the rights of inheritance and are authorized under Quranic law by a tricks and untrue promises in a gathering.

The commission further appealed regarding the Islamic law of inheritance, that is it was an order which directly comes from Allah and a lawful responsibility that must followed by

⁵² Section-4 of Muslim Family Laws Ordinance 1961.

⁵³ Pakistan Observer, "Majida urges provinces to name members for NCSW," (2004), 1-5.

letter and spirit. Consequently, asked its secretary to formulate an operative plan of action intended in order to achieve an agreement with law of inheritance about women's rights and children.⁵⁴ There is no such accomplishment plan has been implemented in current years. The inheritance rights of women are playing an essential role in the social, economics and politics sector regarding the authorization of women. But regrettably women are frequently deprived of inheritance right because of deep-rooted patriarchal system, biased explanation of heavenly commands, property laws and mention above all ineffective procedure for implementing laws.⁵⁵ In line with many scholars such as Gletzer (1998), Hashemi (2000), Malekyar (2000), Farhadi (2000), and Carter and Conner (1989) who said that they are allocating on spot and prior to become a public issue and a load on social organizations. But, such as conflicts which are considered as public are resolved by the community organization institutions at native and tribal areas. The foremost institute which is customarily functioned as a mechanism for settling the conflicts among tribes in villages are called as Maraka or Jirga system among the Pakhtuns and it is approximately equal to the Shura.⁵⁶

2.6 Family Law

In Pakistan, family laws are a blend of codified and customary laws which is based on spiritual customs also called as 'Personal Law'. Currently about 51 family laws are carry out in Pakistan, in which 37 laws are federal while 14 laws are provincial. About 16 family laws are dealing exactly with family matters relating to Muslims, 3 with Christians, 11 with Hindus, 1 federal law each with Parsis and Sikhs, while about 19 are valid to all citizens of Pakistan, with a few exemptions.⁵⁷

The family laws vary from countries to countries and from city to city. In line with Yousafzai and Gohar, who stated about Pukhtoon society in which majority marriages are arranged. They frequently encompass some lengthy discussions and queries that may arise if a promise is compulsory. Initially, discussions focus on whether the proposal of wedding would

⁵⁴ <http://www.dawn.com/2003/01/02/top11.htm> "Last accessed 25 June,2015".

⁵⁵ <http://www.ncsw.gov.pk/previewpublication/3htm> "Last accessed 18 march,2015".

⁵⁶ *Ibid.*

⁵⁷ <http://www.ncsw.gov.pk/previewpublication/1> "Last accessed 19 oct ,2015".

be accepted. In addition, *Vulvur* is the fee to be paid by the family of groom to the parents of bride is an old custom in tribal areas. Though, a man can easily declare the divorce in Islamic law but in tribal areas, divorce itself is viewed as dishonorable. Therefore, divorce is considering very rare in tribal areas. In religious law, a man can marry no more than four women. The children in Pairs are occasionally publicized and engaged by the aged women or head of the family when the children are still babies.⁵⁸

In spite of the remedial views about wedding in close relatives having the danger of inherited faults in children. The practicing the consanguineous weddings, mainly with first cousins are a communal phenomenon. In few cases, undeveloped children may even be married before the sexual maturity. One more area of trouble is an aggressive engagement (*ghazh*)⁵⁹ in which a gentleman openly publicizes his engagement to a woman that is make hard to anybody to propose her in tribal area. The girl's parents either have to kill such couple, or avoiding such garbage; they can overlook the declaration and arrange a wedding of her daughter in some other tribes in village. It is also a possibility to settle with the declaration and approve the wedding ceremony. Clearing after embarrassing declaration by a social divergent demands of high contour *Nanawatay*⁶⁰ and tough discussions with parents of girls that may also include the demand of an exchange of a girl wedding or two from the men's family.

2.7 Lacunae in the Marital Customary Practices

According to the Article-35 of the Constitution of the Pakistan, the govt. is responsible in protecting family, mother, child and marriage.⁶¹ But the literature scrutinizes that in North Waziristan, discrimination in the customary practices and gaps in laws and dominant systems, there is need of improvements which is recommended through alterations in the appropriate laws. In addition, to coordinate closely between the institution officials concern is mainly consider in this regard. The formation of legislative organizations, for the monitoring and supervision of inheritance transfer have also been recommended. The said monitoring

⁵⁸ Yousafzai and Gohar, 40.

⁵⁹ *Ibid*, 40-41.

⁶⁰ *Ibid*, 41.

⁶¹ <http://siteresources.worldbank.org/PAKISTANEXTN/Resources/293051-11146639350561/CGA-Chapter-2.pdf>, "Last accessed 12 June,2015".

organization at provincial level will also serve as resource institutions for the broadcasting of information and creating awareness regarding rights of women to inheritance among crowds and starting programs for women in order to manage her own property.

Shams-ur-Rehman⁶² said that the self-governing tribes of Pakhtun are customarily following the essentials of the Pakhtunwali. Such essentials of Pakhtunwali are the code of conduct of community and customary laws in resolving social and lawful matters among tribes. Hence, customary law is against in many cases when compared with Islamic law such as force marriage with disabled persons, badal (revenge) cases and not forgiving, women's are not being able to participate in Jirga to show her decisions, willingness, Nikkah are not registered and there are no rights to work or get education, especially for women. In short, the strong requirements of family laws and teaching of Islam, the predominant practices in the republic is discriminating and gives abusive remarks to area of women in few cases. In such cases, many women's have options which are fairly restricted and they are usually enforced to live a life in unfavorable settings for the hope that situations will lastly become better.

2.8 Holy Quran Verses

Marriage is a shared agreement between male and female that gives the love, peaceful environment, kindness, reflects demand and satisfaction of both sexes. By the way, the Quranic verses about marriages and inheritance law regarding women, which is briefly explained as under:

2.8.1 Holy Quranic Verses on Marriages

Allah says in Holy Quran,

"And among His signs is that He created for you mates from among yourselves that you may well in tranquility with them and He has put love and mercy between your (hearts); verily in that are signs for those who reflect" (Quran, 30:21).

Allah (SWT) made pairs of all creature such as human beings and animals, who are living in this earth. The wedding is based on the approval and agreement is a requirement for couples which is considered as valid based on the accepting both sexes. Arranged marriages have no status in Islam. There is no status of arranged marriage without the permission of a woman in

⁶² Shams-ur-Rehman, 1-6.

Islam. Allah (SWT) commanding the Islamic community in order to perform Nikaah and enthusiastically support both sexes in such regard:

"Arrange the marriage of the spouseless among you, and the capable from among your bondmen and bondwomen. If they are poor, Allah will enrich them out of His grace. Allah is All-Encompassing, All-Knowing." (Quran, 24:32).

Allah (SWT) says his special benedictions on Prophets (PBUH) and have granted them wives and children: Allah (SWT) says in the Holy Quran:

"We have sent messengers before you, and gave them wives and children. It is not for a messenger to bring a verse without the will of Allah. For every age there are some rules prescribed" (Quran: 13:38).

Though prettiness, bodily attraction and traits that attracts you which can be approved for selecting a life partner. Allah (SWT) says in the Holy Quran:

"Marry the women you like." (Quran: 4:3)

The foundation is to improve the chances of compromise between husband and wife and providing maximum chance of settlement in both sexes. Allah (SWT) says in the Holy Quran:

"And if you have fear from break between the two, then appoint a judge from his persons and a judge from her persons; if they both wish an arrangement, Allah will affect agreement between them, with assurance Allah is Knowing, Aware" (Quran, 4: 35).

Allah (SWT) says in the Holy Quran about *Khulla* (Divestiture) in Islam;

"And if you fear that they may unable to retain the limits of Allah, then there is no sin for both, if woman redeems herself with that" (Quran, 2:229).

Fairness Right (Adl)⁶³ appreciates greater significance in the Islamic system of a justifiable social and political order. Adl means justice and wider in meaning. The Holy Quran uses this term to refer balance and beauty. Allah has created in the proportionate human body. Allah (SWT) says in the Holy Quran:

*"O man! What has made you careless concerning your Lord, the Bountiful who created you, then fashioned, then proportioned (Fasawaka fa'adalaka) you."*⁶⁴ (Quran: 82:2)

It gives viewpoints for justice (equity) that is greater than equivalence: Allah (SWT) says in the Holy Quran:

*"O you who believe! Be steadfast witnesses for Allah in equity and let not hatred of any people seduce you that you deal not gently. Deal equitably (Justly), that is nearer to taqwa (Allah consciousness). Observe your duty to Allah (Wattaqullah). Lo Allah is informed of what you do."*⁶⁵ (Quran: 5:8)

Later, to formulate the suitable laws and guidelines, the most vital task is to implement it. Although, if it not formulated then in the absence of violating human rights become certain that leads to spreading the injustice in society. So, provide justice to all of its citizens with equality. The Pakistani govt. is under responsibility for ensuring the implementation of inheritance laws of inheritance by using suitable measures. Allah (SWT) says in the Holy Quran:

*"Allah doth command you to render back your Trusts to those to whom they are due."*⁶⁶

2.8.2 Holy Quranic Verses on Law of Inheritance

In Holy Quran, chapter number four is about the inheritance law. There are three verses such as eleven, twelve and one hundred and seventy-six. The translation of such verses are given as under;

⁶³ <http://www.camp.org.pk/wp-content/uploads/2016/03/Jirga-manual-final-Eng.pdfhtm> , "Last accessed 27 June.2015".

⁶⁴ Al-Infitar, 82:7.

⁶⁵ Al-Ma'idah, 5:8.

⁶⁶ Al-Nisa, 4:58.

"Allah enjoins you about [the share of inheritance of] your children: A male's share shall equal that of two females - in case there are only daughters, more than two shall have two-thirds of what has been left behind. And if there be only one daughter, her share shall be half -- and if the deceased has children, the parents shall inherit a sixth each, and if he has no children and the parents are his heirs then his mother shall receive a third, and if he has brothers and sisters then the mother's share is the same one-sixth. [These shares shall be distributed] after carrying out any will made by the deceased or payment of any debt owed by him (the deceased). You know not who among your children and your parents are nearest to you in benefit. This is the law of Allah. Indeed, Allah is wise, all knowing."⁶⁷

"You shall get half of what your wives leave, if they die childless. But if they do have children, your share shall then be a quarter of what they leave after carrying out any will made by the deceased or payment of any debt owed by her. And they (your wives) shall have a quarter of what you leave, if you die childless. But in case you have children, they shall then get one-eighth of what you leave, after carrying out any will made by you or payment of any debt owed by you (the deceased). And if a man or a woman is made an heir on account of his [or her] kalalah relationship [with the deceased] and he [or she] has one brother or sister, the brother and sister shall each receive a sixth and if they be more than two, they shall then share in one-third, after carrying out any will that had been made by the deceased or payment of any debt owed by him -- without harming anyone. This is a command from Allah and Allah is all-knowing, most forbearing."⁶⁸

"They ask you. Say: Allah enjoins you about your kalalah heirs that if a man dies childless and he has only a sister, she shall inherit half of what he leaves; and if she dies childless, then her brother shall be her heir; and if there are two sisters, they shall inherit two-thirds of what he [or she] leaves. If there are many brothers and sisters, the share of each male should be that of two females. Allah makes [His commands] clear to you, so that you do not err. Allah has knowledge of all things."⁶⁹

⁶⁷ *Ibid*, 4:11.

⁶⁸ Al-Nisa, 4:12.

⁶⁹ *Ibid*, 4:176.

The share of Widows is given in Surah Al-Nisa which is given as under:

*"In what ye leave, their share is a fourth, if ye leave no child; But if ye leave a child, they get an eighth; after payment of legacies and debts."*⁷⁰

The Prophet Muhammad (PBUH) said that to give of one eighth (1/8th) to the widow⁷¹ and all the Islamic schools of thought have agreement on such regard. Allah (SWT) says in the Holy Quran:

*"Those of you who die and leave widows should bequeath for their widows a year's maintenance and residence. But if they leave (the residence) there is no blame on you for what they do with themselves provided it is reasonable. And Allah is exalted in Power, Wise."*⁷²

2.9 Hadiths

The hadiths on marriages, waleema and maher is briefly explained as under:

2.9.1 Hadiths on Marriages

In this regard, The Holy Prophet (PBUH) says regarding marriages in following hadith:

"Ibn Abbas (RA) stated that a girl came to the Muhammad (PBUH) and she conveyed that my father had enforced me to marry without her agreement. The Muhammad (PBUH) gave her the selection (Musnad, 1950:55).

In above mentation hadith and reference in Sunan Ibne Majah (1952) the girl stated that:

"Actually I accept this marriage but I want to let female know that parents have no right to enforce a husband on her".

Our beloved Prophet Muhammad (PBUH) also ordered the Arab's Muslims to engage in Nikaah as it is best for their modesty and charisma and also help them in protecting their gaze⁷³.

⁷⁰ *Ibid*, 4:12.

⁷¹ Hadith 1919 attributed to Jabir bin Abdullah, Sunan Nisai Sharif by Moulana Fazal Ahmed, Vol. 2, Urdu translation by Moulana Fazal Ahmed, Darul Ishaat, Karachi.

⁷² Al-Baqara. 2: 240.

"Abdullah (RA) stated that we were with the Prophet Muhammad (PBUH) while we were young and had no treasure whatsoever. So, Prophet Muhammad (PBUH) said, "O young people! Whoever among you can marry, should marry, because it helps him lower his gaze and guard his modesty (i.e. his private parts from committing illegal sexual intercourse etc.), and whoever is not able to marry, should fast, as fasting diminishes his sexual power." (Bukhari)

The Sunnah of Muhammad (PBUH) disheartens from celibacy life and abstinence from Nikaah and equates abstinence from Nikaah as unfollowing the customs of the Islam.

"Anas ben Malik (RA) stated that three men came in group to home of the wives of the Prophet Muhammad (PBUH) inquiring that how the Prophet adored (Allah), and when they are knowledgeable about that, they well-thought-out their adoration is insufficient and said, "Where are we from the Prophet as his past and future sins have been forgiven." Then one person among them said, "I will offer the prayer throughout the night forever." Other person among them said, "I will fast throughout the year and will not break my fast." The third said person among them said that, "I will keep away from the women and will not marry forever." Prophet Muhammad (PBUH) came and said to them, "Are you the same people who said so-and-so? By Allah, I am more submissive to Allah and more afraid of Him than you; yet I fast and break my fast, I do sleep and I also marry women. So he who does not follow my tradition in religion, is not from me (not one of my followers)." (Bukhari)

Once the Prophet Muhammad (PBUH) said that,

"Abu Huraira (RA) stated that a female is married for four reasons such as her wealth, beauty, religion and family status. Therefore, you shall marry the spiritual woman (otherwise) you will be a loser. (Bukhari)

A well married life united with an upright affiliation can make-up the major matters of Nikaah. The venue of marriage will not be hidden from society and you must publicize it. In line with, Sheikh (Mufti) Ibraheem stated that,

² <http://www.central-mosque.com/index.php/Relationships/nikah-marriage-a-walima-reception-in-islam.htm> "Last accessed 18 June,2015".

"It is Sunnah for the marriage to be pronounced and performed in the Masjid."

Aisha (RA) stated that Prophet Muhammad (PBUH) once said that, *"Publicise these marriages, conduct them in mosques, and beat the duff (tambourines) to announce them"*. (Tirmidhi)

The marriage sermon (khutbah) is linked with Nikaah which is clergyman of mosque. Sheikh Khalid Saifullah said in his book, *the Halal wa Haram*:

"The following is referred to us as 'Khutbatul-Hajjah' in Hadith and can be read in any event but in a description of Baihaqi, it is connected with the event of Nikaah"

It is from the Sunnah of Prophet Muhammad (PBUH) to congratulate the groom with dua. Abu Hurayrah (RA) stated that when a male is marrying, Prophet Muhammad (PBUH) say to groom, *"May Allah bless you and bless it for you and may He join you with goodness!"* (Tirmidhi)

2.9.2 Hadiths on Walima

Sheikh Khalid Saifullah stated that *"The Walima feast and its preparation is dependent upon the financial status and means of the individual as he (Sallaho Alaihe Wassallam) himself offered different varieties of feast on various occasions of his walima"*

The Prophet Muhammad (PBUH) invited peoples for Waleema in his marriages. He provided bread and meat on marriage ceremony with Zaynab (RA). Hays is also available in Waleema which is a kind of sweet dish made from cheese, dates and butter on his wedding with Safiyya (RA) and barley on other marriage ceremony Bukhari and Muslim).

Anas ibn Malik (RA) stated that he was a child of ten-year-old when the Prophet Muhammad (PBUH) traveled to Madina. Further, he stated that;

"My mother and aunts used to urge me to serve the Messenger of Allah (PBUH) regularly, thus I served him for ten years. When the Prophet Muhammad (PBUH) passed away, I was twenty years old, and I knew about the order of Hijab more than anyone else, when it was revealed. It was revealed for the first time when the Muhammad (PBUH) had consummated his marriage with Zainab bint Jahsh (RA). The Muhammad (PBUH) in the morning was a bridegroom, and

he invited the people to a banquet. So they came, ate, and then all left except a few who remained with the Messenger of Allah for a long time." (Bukhari)

Anas (RA) stated that "The Prophet Muhammad (PBUH) consummated his marriage with a woman (Zainab), so he sent me to invite people for a meal." (Bukhari)

It has also been reported from the Prophet Muhammad (PBUH) that

"Waleema on the first day is confirmed (haq), and on the second day, it is good (ma'ruf), and on the third day, it is showing off." (Abi Daud)

Shaykh Muhammad ibn Adam stated that

"Abu Huraira (RA) stated that "The worst food is that of a wedding banquet (waleema) to which only the rich are invited whilst the poor are not invited. And he who refuses an invitation (to a banquet) disobeys Allah and Prophet Muhammad (PBUH)." (Bukhari)

In marriage ceremony, the members of family, kin, friends and virtuous peoples are invited. It is bad to invite only wealthy peoples and ignored the poor ones.

2.9.3 Hadiths on Dowry (Mahr)

"If the dowry (mahr) was not stipulated in the contract of marriage, then the husband is obliged to pay what is typically received as marriage payment by similar brides (mahr al-mithl), if the marriage was consummated".

Imam al-Mawsili stated that:

"If one did not fix dowry for her or one made a condition that she will not receive any dowry, she will receive what is typically received by similar brides (mahr al-mithl), if after consummation of marriage or death. She will receive a small gift (mut'a) in case of divorce before consummation." (Al-Ikhtiyar li ta'lil al-Mukhtar, 2/126)"

Sheikh Luqman Hansoot has detailed the minimum mehar and the mehar Fatimi (i.e. the dowry given to Fatima (RA) by Prophet Muhammad (PBUH) in the table 4.9:

Table 2.1: Minimum Limits of Dowry (Mahar)

Type of Mehar	Dirhams (Silver)	Grams (Silver)	Troy Ounces (Silver)
Minimum	10	30.62	0.9843
Mehar Fatimi	480	1469.64	47.25

2.10 Suggested Solution of Current Study

There following solutions are suggested by the writer of the study which are given as under;

1. The conflicts arise in North Waziristan regarding Jirga System is due to lack of education and unawareness of Islamic Laws. They will protest for it specially the women of North Waziristan. Additionally, literacy rate and infrastructure development is very low in tribal belt of Pakistan.
2. There is no NADRA office and Municipal Committee for districts and towns in North Waziristan to record the birth, domicile, marriage, death, divorce certificate and also issuance of Computerized National Identity Card (CNIC) number for the peoples of North Waziristan are consider as civilized and educated national of Pakistan.
3. There is no system of official Courts in North Waziristan for resolving conflicts regarding property, marriages, robberies, murders or other dispute on amounts that leads to revenge by giving treats to poor due to fact that there are no help services such as Police Station and Rescue 15 office to provide the security for innocent peoples and give punishment to wicked. Majority people in North Waziristan enforcing women to marry where there Jirga system or elders of village decide even the person is disabled. In such regard, there must be Islamic libraries and seminar to aware peoples in North Waziristan regarding Islam and must following the teaching of Quran and Sunnah.
4. There is very less number of school and colleges. Furthermore, there is no university in North Waziristan that's why majority males and females are uneducated.
5. The rate of criminal offences is very high in North Waziristan that leads to reduce brotherhoods among tribes which is against Islamic law.
6. The customary law is contrary to in many situations when compared with Islamic law such as force marriage with disables persons, badal (revenge) cases and not

forgiving, women are not being able to participate in Jirga to show her decisions, willingness, Nikkah are not registered.

7. There are no rights to work or get education, especially for women in tribal belt of Pakistan. In this way, the women of tribal belt will also participate in resolving conflicts in terms of marriages and other disputes as according to country law. In addition, they will have aware the legal rights to accept and reject Nikkah as per their willingness and not due to force or other means.
8. The model is suggested to resolve disputes regarding Nakkih and others in Jirga system which is shown in Appendix.

2.11 Conclusions

This chapter mainly focused on the customary practices and Shariah rulings that are still used in North Waziristan. In line with Otto who stated that Shariah *is the* God's eternal and immutable will for humanity while family laws are a blend of codified and customary laws which is based on spiritual customs also called as Personal Law. Furthermore, this chapter also explained the Shariah Law, legislation of Pakistan (MFLO,1961), the rule of law and legal empowerment in Pakistan, inheritance and family laws, lacunac in the marital customary practices. Moreover, the customary practices and Shariah rulings are explained in teaching of Quranic verses and Hadiths. Finally, this chapter are suggested some solution for North Waziristan to implement by the government of Pakistan.

Chapter 3

THE BASICS OF JIGRA SYSTEM AND NIKKAH

3.1 History of Jirga

In history, persons, assemblies and communities have conflicted and contested contrary to one individual over rare possessions and resources such as cash, land, ideology and political authority.⁷⁴ In numerous regions of the world, old-style ways of justice are being approached in order to resolve disputes for ensuring harmony and stability in tribes. Such institutes are frequently appropriate in situations in which they are functioning because they are satisfying the native tradition and religious opinions. Such situations frequently making them more positive than the present-day justice system. The nature and reasons of disputes related past literature are approving the procedures for disputes resolution which are extremely strong ties in the history and traditions of all communities. In fact, they are numerous significant ways that are unique to them.

The Author of Pashtu Descriptive Dictionary in 1978 stated that the Jirga is a Pashtu word that means the assembly of small or large number of peoples. But, in its functionality based definition of Jirga is that it is a native institute in order to make decisions and resolving the conflicts which combines the predominant native customary laws, formal ceremonies and elders of village whose collective decisions regarding conflict's resolution between the parties are mainly involved.⁷⁵ In line with Spain⁷⁶ who said that a Jirga is simplest form is simply an assembly. Practically all community businesses, whether public or private, are subject to their jurisdiction. In its operation, it is probably the closest thing to the awning that has existed since the original. It exercises executive, judicial and legislative functions, and yet frequently acts as an instrument for arbitration and conciliation".

The Jirga system are frequently leading to a deep intelligence of fairness, gratification and justice. Pakhtun and non-Pakhtuns in the Afghanistan have mainly preferred the Jirga system

⁷⁴ Ali Wardak. "Jirga: power and traditional conflict resolution in Afghanistan: Law after Ground Zero," (London: Cavendish, 2002), 1-10.

⁷⁵ Ali Wardak. "Structures of Authority and Local Dispute Settlement in Afghanistan" in *Conflicts and Conflict Resolution in Middle Eastern Societies: between Tradition and Modernity*, (2006), 1-5.

⁷⁶ James William Spain. *The People of the Khyber: The Pathans of Pakistan* (Praeger, 1962), 3-10.

instead of state justice system which is scrutinize by the current research and it is done by esteemed seniors that have a traditional societal status and also have the position of piousness and fairness. In addition, such esteemed seniors of village are highlighting on the reward of sufferers and rehabilitation of lawbreakers are back to the society. Similarly, Jirga system also give out quick fairness, highly transparent, trusted and reachable instead of fairness system of state.

Jirga minutes is the process in which senior heads are reaching on the decisions which is according to held native customs and values which are firmly held in united morality of the villages and tribes. They have a deep presence in the whole mind of residents and area of tribal belt.⁷⁷ Frequently, role of quasi-judicial role is concealing in Jirga system and its main functioning are based on resolving the conflict (Teega), peacefully instead of deciding or authorization of a judgement. The lawful system of government is ineffectively in addressing the faults which are acknowledged in the Jirga system. Usually, the inhabitants of Pakistani are lacking the self-confidence in justice system that are undermining rules of law and leads to increases the violence i.e. human rights exploitations, terrorism, crimes...etc. The state fairness system is mainly criticized because it is costly, unclear, unfair, too wastage of time, extensively perceived as corrupt system, prejudiced and conquered by wealthy or authoritative peoples in society. Therefore, all these issues are the contribution to the justice system of state which are recognized as an extremely respected and known kind of fairness and resolving conflicts procedures in the Pakhtun society.

3.2 Jirga and Human Rights

The women are not able to take part in the Jirga system and all males of the tribes are the members of Jirga. If a female is the victim, or respondent of a crime in any case then she is occasionally agreed the right to express views regarding the issue and her destiny only lies in hands of the senior's members of Jirga system.⁷⁸ However, very rarely, a woman may be represented by her male relative in Jirga; even then the decision is taken without her

⁷⁷ Wardak, Ali. "Building a post-war justice system in Afghanistan," *Crime, Law and Social Change*, Vol.41, No.4, (2004): 319-341.

⁷⁸ <http://www.camp.org.pk/wp-content/uploads/2016/03/Jirga-manual-final-Eng.pdf>, "Last accessed 14 Nov,2015".

consultation. It is clear from previous literature, that the Jirga system are constantly censured to make decisions under social pressure and ignoring the canons of the Justice.

On International level, the protestors of human rights are criticizing that the women and pious subgroups are left out from the Jirga system. Furthermore, a crucial apprehension regarding Jirga system is violating the decisions of human rights to inheritance. Mostly, the decisions of the Jirga system are intended to be objective (i.e. the selection of decision maker is from both sides) and unbiased that means the decisions are based on religion, customs and tradition. But really, decisions are based on those codes which are acceptable in community and often intrude on essential women's right and pious subgroups of community.

3.3 Types of Jirga

There are three types of Jirga in Tribal belt of Pakistan, which are given as under;

3.3.1 Olasi Jirga

The Olas word means people. Therefore, a gathering of the senior's peoples of each household or community is called as Olasi Jirga.⁷⁹ Such type of Jirga system organizes to debate on the numerous illegal and municipal level conflicts and its resolution so that entire parties are receiving the payment. Usually, such Jirga are basically organized in order to resolving the conflicts such as joint rights of land, rights and distribution of irrigation water or public issues, such as a site selection for a mosque. The seniors of tribes are approaching to the both parties when conflicts are created and also set up a teega to avoid a more augmentation in conflicting situation. Money or weapon is the monitory value of teega Teega or Kanray is cessation of bloodshed between contending parties. Teega (putting down a stone) means in other words a temporary truce declared by a Jirga. The word stone is used figuratively because there is no stone at the time of the cessation of hostilities. Once the truce is applied, no part of it will violate it for fear of punitive measures.) Additionally, the teega is held frequently for a certain period of time and then followed with an adequate structure of a Jirga system. The Jirga takes

⁷⁹ Shah Mohmand Rustam. "Former Pakistan's Ambassador to Afghanistan, former Political Agent. (Peshawar: Interview on 12 May, 2011).

time to gather evidence, analyze the tests, and talk to both parties and the villagers, it takes weeks from the involved parties. Members of Jirga can take time or hold so many meetings with party members because they think it is necessary to take a decision.⁸⁰

Yousafzai and Gohar explained the mechanisms of the Olasi Jirga in his report, "Towards Understanding Pakhtun Jirga"; Olasi Jirga can carry out any problem of interest or concern to the society and to make innovative rules for the tribal belt, such as water rights, cropping rights, etc. Olasi Jirga is calling for the other notions and give invitation to unpaid worker as personnel, taxes are increases for society work and it go as a delegation and send delegation to the parties. Decisions made by Olasi Jirga are rarely challenged, as it is perceived to be more credible and has legitimacy within the communities. The research done by CAMP, which shows that 53% of the Pakhtuns have faith in that Olasi Jirga provides fairness instead of other kinds of Jirgas.

3.3.2 Loya or Grand Jirga

The Afghanistan has practice loya Jirga for centuries which in our neighbor's country. The Loya Jirga, (grand assembly) is a process of resolving the conflicts through which representatives from numerous areas are come for gathering, discussions and vote on enigmatic issues at the state level. In addition, representatives are mostly including informal and political leaders, pious researcher and seniors. Such type of Jirga chiefly emphases on the problems of national interest such as choice of a new head of state, war declaration, the implementation of peace treaties or a formation of a new constitution, and decisions of crucial local and global problems that can affect the Afghanistan. Still, the choice of representative members of this Jirga is quite vulnerable and sensitive; as minor maladministration and inaccuracy can abolish the integrity and value of such authoritative process.⁸¹

3.3.3 Sarkari or FCR Jirga

FATA is practicing the Sarkari Jirga system, funded by government and radical administration controlled by political agents or their subordinates. First, Sarkari Jirga deals with all civil and

⁸⁰ Yousafzai and Gohar, 32-33.

⁸¹ Yousafzai and Gohar, 45-47.

criminal cases in the managed areas of any particular agency or border region. Laws are administered by the political agent acting as district magistrate. Create the Jirga with the agreement of the parties in question to adjust the creation of Jirga. In addition, this Jirga examines all the evidence in the enigmatic problems that are described and presents its recommendations to political administration. The relevant government authority appoints two or more members of Jirga depending on the complexity and position of a case. He urges Jirga with the consent of the parties and calls the parties, he feels both points of view, collects evidence, analyzes the trials and announces his decision then proceeds to sanction by political administration.⁸²

3.4 Marriage Contract under Islamic Law and Legislation

There are differences in marriage contract under Islamic law and legislation. Under Islamic law, the Nikah is performed in mosque and court marriages are performed anywhere. The marriage sermon (*khutbah*) is linked with Nikah which is clergyman of mosque and for court weddings, the clergyman of mosque is inform the place regarding Nikkah to recite marriage sermon. It is compulsory in both Islamic and country law. Without marriage sermon (*khutbah*), Nikkah is not performed. In Islamic law, three times accept (*qabol*) is mandatory and there is no record keeping of Nikkahnama in North Waziristan while country law differs. The marriage Registries is informed to come to the religious sermon prior to Nikkah and signature of both couple is mandatory. Hence, the marriage contract is not registered in North Waziristan while registered in urban area where people follow country's law. Additionally, there is price received on marriage of female prior to marriage contract in tribal belt of Pakistan while there is no such price received in areas other than tribal belt of Pakistan.

3.5 The Procedure of Divorce under Islamic law and Legislation

The formation and termination of wedding in Pakistan takes place under diverse laws and ordinances broadcasted on diverse events. Lacking the authorized framework frequently creating issues for couples that involved in conflicts, enforcing them to fight for their rights.

⁸² Yousafzai and Gohar, 32-33.

With reference to wedding termination, the following family laws are in practice in the republic of Pakistan:⁸³

1. Guardian-Wards Act (GWA) 1890;
2. Child Marriage Restraint Act (CMRA) 1929;
3. Dissolution of Muslim Marriage Act (DMMA) 1939;
4. Muslim Family Laws Ordinance (MFLO) 1961;
5. Muslim Family Law Rules (MFLR) 1961;
6. Reconciliation Courts Ordinance (RCO) 1961;
7. The West Pakistan Muslim Personal Law, *Shariah* Application Act (WPMPLSAA) 1962;
8. West Pakistan Family Courts Act (WPFCA) 1964;
9. West Pakistan Family Courts Rules (WPFCA) 1965; and
10. *Hadd-e-Qazaf* Ordinance (HQO) 1979.⁸⁴

While, majority articles and clauses of above mention laws are in agreement with the teachings of Islam. But, there are certain areas that are creating conflicting situations, mostly for females.

3.5.1 The Divorce on the Wife's Demand or Khula

The Section-5 of the West Pakistan Family Courts Act 1964 stated that the Family Courts have are allowing to deal with cases of wedding termination that may including *khula* (divorce on the wife's demand), and the associated problems of dower, maintenance, compensation of matrimonial rights, protection of kids, responsibility, dowry, personal land and possessions of the wife. Though, distinct Family Courts are established, the existing Civil Courts are given additional powers of the Family Courts. Modification of 2002 in WPFCA are providing the facility of seeking relief through combining different sections, clauses and articles taken from associated laws in a single suit. Section-6 of the WPFCA 1965 provides that suits for wedding termination or regaining of dower may be filed in a court that has authority in the area where the litigant wife normally be present in. Moreover, according to Section-19 of WPFCA, the court fee for any plaint or appeal is only fifteen rupees which are contrasting to fifteen thousand rupees for ordinary civil suits. These requirements are proposed to help complainant females.

⁸³ Mohammad Aslam Hayat, *Manual of family Law* (Lahore: Khyber Laws Publishers, 2002), 1-40.

⁸⁴ Zafar Emmanuel, *Law and Islamic Practices of Hudood* (Lahore: Khyber Laws Publishers, 2002), 46-60.

Khula is a process in which a female can terminate her wedding by granting sure rights given to her i.e. dower (jewelry, ornaments and any fixed amount given or to be given by the husband), dowry (gifts brought by the bride at the time of marriage) and *bari* (the gift given by the groom to the bride on marriage), etc. In no occasion is she required to pay from her own pocket to protect her freedom from a non-functional marriage. It is also extensively believed that it can be obtained only through court since out-of-court, *khula* settlements are uncommon. With not much to her name lawfully, the average females of Pakistan normally should be laying down of arms those jewelries gifted to her by her husband in cases of *khula*. There are also cases when she is forced to surrender the rights to the tangible things or property given to her by her own parents. There is an extensive misunderstanding that, in Islam, only males are authorized with the right to terminate weddings. In reality, Islam also gives the woman the right to terminate wedding through an agreement between herself and her husband, which may take the form of either *khula* or *talaq-e-mubarat*. In *khula*, the wife terminate wedding by paying for termination or surrendering certain rights.⁸⁵ In *talaq-e-mubarat*, both mates are wishing for a parting and reach a mutual settlement.⁸⁶ In such regard, Holy Quran, states that:

*"If you (the judge) do indeed fear that they would be unable to keep the limit ordained by Allah, there is no blame on either of them if she gives something for her freedom. These are the limits ordained by Allah, so do not transgress them."*⁸⁷

There is a consensus among jurists that it is unjust for a husband to receive some kind of sum from his wife if he is an autocrat. But, if a female is the guilty party and pursues divorce from husband then he can receive something from her wife, the worth no more than what she had given to her or amount of dower. The consequence of termination of wedding through the *khula* is same as the *talaq-e-bain*: the two are not rejoin each other without a remarriage through a new matrimonial contract.⁸⁸ In Muslim world, the legal expert of all four major schools hold

⁸⁵ Sir Dinshah Fardunji, Mullah Muhammadan Laws 2003 (Lahor: Mansor Book House, 2003), 398.

⁸⁶ *Ibid*, 399-410.

⁸⁷ *Al-Baqara*, 2: 229.

⁸⁸ Muhammad Taqi Usmani, *Fiqhi Mulakat* (Lahore: Memom Islam Publishers Al-Faisal, Vol 2, 1996), 141-142.

that *khula* can be decided at bilateral level and some said that it can only be get by a competent court.⁸⁹

Using the right of *khula* without rational reasons is criticized in Islam. According to a saying of the Prophet Muhammad (PBUH), such female will unable to get even the perfume of the paradise.⁹⁰ The Pakistani family laws are transparent about the *khula*, and organized under Section-8 of the MFLO. *Khula* comes into consequence by an offer from the wife to pay her and also release her from marital duties. With mutual consent, she can be released through *talaq-e-mubarat*. In the light of a judgment of the court, the production of evidence by a woman is not necessary to establish that she cannot live with her husband anymore.

In community of Pakistan, a female doesn't seek out parting from her husband and goes to every likely extent to resolve her differences with her husband within the family. In extreme cases, she may seek to dismiss her wedding over the interference of seniors or kin. She approaches a court for termination of wedding only when she faced unbearable difficulties but the husband is unwilling to free her from matrimony. Lately, there is a visible increase in the number of cases reaching in the courts that is accredited to the implementation of the decision by courts to resolve each family cases within six months' time. Muslim experts believe that, under certain situations, a judge can dissolve wedding even without the agreement of a husband. If the husband has gone misplaced, impotent, lost his sanity, or fail to provide care. Likewise, if the husband is unwilling to fulfill wedded responsibilities, the court can interfere and in spite of his not willingness, separate him from his wife.⁹¹ Omer said that termination of wedding in Pakistan takes diverse procedures, such as parting without announcement of divorce; *talaq* (divorce by the husband); *khula*; *talaq-e-mubarat* (jointly negotiated divorce as part of the *khula* process); *talaq* by the wife through delegating right of divorce; and termination of wedding through court. The below debate presenting a comparison regarding evaluation of dominant practices, Islamic teachings and laws relating to termination of weddings in Pakistan.

⁸⁹ *Ibid*, 150-155.

⁹⁰ Tirmidhi, Book of *Talaq*, 1187 and Abu Daud, Book of *Talaq*, 1947.

⁹¹ Abdul Jalil Qasmi, *Islam ke Mukammal Nizam-e-talaq*. (Pakistan: Multan Tayab Academy, 1986), 209-210.

3.5.2 The Procedure of Divorce under Islamic law

The divorce hardly ever proceeds effortlessly by husband. It usually results from an aggressive behavior, mostly caused by a moment of rage, contrary to the ways given by the Holy Quran and Sunnah. It is a common practice to announce three divorces in one breath. Furthermore, to abuse and character assassination. Generally, females are denying their Islamic right to housing and care during period of the *iddah*, i.e. the prescribed waiting period before a woman may remarry after divorce. During period of the *iddah* of a revocable divorce, the parents of the divorced wife usually don't let her remain in her husband's house, disregarding the Quranic teachings and the couple living in same house that are leading to renewal of the matrimonial association. The withholding of dowry and other belongings of the divorcee is also a common practice in society. Protection and care of kids are the two most argumentative problems between parting couples. Commonly, such matters are taken to the courts. The common practices are quite contrary to the teachings of Islam. The Quranic orders linked to *talaq* obviously and convincingly prohibit the women's exploitation. They don't allow males to keep females in a persistent fix or compulsion on the face of clear mismatch.

The Prophet Muhammad (PBUH) clarified the procedure and mode of divorce clearly that is based on teachings of the Holy Quran. In light of such guiding principles, Muslim experts specify the detailed rules for all issues that is linked to divorce, which are given as under:

1. Any *talaq* given for the period during which the husband can revert back to his wife is called *talaq-e-rujaee* (revocable divorce). After the first or second announcement of divorce, even if the *iddah* period is completed, the husband, prior to the announcement of the third divorce, has the option of taking his wife back by re-solemnization, with her agreement. This type of divorce is called *talaq-e-bain sughra*. The third announcement makes divorce ultimate and unchangeable which is as called *talaq-e-bain kubra* or *mughallaza*. The third divorce means that the couple are unable to rejoin, except the unexpected state of *halala* is satisfied.
2. *Halala* is the condition where a divorced woman marries another man in a regular manner with the earnest intention of living with him, but again regrettably separating from him because of his death or divorce. She is then permitted under Islamic law to get married

again her previous husband, if she wishes.⁹² Particularly, the ugly norm of preplanned *halala*, in which the former husband manipulates someone to marry his former wife and then divorce her immediately without even consummation for enabling him to get married again the woman, is a contempt of the divine law and is cursed by the Prophet Muhammad (PBUH).⁹³ The Caliph Omar and Abdullah bin Omar observed such weddings as treachery.

3. According to the Sunnah, the best procedure for divorce is *talaq-e-ahsan* (most approved type of divorce) in which divorce is pronounced once in *tohar*, with no conjugal relationships in that period, and then the couple wait for the full *iddah*, completing the divorce. During the *iddah*, the husband has the complete right of *ruju* (i.e. reversal of the divorce process by the husband and maintenance of wedded relationships as in the earlier) either verbally or practically.⁹⁴
4. The Sunnah also permits another type of divorce; which jurists call *talaq-e-hasan* (proper form of divorce). In this, divorce is pronounced three times, with a gap of one *tohar* period of the wife between each pronouncement,⁹⁵ so that each party has ample time for reviewing its standpoint regarding the dispute. Again, the husband has the absolute right of *ruju* until the divorce becomes final.
5. The practice of giving triple divorces at the same time is contrary to the Sunnah and has been termed as *talaq-e-bidah* (the innovated divorce) by Muslim experts. However, two views exist among Muslim experts regarding the effect of this practice. One group considers such an announcement as one divorce, while the other takes it as three divorces and announces the result to be the ultimate *talaq-e-mughallaza*.⁹⁶
6. Remarkably, it is totally agreed that such divorce is contrary to Sunnah and extremely detested. Once the Prophet Muhammad (PBUH) was conversant that a man had given a three

⁹² Al-Baqara, 2: 230.

⁹³ Tirmidhi, Book of *Nikah*, 894 and Ibn Majah Book of *Nikah*, 1572.

⁹⁴ Al-Nisa, 4:12

⁹⁵ Al-Nisa, 4:12

⁹⁶ Yusuf, Salahudin, "Aurtun k Imtiazi Masail o Qwaneen, Darussalam," (2006), 185-189.

divorce to his wife. The Prophet rose in rage and exclaimed, "Is the book of Allah being played with while I am still existing amongst you?"⁹⁷

3.5.3 The Procedure of Divorce under Legislation

The effect of termination of wedding done by the court is same as the *talaq-e-bain*, i.e. the two may rejoin through again wedding. The Section-2 of the Dissolution of Muslim Marriage Act (DMMA) 1939 are providing a right to a woman to dismiss the wedding. the right to terminate her wedding if her husband has the following reasons.

- is misplaced and has unsuccessful in providing the care,
- is punished to kept in jail for 7-years,
- has unsuccessful to do wedded responsibilities,
- is powerless, cruel, and stupid,
- is suffering from many diseases like leprosy, venereal, etc.
- is related with females of wicked status,
- tries to enforce her for a corrupt way of living,
- disinherits her of regarding her land, or
- hinders her from involved in religion.

Women can terminate her wedding if it was arranged before she reached the age of sexual maturity, whether with agreement or without her agreement, only by announcing that she has now become an adult and unable to identify the wedding. It needs to be underlined that both Islam and the laws of the land allow a woman to approach the courts regarding the termination of her wedding. In truth, there are many uncertain hindrance blocks and she seems so insurmountable that only a slight percentage of suffering females dare and for seeking release and fairness through courts. The overall community dissatisfaction, long-lasting lawsuit processes, higher costs, absence of parent's support and mental and physical stress are some of the problems that leads a woman to approach the court. In divorce cases are sent to the courts which are resolved under the Section-7 of MFLO 1961 and major elements are given as under:

⁹⁷ Nasai, Book of *Talaq*, 3430.

1. The original divorce deed is obligatory to be filed along with the suit. The notices of divorce and photocopies of divorce deed are submitted by husband to the Chairman Arbitration Council (CAC) / Nazim Union Council (NUC) ⁹⁸ soon after the announcement of the divorce.
2. Within 30 days of receiving the divorce notice, the CAC establishes an Arbitration Council (AC) to facilitate reconciliation between the parties and taking entirely needed steps in such regard. Section-2 (a) of the MFLO agrees that the CAC and a representative each of the husband and wife establish the AC.
3. After the ninety days of divorce notice is sent to the CAC, the *talaq* becomes operative if it has not been cancelled during the period.
4. If at the time of divorce is noticeable, the wife is pregnant, the divorce is ineffective while waiting for the birth of baby or the 90-day period ends, either occurs later.
5. Upon the expiry of ninety day, a copy of the decision of the AC, i.e. reconciliation or divorce, duly attested by the CAC, is furnished to each party.
6. To Fail in providing a notice of divorce to the CAC is punishable by caging for one year which is a maximum time or fine him, up to five thousand rupees.
7. In many area of Pakistan, a complaint against the husband's failure to provide the divorce notice can only be filed by the CAC. But, in Punjab province, there is modification of law that wife is enable to also file up such a protest.

In short, Section-8 of the MFLO, 1961 are addressing on the divorce and associated enigmatic problems unambiguously. Section-6 states that consent of a second wedding without the previous approval of the first wife is a crime and must be given punishment with imprisonment or fine or both. The same section suggests the sum of the whole dower, either quick or late, is to give the first wife, instantly. The first wife can also claim for her maintenance if the husband falls short of satisfying his responsibilities. In a case, if wife leave the house of her husband with no solid reasons then on the basis of such unkindness or careless behavior on her husband's part, she is not allowed to seek out her maintenance amount from husband.

⁹⁸ In present district government system, the Nazim of every union council has been given the additional powers of Chairman Arbitrage Council (CAC).

3.6 The Legal Status of Customary Practices with Conflicts of Shariah

Wedding is extremely respected and celebrated in Islamic era and according to a comprehensive treatment of the Holy Quran and Hadiths of the Prophet Muhammad (PBUH). It is called the sign of Allah,⁹⁹ which is a way of prophets¹⁰⁰ and the Sunnah of Prophet Muhammad (PBUH).¹⁰¹ The Holy Quran uses the metaphor of a garment¹⁰² in order to define the equally defensive and enhancing association between wives, and requires them to be very kind and understanding to each other. It also gives diverse roles to each spouse in order to certify a smooth functioning of the family that arises as a result of the Nikkah between bride and groom in agreed way.

The religion Islam is treating the weddings as an everlasting institute with specific rights and responsibilities assigned to each mate. The Islamic wedding regarding Muslim is a social contract between bridal and groom. Islam make known to for all in terms of checking and balancing in order to defend and protected the rights of all peoples such as wife, husband, children, and society. It bans all kinds of adulterous relationships prior and after the wedding ceremony and such adulterous relationships are considered as transgression.¹⁰³ Therefore, the requirement of Islam is mainly to establishment and maintaining the family's honor, is completely contrasting to the viewpoint that signify for sexual negligence in garb of freedom of choice. Despite, its main focus is on weddings and its protection. But, Islam doesn't bane termination of wedding as a last possibility for separated mates. In order to describe the divorce which is the most hateful among the allowed acts.¹⁰⁴ Islam gives the right for both mates to dismiss their wedding if they are unable to fulfill the main goals of wedding.

The selection of a wedding mate is one of the utmost serious decisions that individuals are facing. In modern age, such decision typically following an extensive learning time in which people are engaging in more informal and frequently polygamous relations (Fisman *et al.*, 2006).

⁹⁹ Ar-Room 30:21.

¹⁰⁰ Ar-Ra'id 13:38.

¹⁰¹ Ibn Majah, Book of Nikah.

¹⁰² Al-Baqara 2:18.

¹⁰³ An-Noor 24:2.

¹⁰⁴ Abu Daud ,Book of Talaq, Chapter 131.

In line with Naz and Rehman (2011) who stated that the partner choice is one of the serious issue in life for a female in the area in which females are customarily conquered by males and also females can difficultly in expressing their views in such situations. The process selecting a partner in old-style community are nearly all the time dominated by males in the family, who chooses in order to favor of the endogamous weddings.

Nock said that peoples are not allowed to give consent in order to get married with any person they desire. There are continuously approaches in order to ensure that they are convinced mate pair with certain others, which is known as criteria for selecting the mate in the cultural framework. The choice of mate is a process which are starting only once and we are limiting the fields of suitable spouses from a list of individuals. In fact, it is not only the social right but the religious right of both mates in tribal area. Religion has strong effect on the individual who want to get married and teachings of Islam are defining the area of wedding as to whom is permitted to wed. The religion is leading in life of human being. Wilson stated that religion is significant in numerous areas of the life of peoples and rules of religion are playing leading role in wedding ceremony and life of family are the greatest challenging part of ethical system of religion. By few minor differences, the whole religion of world is supporting wedding and family system. Islam are providing the rights of spouse choice both prior to wedding which is hased on mutual agreement between involved mates and it gives love, peace, kindness and reflects demand and satisfaction regarding both partners.

3.7 The Relationship between Theology and Law

Is there a connection between theology and law? If accordingly, is there any significance in investigating this connection? The paucity of Pakistani legal and Islamic works in this field proposes a both positive and negative response to each of these questions depending upon the areas of devolvement. The majority people living in Pakistan are Muslims and believe in one God but there is no law in North Waziristan due to fact it is emerging city of Pakistan. In presenting numerous opinions on Theology and Law, a significant objective for both fields are possibly lacking the respect of community and there is existence of gap between Pakistani lawful and Islamic work on relating between them. However, it doesn't mean to engage in it will a less fruitful or is considered to be inappropriate to complete understanding the society of Islamic Republic of Pakistan. Actually, the proper concentration due to fear in some area of

Pakistan where Army feel reluctance and it is difficult to start new projects and change their law. The interdisciplinary study of theology and law seeks to determine the ways in which both may actually be pursuing the same goal such as morality and justice — and how, in that common pursuit, they might offer insights to one another. Adrian Evans stated that the necessity for barristers' relining to the values-based decision making, if only due to barristers as barristers are unbelievably authoritative peacekeepers of fairness and unfairness and no individual can practice progressively over the long-time period without some consciousness of such value roots.¹⁰⁵

Undertaking so that means it is essential to discuss with students of law about the large picture regarding death, enigmatic problems of life, Allah and public. The word theology literally means God discourse.¹⁰⁶ It mainly encompasses in order to reflect on the presence of Allah. Theology initiates from the reference line statement of the existence of, and faith of human being in the Allah and then tries to recognize that faith. The relationship between the two disciplines is gradually expanding and emerging in Pakistan. Ahmad studied in his article regarding the Islamic law and theology. The purpose of his work is to examine the link between Islamic law and Theology. Further, he claimed that that Islamic law and theology are interconnected and evolving sciences that perpetually animate Muslim discourse. The article concludes by discussing the political import of this topic, and suggesting avenues for further research.¹⁰⁷

3.8 Views of Islamic Experts and Legal Experts

There are diverse views about the Nikkah and Jirga system by Pakistani Islamic experts and legal experts. There are many reports, where they expressed their views. In line with Muslim scholars, Yousafzai and Gohar¹⁰⁸ stated that Jirga system leftovers an operative institute for nonviolent negotiations and resolving the conflicts of peoples, societies and tribes. The Jirga

¹⁰⁵ Evans Adrian. "Encouraging lawyer's values in a faith conscious world." Vol. 8. No. 1. (2005), 6-22.

¹⁰⁶ <http://www.austlii.edu.au/au/journals/MelbULawRw/2007/11.html>, "Last accessed 11 sept .2015".

¹⁰⁷ <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199679010.001.0001/oxfordhb-9780199679010-e-58>, "Last accessed 28 sept .2015".

¹⁰⁸ Yousafzai and Gohar, 37-38.

system is coming from peers to peers with no printed procedures, terms and conditions. It is believed to be an essential judicial institute where whole individuals are treated equally before the Jirga process. In majority cases, disputes are resolved in adequate ways and everyone give respects to the outcomes of Jirga system. Still, strong administration is necessary to brings the fairness in Jirga system. Jirga system are offering a standard of negotiation between opposing groups, tribes and mediators, but Jirga is a means for creating a structure and setting in order to address modifications between groups involved in conflicts. Furthermore, the Jirga system considered as jury because of its nature of structure and participation. The Jirga system ensuring the operative contribution of individuals in running the fairness that leads to achieve the fairness. Jirga system also providing the safety to the weaker or poor family engage in dispute.¹⁰⁹ In such regard, the Sindh Judicial Academy (SJA)¹¹⁰ had done a report on relating a team of experts having ridiculous knowledge of detecting and lasting part of two systems such as formal justice system and Jirga system in Pakistan. According to legal experts that “Jirga is a local term used to define group of people/elders who sit together for resolving a dispute”. It is typically operating in FATA, Baluchistan, KPK and FATA.

Wardak¹¹¹ said that Jirga in an ordinary practice famous for native or tribal institute to make decisions and resolving the conflicts that integrates the predominant native customary laws, traditional rituals, and elders of village whose shared decision regarding conflict resolution is obligatory for parties mainly involved. The Jirga *system are* combining the old authority and competent authority. The old authority is based on on individual qualities, social status, and leadership skills while competent authority is based on the individual's recognised proficiency and skills that are playing a chief part in attaining a *pikra* (ruling) that is acceptable to between parties of tribes.

3.9 The Customary Practices, Procedures and the Authority of Jirga System

Ginsburg¹¹² said that there is a societal space for women in the Pakhtun community to resolve

¹⁰⁹ Wardak, 46-60.

¹¹⁰ <http://www.waterinfo.net.pk/sites/default/files/knowledge/Report%20Informal%20Justice%20System%20in%20Pakistan.pdf>, “Last accessed 14 Jan ,2016”.

¹¹¹ Wardak 77.

¹¹² Ginsburg, 15.

conflicts in tribes and it is usually private ones. In addition, the older married women have an authority in certain kingdom that includes to make decisions of weddings of their kids, decisions about managing their household affairs, resources allocation and resolving conflicts. However, a remarkable native differences in inactive Pashtun tribes regarding females have greater authorities as compared to nomadic tribes.

The National Commission on the Status of Women (NCSW) has written a report on "*Women Right to Inheritance and Its Implementation*"¹¹³. The author of the report, Zehra¹¹⁴ said that widely held weddings in Pakistan are endogamous while wedding in tribal area are exogamous in nature. Usually, weddings are done outside due to unavailability of right person within family, clan or tribe which are mainly considered. In both weddings either endogamous or exogamous, generally guardians such as father, brothers and uncles have the exclusive right to choose a mate for their children, mainly for girls. But, it is their own will to look up their son or daughter in such regard. But the guardian's decisions, mainly the decisions of father are taken as ultimate and obligatory regarding wedding of their descendants.

Usually, the forms of Nikkah is filled by Nikkahkhuwan or the guardians of the bride and bridegroom and most of the columns pertaining to the bride's rights. For instance, to maintain, substitute right of divorce are intentionally neglected. Normally, Nikkah or weddings held through a *wali* of a bride and amount of dower amount (*mehar*) which is fixed on the bridegroom's choice. It is usually detected rule that the widow and her orphan daughters remain under the protection of deceased husband's family. In addition, the widow and her daughter are no right to get wedded without the agreement of their guardian. The weddings are registered in urban area of Pakistan while weddings are not registered in rural areas.

There many scholars¹¹⁵ who investigated the social analyses of Jirga system and rights of women in Islam in tribal belt of Pakistan. A weighty relationship is detected between

¹¹³ <http://www.ncsw.gov.pk/previewpublication/3>

¹¹⁴ a Chairperson of NCSW

¹¹⁵ Naz, Arab, Waseem Khan, Umar Daraz, "Mohammad Hussain, and Hafeez-ur-Rehamn Chaudhry, "The Relational Analyses of Pakhtun Social Organization (Pakhtunwali) and Women's Islamic Rights Relegation in Malakand Division, KPK Pakistan Arab," International Journal of Sociology and Anthropology. Vol.4. No.3, (2012): 63-73.

Pashtunwali and Islam. Since, *Pakhtuns* enthusiastically accept the Islam as a religion. Furthermore, the Islam and *Pakhtunwali* are serving the elementary pillars and are bringing the social harmony and integrity in the political, socio-cultural, religious, economic and political aspects of *Pakhtuns*. They further emphasize on downgrading of such human rights for both genders in Islam. But on the other side, Jirga system give respect to ideal old-style social structure that seems to downgrade the women. To sum up, almost all the inside and outside affairs of *Pakhtuns* are overseen in old system of Jirga system based on elements of *Pakhtunwali*. The religion Islam is a perfect religion and has no such role in the indulgence of rights of women in tribal area.

3.10 The Role of Women in North Waziristan

Pakistani women generally live lives that are socially, economically and culturally dependent upon their male counterparts. However, women living in the North Waziristan agency are particularly vulnerable to the prevailing patriarchal society due to the poor socioeconomic conditions in the area. Women from other parts of the country live in relatively better circumstances socially, economically, politically and religiously, as compared to tribal women in the project area. In other parts of the country, women living in urban areas of other provinces of Pakistan have greater freedom to raise their voices to protect their rights which are better supported religiously, culturally, and socially than women in rural and tribal areas. However, *Pakhtun*'s women in the tribal project area remain vulnerable to economic, social and psychological poverty, and have little say in society and often no voice in many aspects of their lives. They are often subjected to privacy and loneliness with limited channels to contribute in progress of social and educational sector.¹¹⁶

The role of women in *Pakhtun* society is thought to be mother, wife, sister and daughter. The head of family will organize weddings and both sexes are deprived of their agreement. But the divorce is very rare.¹¹⁷ Ideas of respect and honor are very strong in the tribal area. The women are personifying the honor of the tribe. This is a problematic issue and their public members are subtle and unbending. Women, as symbols of honor, are expected to reject

¹¹⁶ http://pdf.usaid.gov/pdf_docs/PA00K9ZG.pdfhtm , "Last accessed 12 Jan,2015".

¹¹⁷ http://pdf.usaid.gov/pdf_docs/PA00K9ZG.pdfhtm , "Last accessed 23 Jan,2015".

opportunities for themselves as individuals, as they are thought to be gifted through nature for being a woman. As part of this codified honor, females are not allowed to speak up for their needs, facilities, likes and dislikes. Women in FATA are not permitted by tribal customs to exercise their legal rights to: property; use, plan and manage local resources; participate in decision-making processes; information; redress; development and policymaking processes; make decisions regarding how local resources will be used; negotiate for any cause; fair and just compensation; common property resources; equal wages for equal work; employment and education (USAID, 2013).

Men make every effort to prevent female family members from being influenced by the outside world to preserve women's honor, and women are rarely seen outside their homes. Women are expected to live within the boundaries of their homes that are earmarked by their male relatives for their entire lives. Women may never travel or move alone in public, and must be accompanied by a male fellow of her family. While traveling, she is not allowed to sit in a vehicle's front seat. *Pardah* is very strictly observed in Pakhtoon culture. On the other hand, males are considered to be the economic providers, decision-makers, and public and household leaders who play a role in the public realm. Men benefit from and have access to multiple resources, including natural resources, employment, development opportunities, and use and management of assets.¹¹⁸

3.9 Conclusions

In short, this mainly focused on the basics of *Jirga* system and *Nikkah*. Furthermore, this chapter also explained the History of *Jirga*, and human rights, basics and type of *Jirga*, marriage contract under Islamic Law and Legislation, the procedure of divorce under Islamic law and legislation, the legal status of customary practices with Conflicts of Shariah are criticized. Moreover, this chapter also explained the enigmatic issues of customary practices with relating between Theology and Law, views of Islamic experts and legal experts, the customary practices, procedures and the authority of *Jirga* System. Finally, the role of Women in North Waziristan is also explained in chapter.

¹¹⁸ Kurram Tangi Dam Construction, Environmental Mitigation and Monitoring Plan Main Report, December, 2013. see, http://pdf.usaid.gov/pdf_docs/PA00K9ZG.pdf, "Last accessed 19 march.2015".

Chapter 4

LEGAL STATUS OF CUSTOMARY PRACTICES

4.1 Legal of Customary Practices of Nikkah in North Waziristan

In villages and tribal belt of Pakistan, the customary law must be steadily altered due to the fact that few customary laws are very firm and conflicting to the commands of Islam. For example, the idea of divorce is very rare in Baluchistan. But, if situations are becoming poorest then it may be allowable in tribal belt of Pakistan. Alternatively, the Islamic law (Shariah law)¹¹⁹ which is enshrined in the holy Quran and Hadiths and the family laws of Muslims are based on it. By feature of Islamic commands, divorced female is conferred with right to dower (mehar) if it is not paid, maintenance for herself and for her kids (if any) and their protection.¹²⁰

According to the Dr. Arfa Sayeda Zehrat¹²¹ that “3-layers of jurisprudence must be taken into consideration in our legal education such as customary law, social customs, and common law”. In the constitution of marriage, it is a public contract where the free agreement of both parties is fundamental to its achievement. However, the association of both parties in the Contracting Parties doesn't create an uncontaminated civil contract, but is determined in conjunction with its religious connotation, whereas ordinary law considers marriage as a civil contract under three conditions:

1. The parties are lawfully able of marriage contract
2. The joint consent

¹¹⁹ There are numerous preliminary books on Islamic law, its nature and sources. However, their perspectives differ. Books written by orientalist are apt to present a distorted, prejudiced, and biased view of Islam and its laws while books written by Muslims present a sympathetic view. Books written by orientalist i.e. Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1984), and Noel J. Coulson, *A History of Islamic Law*, Edinburgh: Edinburgh University Press, 1964. AAA Fyzee, *Outlines of Muhammedan Law*, Delhi: Oxford University Press, 1974. Joseph Schacht, *Origins of Mohammedan Law* (Oxford: Clarendon Press, 1959).

¹²⁰ <http://www.ncsw.gov.pk/previewpublication/1>, “Last accessed 16 April, 2015”.

¹²¹ Chairperson of National Commission on the Status of Women. See, <http://www.ncsw.gov.pk/previewpublication/3htm>. “Last accessed 16 April, 2015”.

3. The authentic contract in the form agreed law

Unlike Muslim Personal Law, the attention for wedding is non-compulsory under common law. The Xhag or Ghag is the customary practice prevailing in tribal belt of Pakistan that is an inherent part of the village codes dominated in tribal areas. This old tradition, Jhag, is a man's statement of right over a woman for wedding. But in this norm, males (mostly paternal cousins) have a birthright to marry their cousins, even if their match is unharmonious. Numerous cases in such regard are found in which females are being enforced to marrying a man in tribes who are prisoners, mental or other disability as per such tradition. It infers that if somebody can advance claim (Xhag) over a female and if anybody desires to wed her then he will do contract as a claimant on first phase of wedding. Hence, far improved proposals for females are unconsidered and at times, females who are mainly affected due to this tradition are enforced to keep on spinsters for whole life.¹²²

The *Walwar* is an old custom of tribal belt of Pakistan called as price of bride which is a traditional practice of tribal areas for numerous centuries. Usually, price of bride is mainly consisting of tangible objects (property, gold, cattle ... etc.) or the money paid by the groom to the bride's family in exchange for the bride. According to tradition, such a standard is a gift primarily used for the purpose of joining families, by participating in the bridal family's financial costs associated with the wedding as a sign of appreciation. Today, however, unfortunately this practice seems to have been marketed and lost much of its traditional value in many cases. The significance of this centenarian personality has changed into a list of requests made by the bride's family. Now it seems that man "acquires" his wife as a commodity, with the price that depends entirely on her beauty, her monetary status and her age. The impact of this immoral tradition on young women is terrible as it diminishes them into assets that constitute a strong violation of their essential human rights and self-respect.¹²³

¹²² Community Appraisal and Motivation Programme (CAMP) Jirga report, (2016). Available at, <http://www.camp.org.pk/wp-content/uploads/2016/03/Understanding-Jirga-.pdf>, "Last accessed 27 Feb ,2015".

¹²³ *Ibid*, 10-16.

4.2 Informal Justice System from a Rule of Law Perspective

Informal justice systems also called the Jirga system from a rule of law perspective and have recently received a lot of attention from theoreticians and practitioners of the rule of law. The idea refers to a variety of organizations that help resolve conflicts and refer to social practices other than official state policy. Informal justice systems can be managed by traditional, religious, elderly or other respected community members. They are "informal" as they apply non-state conflict resolution methods. However, they may be required to adhere to state law and may also be formally incorporated into the state court system. But even though the law recognizes and incorporates them formally, these institutions stand out from the official state and are perceived as "informal" by the people. Informal justice systems have existed in almost every society and at all times. This article focuses on the phenomenon in the context of current development. The Jirga system can be considered as part of the complete management system.

The phenomenon is mainly discussed in cases in Africa, Latin America and South Asia. Many observers point out the practical needs of rural populations to explain the popularity and functionality of informal justice institutions. Rural populations tend to have better access to informal justice systems than the state justice system and prefer them for a number of important reasons: usually the procedure is performed locally, is more or less cost-free and less prepared for corruption; It is exercised by trustworthy people in the language everyone is talking about and decisions are made according to the rules known to all members of the community. Normally informal procedures aim at restoring social peace rather than applying abstract legislation. It is consensual and justice-oriented. In this sense, informal justice systems provide a better "access to justice". In addition to these common features, the Jirga system is, in large geographical areas, the only option due to the absence of government. This is often the case in regions where colonial powers are not trying to establish formal higher court systems i.e. Afghanistan or Northern Yemen.

In the status quo of armed disputes, Jirga system frequently gain more status because of failure of the state justice system. In post-conflict societies, they are playing a vital role in the balance and understanding process. In many cases, their positive potential is effectively used if

they are reformed and connected to government organizations. This will be especially significant for the purpose to certify that elementary human rights standards are fulfilling. The inclusion of Jirga system will lead to a more complete method towards building the rule of law. Noticeable variations would however be not expecting in short duration of time.

4.3 Challenges for Strengthening the Rule of Law

The increasing consideration are given to Jirga system is because of the fact that the transference of western-style magistrates to post-conflict humanities are less or more failed. Later on two decades of globally funded organization, building and ruling regarding promotion of law and billions of dollars spent in such regard but the results are seems inadequate. The finding of current studies reveals that recently formed government courts legal laws they are applying are unaccepted by native inhabitants. Especially, in countryside conservative areas that have a traditional society but still the gap between the state justice and Jirga system can be vast. Even if courts of governments have been newly established, conflicts are still and foremost dealt with by the Jirga system. Hence, more current hard work is emphasis on solidification and restructuring prevailing old-style organizations and relating them to government organizations instead of trying to demote them.

A morally government adjusted clue of the rule of law can find a less supporting while Jirga system are more accredited as functionally parallels to state courts. Jirga system are fulfilling rule of law function instead of satisfying the necessities regarding rule of law. However, it is playing an essential role in linking in order to establish and maintain rules and governed behaviors between the residents.¹²⁴ They accompaniment and frequently even a substitute for the government infrastructure for resolving the dispute. Further, it is allowing the renovation of the social peace, and providing improved lawful foregone conclusion that's have a considerable concern for such new strategy. The pros of Jirga system that are requiring to accept the cons as well:

¹²⁴ Tamanaha Brian Z, "The Rule of Law and Legal Pluralism in Development." *The Hague Journal on the Rule of Law* (2011): 1-17.

1. The functionality of Jirga system working well within homogenous societies instead of heterogeneous societies because it can create the conflicts.¹²⁵
2. The Jirga system are frequently males subjugated instead of females and their decision makings are gender-biased.
3. The utmost often raised up concern is related to the rights of human. For example, swara is the old norm in tribal belt that means to wed a female into another family as a return for the member of murder's family as a sign of resolution in tribal belt. To safeguard a well standard of protecting the human rights and fair trials in Jirga system in which some kind of intensive care and need of interference and will also raise the access to fairness unable to create injustice for the deprived.
4. The Jirga system are protected contrary to dishonesty, favoritism, and other factors influencing the fairness.

4.4 Conflict of Customary Practices of Nikkah with Shariah Law

Jirga system depend on a various conflicts resolution techniques that includes the compensation of hurt parties with land, money and livestock and a numerous customary practices regarding conflicts that is based on understandings of the Islamic laws. In the 1st category of customary practices are real impingements of females' ability to do agreement in marriage. It is mentioned previously that marriages under the Islamic laws is based on agreement between both families. Shared kinds of compensation under Jirga system includes to give females for resolving conflicts (baad), exchange of weddings (badal) and murders on the basis of honor which is characteristically stem from hard work of woman to run away from marriage ceremony.

USIP-PTRO survey mainly emphasizes on the principle that the evidence to resolve the practices of baad seemed questionable. Currently, such practices don't exist in Paktia and Takhar. In addition, these practices are non-existent and are not reported or changed. The respondents of Takar frequently declared that the practices are not really occurred and don't in recent years while respondents of Paktia stated that such practices of baad are concealed by

¹²⁵ Kötter Mathias, "Non-State Justice Institutions: A Matter of Fact and a Matter of Legislation 6 WZB," (Paper: No. 34, 2012), 1-6.

offers of money and land.¹²⁶ Others stated that the old-style practices are replaced by a similar practice. However, the quarry's family are demanding from the perpetuator's family to give the payment of marital and dowry expenses to women.¹²⁷

The 2nd class of customary practices are unfriendly to Islamic law is mainly lacking women's rights to receive property. According to Islamic law, kin of women can receive property from their male relatives, although in small shares than identically situated inheriting males. Alternatively, only males have the right to own property in tribal areas. The members of survey justify that legal Islamic orders in such regard can get an advantage of larger social unity. A little loss of property of women was explained away in terms of the claimed assistances accrued over male guardianship. The survey further finds that whole hesitancy among females to give issues in newspapers or other media for their inheritance rights for having terror of social dishonor. Referring to one interviewee who said that "women don't have the courage to ask for their rights from their brothers or relatives because it is shameful for them." Cases where women may press for their inheritance rights leads to hostile response from community. In addition, a case in Paktia where two descendants are trying to press for inheritance rights which are then refused by a native shura.

A daughter of one's family committed suicide and most of property is owed to other kin in a bid to endorse resolution within the larger family. When asked why this pre-Islamic custom could continue in the face of clear Quranic command and one informal justice actor in Takhar recommended that the process in order to resolve native conflicts are mainly oriented toward reaching agreement between parties instead of supporting a person that preferring the law which he understand. The survey done by the USIP-PTRO shows that accomplishment of an agreement is not a function of equality under customary law but rather the comparative authority of individuals in order to resolve the conflicts. The Shura or Jirga's participants effects the final outcomes. The ulama found to decide conflicts in the Jirga system and their authority will inversely relate to the lawful authority of prevailing ancestral and customary customs

¹²⁶ In case, the injured party are offering the amount of four million rupees, or about thirty-seven thousand dollars.

¹²⁷ The alternate example of such alteration in ability of debater to be alter, who are representing them in the case of appeal. In past, the decision makers of society are selecting a representative of in case of appeal.

which is understandable to those tangled in conflicts. The prominent basis to limit or deliberately disregarding such situations under the Islamic law is give respect to the customary law and maybe more indirectly to maintain ancestral and male-controlled authority.

In short, there is difficult to get justice by women in tribal belt of Pakistan and have no direct involvement in Jirga system. The contract of marriage is very expensive to poor family if they are not being able to give money. In this way not be able to get married in North Waziristan. Furthermore, if the bride family not receive money; so, the neighbors can give the taunts regarding breaking the old customs. The marriage contract and divorce are not registered in North Waziristan due to the fact that there is no divorce and marriage and registrar office and also municipal committee and family courts for record keeping.

4.5 National and International Organization's Efforts to Support the Alignment of Jirga Compatibility with Human Rights Standards

There are many national level NGOs working in Pakistan for women rights such as Blue Veins, All Pakistan Women Association (APWA), the Tribal Women Welfare Association (TWWA), Pakistani Women's Human Rights Organization (PWHRO), Rutgers WPF and Sindh Judicial Academy (SJA) while international organizations includes The International Council on Human Rights Policy (ICHRP), the Office of UN High Commissioner for Human Rights (OHCHR), United States Agency for International Development (USAID), National Commission on Status of Women (NCSW), the Gender Equity Program of Aurat Foundation and the United Nations Development Programme (UNDP).

4.5.1 National Organizations Blue Veins¹²⁸ is established for the purpose in order to fulfill information need, involvement and grass root organizing towards the enablement of women and other groups. Nowadays, this NGOs is mainly working for allowing the societies towards enhancing their position which is crucial to realize the full potential in order to develop the economics, politics and social sectors of republic. In addition, this NGOs believes every person in spite of their sexual alignment and gender identification is consider as an opportunity to shape their coming future through aspiration, hopes and dreams. But too frequently, their voice is muted, ignored and repressed. It is mainly working to worn down fences regarding silence of women and transgender peoples.

¹²⁸ <http://www.blueveins.org/> "Last accessed 19 march,2015".

The Blue Veins are preventing the Child, Early and Forced Marriages (CEFM) in Pakistan. The marriages of children are stealing the innocence of millions of girls on global level and frequently convicts them to survives of poverty, illiteracy and diseases which is the main hindrances in way of development. The child marriage of children is a serious enigmatic issue that are violating the human rights of girls and obstructs the outcomes of development. Current, the worldwide estimates show that more than sixty million females whose age is between twenty to twenty-four were married before they turned into the age of eighteen. However, in controls of strictly pious, families tie and tribal customs, the majority of such innocent females become victims of inattention that leads to discrimination as compared to their male siblings. From beginning of living, the family people consider and treat the women as the weak gender in family. In such regard of the attitude regarding society that forced women to live her life of capitulation, submission and acceptance.

All Pakistan Women Association (APWA)¹²⁹ is oldest NGO working in Pakistan since, 1949. It is notorious for non-political and not operated with objective of making a profit. The essential purpose is give the social, ethical and economic welfare to women of Pakistan. It was instituted in 1949 by Begum Raana Liaquat Ali Khan, a well-known activist for right of women. Further, she said that the role of women is not less significant as compared to men. TWWA is employed for making awareness regarding role of women in tribal belt of Pakistan such as PATA and FATA. The main aim of PWHRO is to rise the voice in global forums regarding enigmatic issues faced by women of Pakistan such as qasas and zina laws, hudood and karo kari ordinance.

Rutgers WPF¹³⁰ is well-known center of proficiency in sexual and generative health and rights. Its activities are operating in Asia, Africa and Netherlands. The aim of Rutgers WPF is to enhance sexual and reproductive health and rights all over world and also supporting the partner administrations and professionals in their working activities to rise their expertise on Sexual and Reproductive Health and Rights (SRHR) and issues surrounding it and its vision is to envisages

¹²⁹ <http://apwapakistan.com/>. "Last accessed 16 feb,2015".

¹³⁰ <http://www.rutgerswfpak.org/>. "Last accessed 25 June, 2015".

a society in which all individuals are equally capable to work out their SRHR and its mission is to work for supportable human development by encouraging the sexual and reproductive health and rights of women, youth and other downgraded groups.

The informal justice systems¹³¹ means a non-governmental justice system which have existed, and unable to alter, since pre-colonial times and are generally found in tribal belt of Pakistan. During the work, Jirga system is also detected and opinions are obtained about its accessibility and effectiveness. It was also the purpose of study to know about associations between formal and informal justice systems and what are state's inventiveness to make known to structure another system to resolve the conflicts in whole country. Such evaluation was conducted through the Law & Justice Commission of Pakistan (LJCP) under supervision of Sindh Judicial Academy (SJA) is appropriate to the state justice sector reforms such as to explore ways and processes in order to lessen tendency regarding workload of legal system and providing justice to all humanity on wholesale such as weaker, marginalized and poor peoples.

4.6.2 International Organizations

The International Council on Human Rights Policy (ICHRP) was formed in Geneva in year 1998 involved in doing applied research on enigmatic issues of existing human rights. Its research is mainly intended and have a practical significance to the policy makers in global and local administrations, agencies, and in unpaid organizations of all types. The ICHRP is autonomous, global membership, participating in its tactic and a nonprofit basis under the Swiss governmental law. The OHCHR in the same way calls for more donor management in framework regarding post-conflicting justice sector reforms.¹³²

Nazish Brohi, written the report on females, violence and Jirga's, agreement and freedom in Pakistan except the work related to the interface of formal and informal judicial systems is studied and written by Nida and made to order by the National Commission on Status of

¹³¹ <http://www.waterinfo.nct.pk/sites/default/files/knowledge/Report%20Informal%20Justice%20System%20in%20Pakistan.pdf>, "Last accessed 17 June, 2015".

¹³² OHCHR report, 39.

Women (NCSW).¹³³ In addition, such global NGOs have a greater inventiveness for outcome procedures to finish ferocity contrary to females and supporting their authorization. The American persons of United States Agency for International Development (USAID) are supporting to write this report under the supervision of the Gender Equity Program of Aurat Foundation.

United Nations Development Programme (UNDP) has done a report written by Wojkowska in 2006. In order to rise its assignation with Jirga system. In addition, such system is fortifying the access to fairness regarding deprived and needy peoples. The Jirga system is referred to conflict resolution which is outside the boundaries of the Jirga system of state. The Jirga system remain mostly ignored by the UNDP and this is somewhat surprising because the UNDP's must provide access to the justice for those who are deprived and needy peoples and are unaware how to fight for their legal right in tribes as teaching of the Quran and Sunnah.

4.6 Conclusion

In short, this mainly focused on the Legal status of customary practices of Nikkah in North Waziristan, Informal Justice System from a rule of law perspectives, Challenges for Strengthening the Rule of Law, conflict of customary Practices of Nikkah with Shariah Law, community perceptions regarding Jirga System, National and International Organization's efforts to support the alignment of Jirga compatibility with human rights standards. Let me reiterate that the customary practices in North Waziristan are against Shariah law and there is no need to provide legal rights for women.

¹³³[http://af.org.pk/gep/images/publications/Research%20Studies%20\(Gender%20Based%20Violence\)/NB%20NCSW%20JIRGAS.pdfhtm](http://af.org.pk/gep/images/publications/Research%20Studies%20(Gender%20Based%20Violence)/NB%20NCSW%20JIRGAS.pdfhtm), "last accessed 12feb 2015"

Chapter 5

FIELDWORK

5.1 Introduction

The current study focuses on interviews and few case studies, Moreover, this chapter also explains the Holy Quran Verses and Hadiths to explain the Jirga System and Nikkah and summary of whole chapter.

5.2 Result of Interviews

The 80 respondents are interviewed in North Waziristan that gives views about the 13 questions. The results are given as under:

1 Is *Jirga* system inevitable for Pukhtoons in North Waziristan?

Table 4.1: The Inevitability of Jirga system in Pakhtuns Society

Responses	Respondent's Frequency	Respondent's Percentage
Yes	75	93.75
No	5	6.25
Total Respondents	80	100

The above Table 4.1 demonstrates that majority people say that Jirga system is inevitable for Pakhtuns society in North Waziristan by 93.75% and minority say no which is about 6.25% of total sample size.

2 Do you support continuance of the *Jirga* system?

Table 4.2: Support of Jirga System to Continue

Responses	Respondent's Frequency	Respondent's Percentage
Yes	77	96.25
No	3	3.75
Total Respondents	80	100

The above Table 4.2 shows that majority people say the continuation of Jirga system for Pakhtoons society in North Waziristan by 96.25% and minority say no which is about 3.75% of total sample size. The minority people of North Waziristan deny Jirga system due to the fact that they are educated peoples and following the court rules and regulations.

3 What is the main functional form of the *Jirga* system you can mainly support in North Waziristan?

Table 4.3: Main functional form of Jirga System

Responses	Respondent's Frequency	Respondent's Percentage
Official	3	3.75
Olası	70	87.50
Others	7	8.75
Total Respondents	80	100

The above Table 4.3 shows that only 3.75% people shows interested in Official Jirga. However, the majority are interested in Olası Jirga system by 87.50% and interestingly others people are interested in both type of Jirga System by 8.75% of total sample size. The minority people of north Waziristan want Official Jirga System since they are educated peoples but are unable to leave birth place area and some customary practices are imposed by ancestors.

4 Are Jirga system is used to resolve conflicts in the North Waziristan?

Table 4.4: The usage of Jirga system for Conflicts Resolution

Responses	Respondent's Frequency	Respondent's Percentage
Yes	70	87.50
No	10	12.50
Total Respondents	80	100

It is clear from above Table 4.4 that only 12.50% of total sample size say no that Jirga system may not resolve conflicts and while 87.50% said that Jirga System can resolve conflicts which is according to customary practices instead of legislations. In short, the minority are unhappy from their old customs because of having educated background while majority are happy regarding

conflicts resolutions in North Waziristan that have no educated background and they don't know the customary practices are against Islamic laws.

5 Is Nikkah (contract of marriage) and divorce is registered in North Waziristan?

Table 4.5: Registration of Nikkah and Divorce in North Waziristan

Responses	Respondent's Frequency	Respondent's Percentage
Yes	0	0
No	80	100
Total	80	100

In response to this question when asked from 80 respondents in North Waziristan, the people said that Nikkah and divorcee which is not registered by 100% shown above in Table 4.5. Further they said that North Waziristan is rural area that having low infrastructure development and literacy rate as compared to urban areas of Pakistan. Furthermore, there is no office of Court and Municipal Committee to receive a marriage certificate and other registration like birth and death certificate.

6 Is Nikkah perform in your area after 1-month to 1-year period after Waleema?

Table 4.6: Time Span of Nikkah is after 1-month to -year period after Waleema

Responses	Respondent's Frequency	Respondent's Percentage
Yes	25	31.25
No	55	62.50
Total	80	100

In answer to this query when asked from 80 respondents in North Waziristan, the 31.25% respondents said that Nikkah is perform in North Waziristan area after 1-month to more and the married female get divorce in one month and not received any *Haq Mahar* or any other gold given to him. But on the other hand, 62.50% respondents said that there is no such rule

prevailing in North Waziristan and following the local culture but also consider the teachings of Holy Quran and Hadiths.

7 Is there any payment received on marriage of female?

Table 4.7: Receiving a Money on Bride by Parents

Responses	Respondent's Frequency	Respondent's Percentage
Yes	80	100
No	0	0
Total Respondents	80	100

In response to this question when asked from 80 respondents in North Waziristan, 100% respondents said that we are receiving money on female prior to her marriage. The amount varies from area to area. Furthermore, the range of amount is between 5 lakhs to 10 lakhs. If the family members of female not received amount prior to her marriage, then the community people gives taunt to the family members because of breaking the rules of their customs and traditions. Moreover, the amount received is not for the *Jahiz* or other arrangement of ceremonial dinner and gold from female side. Additionally, one-rupee form received amount is not given to her on wedding. Majority people are not happy from this system and said that they are just selling the bride and not asking after her marriage. Thus, it signifies that females in north Waziristan are not treat equally like males.

8 Is *Jirga* system appropriate after attack of 9/11 and rise of the Taliban?

Pointless to say that in the after attack of 9/11 and rise of the Taliban, *Jirga* system has affected, unfavorably. The tribal belt of Pakistan where *Jirga* system controlled as an ultimate organization to resolve any problematic issues which is governed by Taliban revolutionaries or Pakistani military. So, the answer of last question from eighty respondents in which 60% respondents said that the Taliban have completely managed the arrangement of Tribal belt of Pakistan and *Jirga* system has disappeared while 40% respondents of total sample size said that *Jirga* system still prevail after 9/11 situation and still exist the *Jirga* system. The respondents shared the views regarding instable circumstances regarding tribal belt of Pakistan after 9/11

attack and rise of Taliban in North Waziristan and power of the non-state actors (NSA) are making the *Jirga* system further appropriate.

5.3 Case Studies

The following case studies are investigated from different articles, reports and peoples. Ginsburg provided two case studies related to Waziristan which is about the operations of *Jirga* system in practice.

Case Study-1

Mr. Haji Sardar and Mr. Shah Tofan are from Waziris family and had a dispute of water distribution. The quarrel finally intensified and son of Mr. Haji Sardar shot and killed son of Mr. Shah Tofan. Furthermore, family of Mr. Haji Sardar was then forced to leave that place where they are living. The elders of village take decision to stop revenge regarding murder and solved problematic by giving 2-females and Rs. 3 lakhs to Mr. Shah Tofan's family. However, Mr. Shah Tofan's family in order to provide a girl for marriage into Mr. Haji Sardar's family to fulfill the final decision of *Jirga*. But, Mr. Shah Tofan finally deny to receive cash payments from murderer families but agreed to receive females. The decision of *Jirga* is solved the quarrel between two families, successfully. Hence, *Jirga* system is resolving conflicts but are not writing for record keeping purposes in North Waziristan.

Case Study-2

The 2nd case study is about farmer who borrowed amount from businessman in North Waziristan and promised his forthcoming poppy crops kept as collateral. Due to dearth, poppy crops are destroyed and farmer is unable to pay amount of loan. When the businessman demanded of his amount to repay it, the farmer explained the situation regarding dearth. Furthermore, the farmer gains his sympathy by giving offer to kept by family member such as my wife and children for exchange of his debt. The businessman demand the farmer to turn his family to repay amount of loan. The farmer shared this view to children and wife to go with businessman. When they leave home then agriculturalist take his gun and kill businessman. Finally, the *Jirga* system decided that farmer will not give any payment for compensation to businessman's family. In fact, any person can see the violation of understood norms by the businessman and perhaps said that the farmer's family will be kept as debt which signify the violation of norms regarding defending the women's honor in tribes (Ginsburg, 2011). Hence,

Jirga system is not resolving the cases as High Court resolves it by giving a murderer a death penalty. Furthermore, if the businessman family forgive the murderer then there is no penalty in Islamic law.

Case Study-3

The two Waziris families in North Waziristan have decided to celebrate the marriage of his beloved son Mr. Ali Rehman to Mrs. Saima Khan. Prior to her marriage, the Mr. Ali Rehman father received Rs. 6 Lakh received on her father. If Mrs. Saima Khan. father do not received money, then the people of community gives taunt to each family member that you violate the customs and tradition of our ancestors. Furthermore, received amount received is not for the dowry system, ceremonial dinner and gold from female side. Additionally, one-rupee form received amount of Rs. 6 Lakh is not given to her on wedding. This is unethical and against the teachings of Quran and Sunnah. Moreover, people from educated background are not happy from this backward system and argued that they are just marketing the bride and not asking after her marriage. Hence, it implies that females in North Waziristan are not treated equally like males. This case study is written from my class fellow who is living in north Waziristan.

Case Study-4

The opinion of strange social structure of Pukhtun, one individual cannot wait and afford for slow disposal of cases by government judges. Occasionally, a small quarrel can lead to violence and last case study is based on functionality of Jirga system in Miranshah. Mr. Azan Gul and Mr. Younas Khan are two family's members who are conflicted over marital problem. The Mr. Azan Gul's daughter was engaged to Mr. Younas Khan's son. After one year, Mr. Azan change his decision and finally decided to finish relationship and break engagement because his son have a bad moral character in village. The family of Mr. Younas Khan take serious action and do battle of gun with fiancé family in Miranshah that leads to bloodshed but Jirga system interfered and resolved the dispute politely between two tribes.

Conclusions

The current dissertation focused on analytical study of customary practices regarding Nikkah and Jirga system of North Waziristan, in the perspective of Islamic and family laws. The aim of this study is to investigate customary marriage practices in North Waziristan are something alien to shariah law and Pakistani legislation and the adjudication of family cases by a Jirga system is not effective in providing solutions and especially to the issues of family affairs regarding women's that are not treated equally due to no justice and serve as servant having no right. A Jirga is single institute that exists in Pukhtoos community. It is a Pashtu word that means circle. In current study, the author has emphasized mainly the basics and development of Jirga system.

The methodology of the current study is based on interviews, case studies, Holy Quranic verses, Hadiths, news reports and websites. By using secondary data, the eighty respondents in North Waziristan are interviewed by writer. Hence, the current study contains latest shared critique and information instead of review by a single writer. The finding reveal that customary practices regarding Nikkah and Jirga System in North Waziristan does not value the shariah law and legislation of the country regarding to family issues like contract of marriage, divorce and inheritance due to which unfortunately many has to compromise only to survive without justice because customary practices are not according to shariah and country law. There are many obstacles in ways of local women of North Waziristan for advancement of justice in family issues regarding customary practices and *Jirga* system is not so compatible with human rights standards and best alternative of family courts are not available.

Additionally, the fact is due to low infrastructure development and literacy rate in North Waziristan. Moreover, there is no court offices, police stations, municipal committee and NADRA office for record keeping of Wazirs in North Waziristan in order to handle disputes, crimes, robberies and other wars among tribes. Moreover, after much loses to armed forces, local Waziri tribes and property, war is no more an option as it is considered always against the proper noun (German Proverb), whereas, against common noun (terrorism and extremism), war have been less successful. The sage principle and the most rational choice remains the same;

granting power and respect to local's influential tribesmen and skillfully, and brilliantly deploying their assembly to produce well for Waziristan and Pakistan – indirect ruling the wild Waziristan. And it remains a common reality that after conflicts peace process born, rise and prevails, if it is born in a climate of locally accepted legitimacy. Hence, Jirga revival is the best possible solution to end radicalism from the Pakistani soil and to halt its export to other regions. Only the local tribal elders through their unofficial parliament can safeguard the area and eliminate extremist ideology from their lines for durable peace in the Waziristan, like before.

Recommendations

The following recommendations are suggested for the government of Pakistan to achieve in North Waziristan.

1. It is recommended for government of Pakistan that needs proper reforms regarding customs of tribes that is based on discrimination of women, minorities and peoples with disabilities.
2. Awareness programs through shariah academy, organized for people and ullmas of mosque such as training programs of 15 to 20 days.
3. It is recommended for policy and decision maker to take essential steps to amend cultural and social forms of conduct for gender and to remove those customary practices that are developed from notion of superiority and inferiority basis that prevails in tribes. Register marriages and divorces through proper channel. Furthermore, to remove rules which are against Islamic laws.
4. It is recommended for government of Pakistan to take actions to remove discrimination against females in many matters i.e. kinships, marriages, education...etc. Furthermore, the govt should work towards eliminating social ills such as Swara, price of bride, *Khag*, and enforced marriages in North Waziristan. Later on marriage ceremony, the husband name of a women must also be showed on CNIC prior to her name and Nikka registrars should be bound to inform regarding every section of *Nikahnama*.
5. The birth certificate received by the Union Council must be compulsory for admission in schools. The school administration is responsible for verifying the birth date of the birth certificate in the Council of the Union in North Waziristan. In addition, marriage and

divorce registries must be held responsible for verifying the date of birth and age of both the couple from birth registry in Union Council in North Waziristan.

6. Awareness programs and seminars for right to inheritance regarding females, dominant system or measures in such regard and broadcasting of ethical and moral values for the purpose to strengthen units of families that must be raise by following four ways:
 - i. Print and electronic media.
 - ii. Pretentions topics on women's rights to inheritance in the syllabus regarding schools, colleges and universities as a distinct subject.
 - iii. Lectures and sermons in the mosques and pious organizations.
 - iv. To train and sanitization of gender regarding judicial workers, patwari, tehsildar, woman councilors, and nikahkhuwan and to utilize their services for turning over fruitful change in the perception of peoples regarding inheritance rights of females.
7. Legal documents should be in Urdu language and must be made easily understandable for men and women. The government officials must be accountable for registration of the births, deaths, marriages, divorces and transfer of inheritance. Furthermore, advice-giving meetings on the law of inheritance must be held occasionally to discuss the male and female problem of tribal areas.

Policy Implications

There are some policy implications of the current dissertation which are given as under:

1. The role of traditional shariah law will be further developed and lawful system of Pakistan will be depending on political selections done by political parties such as selections relating to judicial authorities, political stability, electoral results, socio-economic development, relations with their neighbors' such as China, Bangladesh, and Iran.
2. The policy maker when making any decisions must give legal rights to women of tribal belt of Pakistan in order to raise voice in Court offices when they suffer any undue influence. Moreover, if women receive divorce and do not receive any right in property, gold and other means which is said at the time of Nikkah then there must be record keeping offices to remove ignorance and raise the literacy rate in North Waziristan.

Furthermore, the right of inheritance regarding females plays an essential part in the social, economic, and political authorization of females. But, inappropriately women are deprived of inheritance's right because of patriarchal system which is deep-rooted.

3. The conflicts arise due to low level of education in North Waziristan. The policy makers must concentrate on infrastructure development such as roads, dams, bridges, schools, colleges, university, libraries and other offices for peoples of North Waziristan to hinder poverty and other immoral justice system prevails from their ancestors which are contrary to Islamic law. The law maker must make reform in structure regarding Union Council which is mainly concerned with five registries such as birth, death, marriage, divorce and inheritance transfer registry. Furthermore, the registrar can register each registry which is supervised by a him to convey detailed functions

Direction for Future Research

The current dissertation has focused only on customary practices regarding Nikkah and Jirga system in North Waziristan, in the perspective of Islamic and family laws. The first direction for future research is that if the same study is done in whole tribal belt of Pakistan such as FATA, Swat, Bannu, North and South Waziristan and compare the differences. The second direction for future research is to investigate customary marriage practices are alien to shariah law in world Islamic countries and compare the differences. The third direction is to do more work to provide justice in cases of inheritance, dower and divorce.

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Appendix:

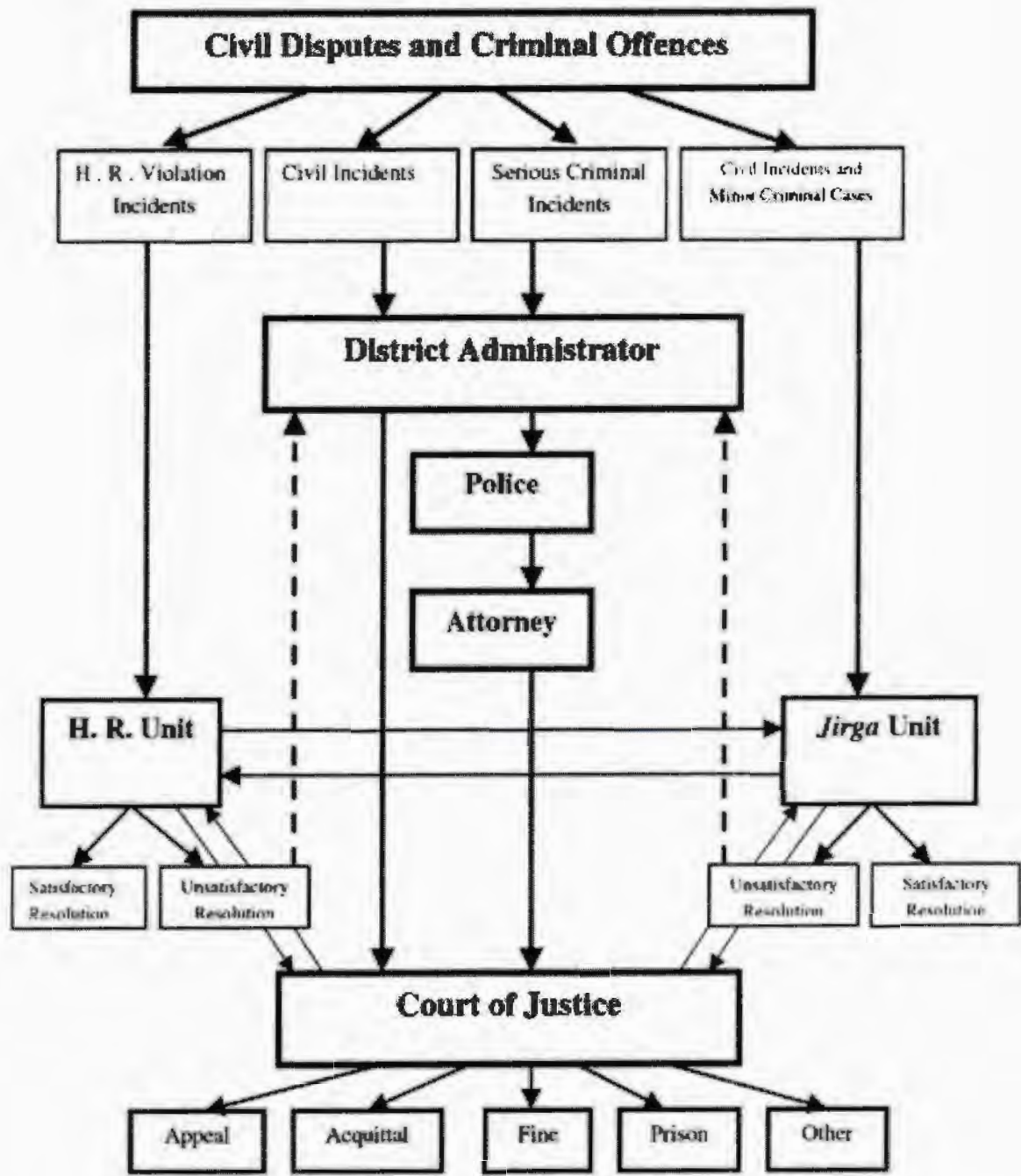


Figure-1: Suggested Model for Jirga System, H.R. Unit and Court System for North Waziristan

Map Showing Pukhtoon Majority Areas of Pakistan and Afghanistan



Figure-2: Detailed Map of Tribal Belt of Pakistan and Afghanistan.

