

**JIRGAH AS AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM:
CHALLENGES AND PROSPECTS**



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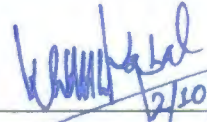
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the Most Beneficent,
the Most Merciful*

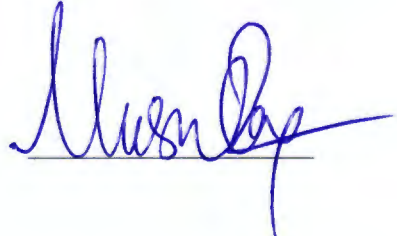



Final Approval

It is certified that we have gone through and evaluated the dissertation submitted by Mr. ShaukatUllah, student of MS Human Rights Law, having University Registration NO: 42-FSL/MS(HRL)/F11 titled “**Jargah as An Alternative Dispute Resolution Mechanism: Challenges and Prospects**” in partial fulfillment for the award of degree of MS human rights. We have evaluated the dissertation and found it up to the requirement in its scope and quality for the award of degree.

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DEDICATION

To my Parents, my Wife, son Junaid, and daughter Manahil,

Dr. Babar Saeed Khan Ex Director Hospitals Islamic International Medical College Trust
(IIMCT) Rawalpindi,

Mr. Khalid Hussain Khan Director Federal Bureau of Statistics Division Islamabad,

And those who love Humanity

DECLARATION

I, **Shaukatullah**, hereby declare that this dissertation is original and has never been presented in any other institution. Moreover, I declare that any secondary information used in this dissertation has been duly acknowledged.

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List of Acronyms

APA	Assistant Political Agent
CAMP	Community Appraisal and Motivation programme
CEDAW	Convention on the Elimination of all forms of Discrimination against Women, 1979
CRC	Convention on the Rights of Child, 1984
FATA	Federally Administered Tribal Area of Pakistan
FCR	Frontier Crimes Regulation
IHRL	International Human Rights Law
ILO	International Labor Organization
NA	National Assembly
NGO'S	Non Governmental Organizations
OIC	Organization of the Islamic Conference
PA	Political Agent
SWWD	Social and Welfare Department
UDHR	Universal Declaration of Human Rights,1948

Thesis Statement

Jargah—an informal dispute resolution mechanism is prevailing in the tribal areas of Pakistan since time out of mind. Although it played a significant role in settling disputes, at present, fingers are being pointed out on its effectiveness. This study, after quantitative analysis, seeks to explore the grey areas in the overall mechanism, explore challenges, bring it within the norms of International Human Rights Law (IHRL), and suggest improvements to make it complementary to the formal justice system.

Introduction

1. Jargah is a unique and useful conflict resolution mechanism in FATA; give the full form once for the first time use arbitration.
2. A Jargah system has proved effective in conflict resolution as compared to the formal judicial system which is costly, complex and slow.
3. Despite some good results Jargah system has some problems, such as role of women, nepotism, favoritism and implementation.
4. There is evidence which demand the complementarities of formal and informal justice system (UK Woolf inquiry report).
5. This study focuses on Jargah as a conflict resolution mechanism in FATA which is a tool for conflict resolution.
6. The human rights perspective of Jargah system is very useful

1. Conflict resolution in the present time is a burning issue; customarily individuals, social groups and societies have disputed and competed against one another over

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UNO United Nations Organization

UNDP United Nations Development Programme

UNESCO United Nations Educational, Scientific and Cultural Organization

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Thesis Statement

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1. Conflict resolution in the present time is a burning issue; customarily individuals, social groups and societies have disputed and competed against one another over

property, wealth, land, money, political superiority, and ideology. The most important and growing contributions to conflict resolution and peace building are done by local practitioners.¹ These practices are often appropriate to the conditions in which they operate as they satisfy the aspirations of the people concerned. These indigenous institutions are sometimes more useful than the modern systems. Jargah² is one such institution.³

2. In Pukhtoon culture, Jargah system is the oldest and well established institution. Till date, its history, constitution and actions mostly remain verbal. In fact this is one of the institutions that work as an energetic force behind the entire lives of individual. Jargah system is practiced as a best tool for conflict resolution and satisfies the aspirations of the people.⁴

3. Jargah means an assembly or gathering of the tribal elders coming together for resolution of a dispute. It contains of two or more persons who are normally family elders or their representatives. Religious person's scholars and Ulema also join Jargah. Authority and skill of the Jargah members depend on the nature of the problems the Jargah has to tackle.⁵

4. Jargah system represents a formal traditional institution of Justice, which is practiced in the Pukhtoon society from time immemorial. According to the Pukhto Descriptive

¹Ali Wardak, *Jirga- A Traditional Mechanism of Conflict Resolution in Afghanistan*, (University of Glamorgan), UK, sep 2004.

² The word Jargah is a Pukhto word. It may also be spelt, or Jirga, Jarga in this thesis Jargah will be used

³www.restorativejustice.org/articlesdb/articles/4712. (Last accessed: 15.07.2013)

⁴Ibid.

⁵M. Hassan Yousafzai and Ali Gohar. *Pukhtoon Jirga* (Peshawar: Just peace International,2005),20.

Dictionary, Jargah is an original Pukhto word. Usually, it signifies group of people. Sometimes it also means consultation and meeting session.⁶

5. From the creation, the use of the Jargah is limited not only to trials of major or minor crimes and civil disputes but it also assists in resolving conflicts between groups and tribes. There is a systemized method and basic criteria for the selection of Jargah members. Mostly noble elders of the area chosen for this purpose who have known repute for their honesty, intelligence and a sound understanding and knowledge of Pukhtoonwali, and even Islamic law. When a question of Islamic law involved religious scholars (Ullema) will participate in Jargah.⁷

6. The proceedings of Jargah are carried out in a Jumaat (Mosque), Hujra (Guest House) or under the shade of a huge tree. There is neither a governing officer, nor any other hierarchal position in a Jargah. Jargah is conducted in two ways.⁸ Firstly, In case of family or individual disputes, the concerned parties themselves appeal to Jargah, Secondly, the Jargah assembles on its own. This is comparable to a 'Suo Moto' action of a court. Such action is taken in case of any serious threat to a tribe or under severe social problems.⁹

7. In the first case, both the parties are given time to present their case and principally there is no discrimination made on any basis. After hearing both the parties and in the light of witnesses, the Jargah officially announces its decision.¹⁰

⁶Dr. Sherzaman Taizi. Jirga system in Tribal Life, (University of Peshawar Area Study Centre (Russia, China and Central Asia), April 2007). 4

⁷Yousafzai and Ali Gohar. Pukhtoon Jirga, 20.

⁸Taizi. Jirga system in Tribal Life, 4

⁹Yousafzai and Ali. Pukhtoon Jirga, 21.

¹⁰ Ibid

8. The decisions in based on Pukhtoonwali- The social code of pukhtoon nation. Key principles are: (honor-based society is governed by the concepts of Ghairt or nang (bravery, or courage, chivalry), milmastia (hospitality), purdah or namos (gender boundaries) Hujra (public guesthouse), Jumaat (mosque)), local traditions and fair play. Every possible effort is made to reach a fair and realistic solution to a conflict.¹¹ Wealth, social status and political power and affiliation are not supposed to influence the decision of Jargah in any case.

9. Jargah is a very broad and wide topic but in this research I will discuss the present status of Jargah in Tribal areas of Pakistan. The Jargah system is a very effective tool for conflict resolutions which has many issues and faces some serious challenges. However, their positive potential can only be effectively used if they are reformed and linked to state institutions. This will be especially important in order to ensure that basic Human rights standards are met, to discuss and fill the gap missed in former research works as this is an important and heart touching issue which needs to be implemented and improved in the light of international Human rights law standards.

10. This study only focuses on FATA due to the absence of formal justice system. A study estimate, that the majority of the population is often not in a position to access the formal legal system for various cultural, linguistic, financial and logistical reasons.¹² Their access to Justice largely depends on the functioning of informal systems, which

¹¹https://www.google.com.pk/?gws_rd=cr&ei=UtfGU8GJEozG7Ab0n4GoCA#q=www.justpeaceint.org%2Fquami-jirga-main.php%E2%80%8E.++ (Last accessed: 10.06.14)

¹²Danish Ministry of Foreign Affairs, Danida, Evaluation: Danish Support to Promotion of Human Rights and Democratization, volume 2: Justice, Constitution and Legislation (Copenhagen: Evaluation Secretariat, Ministry of Foreign Affairs, 2000). Cited in Stephen Golub, Beyond Rule of Law Orthodoxy: the legal empowerment alternative; Rule of Law Series, Carnegie Endowment for International Peace, Democracy and the Rule of Law Project, No. 41, October 2003.

have been ignored in terms of external support in many developing countries. Traditional or customary justice systems handle 80% of the total case load.¹³

In this research the tribal Jargah system will be discussed in its real shape. This informal justice system has growing contribution to conflict resolution in the absence of formal justice system. In the present days the FATA is center of attention due to war on terror and the Jargah system have some serious challenges to link this institution with international Human rights, national laws and state department.

11. The thesis use both qualitative and quantitative methods. On qualitative side, it examines the relevant literature on Jargah. On quantitative side it conducts survey of the justice serving users and analyzes the empirical evidence.

12. At last, recommendations will be given for the improvement of Jargah system in Pakistan. This method of study will be followed for proving that Jargah is the best way for dispensation of justice among people as compared to ordinary judicial system. It is therefore necessary to know the views of people of Bajaur Agency through a questionnaire in order to prove that Jargah system is more speedy and accurate.

13. This study contains four chapters. Chapter one includes concept evolution and mechanism of Jargah. It explain procedure that how a Jargah system works. Chapter two focuses on kinds of Jargah and how Jargah works in FATA. The third chapter focuses on challenges to Jargah system, to explanation those challenges which have the Jargah system in present time. The final one is data analysis to investigate Jargah system.

¹³Ibid.

Chapter 1

Evolution, Concept, and Mechanism of *Jargah*

Introduction

The informal justice system—*Jargah*—remained prevalent, though known with different names, in almost all the regions of Pakistan¹⁴. In the contemporary legal milieu, it has its own significance. However, it seems that recently it remained under a hot debate in the legal and social corridors. This form of dispute settlement mechanism is an essential ingredient of the communal life of the citizens of Federally Administered Tribal Areas (FATA), Pakistan.

FATA is controlled through a special law, the Frontier Crimes Regulation (FCR)—a law notorious for less regards of human rights standards. Disputes under the FCR are mainly referred and resolved through a local *Jargah*, known as *council of elders*. Thus the institution of *Jargah* is a significant component under the FCR. *Jargah* system is not new in the tribal belt of Pakistan. It has a long history. This chapter discusses the evolution, concept and the working mechanism of this system.

1.1 Evolution

The history of *Jargah* system is traced back to the Aryan tribes. They migrated from central Asia to Afghanistan and then went to India.¹⁵ The Aryans tribe used to use *Jargah* for resolving conflicts and disputes. Sometimes the king also joined sessions and

¹⁴ In some parts it is known as *Panchayat*. In others it is named as *Maraka*, and *Ulasi Jirga* etc.

¹⁵ Taizi, "Jirga System in Tribal Life", 3

defense of the Turkish Khalifat, allied to the Germany. The decision was discarded by the Amir at the instance of the British Indian. Amanullah Khan was challenged by such a *Jargah* in 1924 for his Nizam-nama (Constitution).²²

A *Jargah* held outside from Afghanistan for unavoidable reasons. The first such a *Jargah* was held in Peshawar, Pakistan, on 11-12 May 1980.²³

FATA is part of Pakistan and administered and regulated by officials of Pakistan. *Jargah* is followed and practice as a mechanism to resolve quarrels of the individuals and community. In FATA, joint *Jargahs* are also organized for settling issues. The *Jargah* in the *pukhtoon* community of FATA is an established traditional institution for conflict resolution from creation till date.

1.2 The Concept of *Jargah*

The word *Jargah* is an original Pukhto word which is referred to the gathering of a few or a large numbers of people. *Jargah* is derived from the root word Jirg²⁴ which means a “loop” or “round”. In terms of Persian language, it refers to group or crowd of people.”²⁵ Some scholars argue that the word *Jargah* is originated from Turkish language with the same meaning as in *Pukhto*.²⁶

Jargah means a position where individuals may express their sentiments and feelings without any threat. In *Pukhto* “Jar” means open tone and “gah” means place or position. In Arabic the word *jahar* means loud.²⁷

²² Taizi, “Jirga System in Tribal Life”, 8

²³ Ibid

²⁴ Definition of Jirga in Dictionary (Ghyathul-lughat,1871) 119.

²⁵ Dictionary of Persian and Urdu Jamia, Feroz-ul-lughat, 2004

²⁶ M. Faiz-zad, “Jirga Hai Bozorge Millie Afghanistan”, 1989, 5.

²⁷ Ali Wardak, “Jirga: A Traditional Mechanism of Conflict Resolution in Afghanistan”, *University of Glamorgan press*, UK, September 10, (2004).

“The *Jargah* exercises both executive and judicial roles and settles all disputes pertaining to the distribution of land, property, blood feuds, blood money and other important inter-tribal affairs on the basis of tribal conventions, traditions and principles of justice”. In *Jargah* proceedings the judicial and executive functions are also done keeping in view the traditions and customs practiced by the people in the tribal area of Pakistan.

In Khyber Pakhtunkhwa and Balochistan province, *Jargah* is used as a mechanism and method for solving problems, conflicts, issues and disputes of the people. Business issues are also settled through *Jargah*. It also resolves the land, civil and criminal issues of the people. In fact, *Jargah* plays significant role in democracy because in this case every individual has right to sit in the proceedings of *Jargah*. Parties are examined and inquired in front of public at large. It is the safe and secure method for awaring people to know about the rules of that locality.

The *Jargah* members usually sit in a circle. It denotes the pukhtoon culture and equality among people. It is like a round table conference in which one person is the chairman. The main criteria to attend a *Jargah* are, knowledge of *Pukhtoonwali*, wisdom, and problem solving skill.²⁸ The tribal *Jargah* works according to the tribal custom and tradition for conflict resolution to maintain peace. “A *Jargah* has both a horizontal and a vertical role. Horizontally, its main role is dispute resolution whereby it adjudicates over crimes and infringements as a jury. Vertically, *Jargahs* are involved in establishing upward and downward linkages to and from the government, interface with other tribes, diplomatic, legislative, peace building, developmental and arbitration roles”. *Jargah*

²⁸ Taizi, *Jirga System in Tribal Life*, 4.

represents the *Pukhtoon* culture worldwide. It has special character for addressing people's issues and conflicts.

The purpose of *Jargah* is to resolve disputes, conflicts and issues of the individuals and society at large as well. It addresses the key concerns of the tribal people and reflects and results in the shape of decision which is binding on the parties. Therefore, "it has both a tactical and a strategic role. Due to its inherent simplicity, it ensures quick, cheap and certain justice compared with country's judicial system which is very complex, time consuming, costly and elusive by comparison. The *Jargah* is flexible and operates in close inter-personal contact with parties".

Jargah promotes consensus and protects the rights of the individuals. Unanimous decision by *Jargah* members is given at the end. By the way of *Jargah* the day-to-day pendency of the ordinary Courts can also be controlled. In *Jargah* proceedings the determination of the liability is an essential element. The elders of the locality follow the past practices and implement in their decisions. On tracing back the history, *Jargah* has attracted the attention of people all around the world because of its speedy and easier method. *Jargah* works in the absence of governmental authority and consent of parties is the foremost essential ingredient while selecting parties.

Historically, the supreme head or official of the government appoint *Jargah* members for resolving disputes of the people. Their opinions and recommendations are taken into consideration for settling issues of the people. They decide national issues through consultation and group discussion. Most of the issues are openly discussed, listened and consulted by the *Jargah* members as they are experts of the locality.

Other authoritative persons who are public servants were also called to attend and join the *Jargah* proceedings. The public servants and officials observe fully the proceedings of the *Jargah*. The *Jargah* members deeply studies and analyses the issue. In order to understand the issue, they may take help from any other person who is expert. *Jargah* comprises a committee and council to enforce the decision which is binding on the parties. Implementation is easy because decision is given by the *Jargah* members who are the honorable members of the society.²⁹

Thus, "it is the institution and system of *Jargah* which meets the need of solving and deciding common, communal, tribal and inter-tribal problems, issues and disputes etc. as well as personal, domestic, inimical affairs between families, and so forth".

1.3 Mechanism of *Jargah* system

The *Jargah* system of semi-formal, local, traditional courts is common throughout Pakistan. *Jargah* are board of gentleman elders of the communal group. They are generally appointed with the consent of the parties concerned. Parties may also recommend selecting *Jargah* member who is expert and knowledgeable in this regard. "The literal meaning of the word is an assembly, which addresses questions between parties." *Jargah* is the important and vital component of *Pukhtoon* culture and civilization. It has its own functions, structure and history.

²⁹https://www.google.com.pk/?gws_rd=cr&ei=UtfGU8GJEozG7Ab0n4GoCA#q=http%3A%2F%2F+www.Jarga-pushto.com.html (Last accessed: 30.12. 2013)

At present there is very incomplete and incompatible access to justice in FATA. *Jargah* supports the people for accessing justice. Procedural technicalities are almost inapplicable to the *Jargah* proceedings and that's why *Jargah* is often better and faster than ordinary litigation. The proceedings of the *Jargah* provide confidentiality. The result or decision may be kept confidential. It is a cheaper option for the people and less expensive. The most interesting and best thing in *Jargah* is that, parties have option to choose their adjudicators without any pressure or threats. They have liberty to opt for adjudicator mutually. The process and procedure of *Jargah* is not complicated but easier.

The decision based is purely on the basis of evidence. Evidence and testimony are also required for completing the procedure of the *Jargah*. *Jargah* serves the humanity and particularly the tribal people of Pakistan. The functioning of the *Jargah* is less technical. *Jargah* is a mode of alternative dispute resolution. *Jargah* is similar to the process of mediation. The role of mediator is different because he hears both the sides and tries to make consensus of the people and to bring them to a point of concurrence. Mediation is an activity like *Jargah* in which mediator facilitates the disputing parties in arriving at a point of concurrence and compromise. Mediator prefers to bring parties to a point of compromise. The *Jargahs* conclusion is binding.

The code of conduct is also followed in *Jargah*. This code of conduct differs from area to area. Usually it is made according to the past practices and experiences. In Pakistan and Afghanistan this practice is followed. *Jargah* is completely different from the ordinary Court. The actual authority and power rests with the *Jargah* members who are nominated and selected by parties. In this context, the role of political agent is also

important. The purpose of his appointment is to maintain law in order situation by examining and applying relevant provisions of Frontier Crimes Regulation (FCR). Political agent does this job with the help of tribal people as they are cooperative and kind-hearted for doing such task given to them.

Keeping in view, distinguishing feature and social applicability of *Jargah* system it is realized to explore the working of tribes based judicial system. It works fully on the principle of equality and impartiality. The implementation mechanism of *Jargah* system proved shelter to helpless and poor people. The word mechanism is used in this chapter and thesis for method and procedure of *Jargah*. This study highlights that how a *Jargah* works.

1.3.1 An Issue brings in a *Jargah*

There are three ways in which an issue is brought before *Jargah* members. These are as follows.

1.3.1.1 One party approach to *Jargah*

In this case any party to the dispute requests the *Jargah* members to intervene for resolution of the dispute. Usually, one party approaches *Jargah* members for solution of the dispute or conflict.³⁰ The second party comes to know about such a request from other members and usually the second party welcomes the news.³¹

This is the method through which issues are settled and this method is followed by the people as a resolution mechanism and acceptable resolution method. Both parties

³⁰ www.pakhtun.com/Aboutpakhtuns.htm (Last accessed: 10.2.2013).

³¹ Yousafzai and Ali, *Pukhtoon Jirga*, 57

have right to approach *Jargah* members. If one party denies the decision or proceedings of *Jargah* after consent then the whole blame rests on the party who denied it. All queries and questions must be answered by parties. This denial gives moral win to the other party who accepts it.³²

1.3.1.2 Both the parties approaches to *Jargah*

Sometimes both the parties may also approach the *Jargah* when the dispute relates to land, money or small quarrels. For example, in money and land matters people usually prefer to bring their dispute before *Jargah* members in order to resolve their issues. It is so because the verdict of *Jargah* members is obligatory on parties and speedy as well. Both the parties would request the *Jargah* for a solution.³³

1.3.1.3 *Jargah* approaches the disputants

Sometimes disputes arise between individual, families or tribes in such a way it affect other people. For example if the parties start cross fire on one another. The life and prosperity of others people will be in danger. In this situation the elders of the community call a *Jargah* and listen the view point of both the parties to arrive on acceptable solution.³⁴

After approval is gained parties are advised to stop their fire. A momentary armistice is established, first which level the argument for auxiliary and

³² www.pakhtun.com/Aboutpakhtuns.htm (Last accessed: 10.2.2013).

³³ Yousafzai and Ali, *Pukhtoon Jirga*, 57

³⁴ www.khyber.org/pashtoculture/Jirga/Jirgas.shtml (Last accessed 12.09.2013).

additional discussion. The *Jargah* try to take *waak* (authority) from both the parties and solve the dispute³⁵

1.3.2 Selection of *Jargah* members

“The selection of the *Jargah* members varies according to the type of *Jargah*. For Sarkari *Jargahs*, usually the members are selected from the notable elders or the Maliks of the area. In a Shakhshi *Jargah* the government selects and appoints two members from each side, whereas one member each is selected by the consent of the parties in the dispute. In case of the *Ulsi* or *Qawmi Jargah*, the members are usually comprised of elders of the notable families whose social standing and experience with the *Pukhtoonwali* entitles them to a place on the council. The size of a *Jargah* varies from one situation to another, based on the nature, significance and sensitivity of the dispute. It might consist of one member, although two members are more usual and often there are four or six experienced members, fully conversant with the laws of the *Pukhtoonwali*”.

When a conflict is arises between two individuals are tribes, the first step is the selection of a *Jargah*. The assortment of the *Jargah* members varies from case to case and according to the kind of *Jargah*. According to FCR 1901, “the Political Agent or his assistant is empowered to nominate *Jargah* members. These members of Sarkari *Jargah* are usually selected from the notable elders or the Malaks and Khans of the area who have a reputation of loyalty to the government”³⁶.

Neutrality is the foremost and significant requirement for *Jargah* members. Usually, parties agreed upon neutral and impartial members in local *Jargah*. If one party has any serious problem then party has right to nominate representative who acts on his

³⁵ Yousafzai and Ali, *Pukhtoon Jirga*, 58

³⁶ www.khyber.org/pashtoculture/Jirga/Jirgas.shtml (Last accessed 12.09.2013).

behalf. Normally, parties choose odd numbers of *Jargah* members who are neutral in order to facilitate voting. Mutual consent of the parties is necessary. Sometimes parties select different members in *Jargah* system but usually both the parties mutually consented on the names of the members of the *Jargah*. Those members should be impartial and knowledgeable because it is necessary for them to know relevant laws about issue. Disputes usually arise when there is assertion of right from one party and denial from the other party. The parties have free choice to select *Jargah* members. The code of *Pukhtoonwali* is considered as direction and guideline while taking decisions by *Jargah* members.³⁷

Members are normally chosen from elders and respectable members of the society called *Speen Girey* (White beard men) in the case of *Ulusi Jargah*. They have known repute for their honesty, intelligence and a solid understanding and knowledge of *Pukhtoonwali* and Shariah.³⁸ The *Jargah* members are also required to implement their decision. For this purpose, the *Jargah* members must be powerful people of the area.³⁹

During the current war against terrorism, grand *Jargah* has played significant function in serving the State to restore peace and normality. In 2006 before the military operation, the grand *Jargah* of Manond held at Sewai village. A joint decision was announced by elders of loai and warha Mamond. They announced that a person will be expelled from the area, if he provides shelter to foreigner or outsiders. The rule is that if any foreigner is found in the home of any person, his house will be burnt.

³⁷Yousafzai and Ali, *Pukhtoon Jirga*, 52.

³⁸ www.pakhtun.com/Aboutpakhtuns.htm (Last accessed: 10.2.2013).

³⁹Ali Wardak, "Jirga: A Traditional Mechanism of Conflict Resolution in Afghanistan", *University of Glamorgan press*, UK, September 10, (2004).

The Bajaur Salarzai tribal elders in 2007 were banned from sheltering non-locals in their area. This was decided by elders of various tribes in a Grand *Jargah*. It indicated if anyone found violating the decision of *Jargah*, he would have to pay a fine up to Rs 1,000,000, as per the *Jargah* decision.⁴⁰ The violation of these axioms would be treated in accordance with tribal traditions. The establishment of peace was only possible if everyone played their due roles. The local elders assured the Political Administration of their cooperation in this regard.⁴¹

If a *Jargah* is called for resolution of a dispute between two individual and parties they have the right to change or reject a member or members from the *Jargah*. For example, if one of the *Jargah* members is favoring unnecessarily another party, then first party has right to change or reject *Jargah* members due to his bias and favoritism. However, there should be balance on the selection of *Jargah* members. They should be chosen by mutual consent of both the parties. Duties are also on *Jargah* members that they should do justice and give decision according to law.

Key qualification of a *Jargah* members include proven leadership, hospitality, family background, manpower, political influence, effective verbal expression and recognized source of judgment.⁴² *Jargah* member should be non-biast and kind-hearted. He should also possess the sound knowledge of the law. His moral character and

⁴⁰ Daily Times Tuesday, September 18, 2007.

⁴¹Ibid.

⁴²Ali Wardak, "Jirga: A Traditional Mechanism of Conflict Resolution in Afghanistan", *University of Glamorgan press*, UK, September 10, (2004).

Tribal Area Grand Jargah Proceeding



behavioral honorable attributes such as integrity, truthfulness and straightforwardness should be correct.⁴³

1.3.3 Proceeding of *Jargah*

Jargah proceedings are different as compared to ordinary judicial proceedings. There is specific procedure for its implementation. People prefer such proceedings because of less technical and easily accessible. It is necessary to explain here that *Jargah* proceedings are completely different from trial. *Jargah* proceedings are simple and without any formalities. Proceeding of a *Jargah* is as follow:

1.3.3.1 Controlled

The proceedings of *Jargah* are carried out in a *Masjid*, *Hujra* (Guest House) *Daba*⁴⁴ (elevated open place of village) or under the shade of a huge tree. There is no leading officer and hierarchal position in a *Jargah*. The most experienced and skill full persons carried out the proceeding of *Jargah* after the recitation of Holy Quran and jointly duaa (prayer) for the good settlement of the issues.⁴⁵

When an issue is between two individual and two tribes the *Jargah* held in a *Hujra* or a *Masjid*. If the dispute affects the whole society, the *Jargah* carried out under a huge tree or a village *Daba*. All the people have the right to listen open discussion and proceedings of *Jargah*. The *Jargah* system is conducted in two ways.⁴⁶

⁴³ www.restorativejustice.org/university-classroom/02world/.../traditional. (Last accessed: 05.09.2013).

⁴⁴Hujra, Jumat, Daba, Akhter, Ghobal, essential component for a Village, Daba is a Common place of a Village where organized the entire cultural social and also some religious activities.

⁴⁵ Ali Wardak, "Jirga: A Traditional Mechanism of Conflict Resolution in Afghanistan", *University of Glamorgan press*, UK, September 10, (2004).

⁴⁶Yousafzai and Ali, *Pukhtoon Jirga* 20.

Firstly, In case of a family or individual disputes the concerned parties themselves appeal to *Jargah*. The second category can be compared with the Suo Motu action of a court, particularly of the supreme court of Pakistan. The *Jargah* is organized by volunteers called *Khadims* who perform the role of messengers announcing the date, timings and venue in all the villages of the tribe and also provide necessary arrangements for conducting *Jargah*. The *Jargah* participants usually gather round a huge circle resembling to a round table conference giving the message that no one is better and superior than the other in the eyes of *Pukhtoonwali*.⁴⁷

First of every things, each party is given time to explain its view point. The normal duration of ordinary *Jargah* is a day or two. For a special and important issue, the proceeding of *Jargah* may take weeks and so.⁴⁸

The concern children and vulnerable people participate through their guardians. Because of pukhtoon culture women cannot sit in *Jargah* and hence involved through their representatives.

The operation of *Jargah* is carried out according to tribal tradition and custom. During the operation of *Jargah*, maximum participation from both the parties is ensured. This aids in understanding the nature of problem more effectively and providing possibilities for discussions between the two parties. The crowd is not allowed to participate or interfere in the proceedings of *Jargah*. Because the crowd is not the *Jargah* members and they are not allowed to sit in the first circle. Politeness, smoothness

⁴⁷Ibid.

⁴⁸Taizi, *Jirga system in Tribal Life*, 5.

of the proceeding, and respectability of the *Jargah* is highly ensured during the whole process.⁴⁹

Traditional *Jargah* process is very straightforward and simple in its manner. The *Jargah* is comprised of the *Speen Girey* or white bearded elder men, and other male members. The '*Speen Girey*' acts as judges and other participants are like jury members. All the parties involved are required to respect the *Jargah* members. If the parties have any reservation, those need to be shared in the pre-mediation process and stage. During the *Jargah* proceedings, all the parties will address the members of the *Jargah* and not the rival parties directly.⁵⁰

1.3.3.2 Hearing

The *Jargah* members have a very well-built authority to prevent parties from talking when it is essential. The *Jargah* members hear and examine the facts and witnesses to find out and elaborate the truth. Following a systematic debate with the parties, *Jargah* members inquire the matter in controversy in the light of customary, tribal, spiritual and traditional rules and regulations. When inquiries are conducted, then *Jargah* members reach to an unbiased and agreed resolution of the dispute.⁵¹ It is well established principle that no one should be condemned unheard. Therefore, in tribal *Jargah* every party has right to hear and speak irrespective of his/her status. Usually if women are involved in a case then her representative speaks on her behalf. Women are considered as respectable

⁴⁹www.pakhtun.com/Aboutpakhtuns.htm (Last accessed: 10.2.2013).

⁵⁰Yousafzai and Ali, *Pukhtoon Jirga*, 21.

⁵¹www.khyber.org/pashtoculture/Jirga/Jirgas.shtml (Last accessed: 15.03.2013).

and honorable in tribal societies. Their rights are protected and promoted in order to solve their household problems, as they are vulnerable class of the society.

1.3.3.3 Neutrality

In this process both the parties agree to nominate neutral members with their mutual consent. Sometimes mutual consent is pre-requisite for the selection of *Jargah* members (if parties agree). Often the neutrality is visible after the decision made by them. Infact they are always learned and experienced persons of the community. They are most honorable and knowledgeable persons of the locality. People usually choose them because they have confidence on their character, experience and knowledge. The decision of the *Jargah* members is final and parties accept without any reservation. It is responsibility of the *Jargah* members that they should be neutral while taking decisions. They should not be beast against one party. As parties choose them and have confidence on them, they should also prove that they are impartial and authoritative in their decisions. Being decision makers there must not be any doubt regarding their neutrality.⁵²

1.3.3.4 Evidence weighed

The weight age of evidence is important in *Jargah* proceedings. It is different as compared to ordinary judicial system. The *Jargah's* decision and result is based on general way of life and tribal habitual way followed by people. In fundamental cases, such as murder kidnapping and serious crimes, the *Jargah* takes oath on Holy book. People practice it as it is linked with them in moral terms and usually they cannot take false testimony on Holy Book. After such oath, the difference stands resolved. This

⁵² Yousafzai and Ali, *Pukhtoon Jirga*, 52.

practice is followed ordinarily in *Pukhtoon* culture and its application is different in areas. The objective is to dispense justice therefore *Jargah* members strive hard to achieve this objective. The *Jargah* strives to find a peaceful and good enough clarification to the clash as soon as possible and devise mechanism for its enforcement.⁵³ Sometimes witnesses are examined personally by *Jargah* members but it is different from cross examination and examination-in-chief. It is usually asked with a question i.e. YES or NO. It does not involve long stories. The questions asked are short and witnesses usually answer to the point.

1.3.3.5 Principle of equality

The principle of equality is another unique feature of tribal *Jargah*. All the members and both the parties are equal in the eyes of *Pukhtoon* traditional and customary law. Everyone is equal before law and no one is above the law. *Jargah* members usually consider both parties equal. They never neglect any party. Discrimination on the basis of sex, caste, religion, and language is prohibited under human rights law, (as envisaged in human rights instruments i.e. UDHR, ICESCR, ICCPR, CRC), therefore *Jargah* members are not allowed to discriminate parties. They are supposed to treat parties equally. No one is superior to other. All the members sit in a circle without keeper. There is no special position for any *Jargah* member all are treated equally.⁵⁴

The disputants are also treated equally, no one is superior. Principle of equality is accepted universally. If we look into the international human rights instruments we found that human rights instruments speak about this issue. For example,

⁵³Yousafzai and Ali, *Pukhtoon Jirga*, 20.

⁵⁴Taizi, *Jirga system in Tribal Life*, 5

“The Universal Declaration of Human Rights (UDHR) is an international document adopted by the UN General Assembly on 10 December 1948 at Paris. The Declaration arose directly from the experience of World War II. It represents the first global expression of rights to which all human beings are inherently equally entitled.⁵⁵ Article 10 of UDHR states that”:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.⁵⁶

1.3.4 Decision of *Jargah*

Decision is the most important part in *Jargah* proceedings. After hearing both the parties and in the light of evidence the *Jargah* officially announces its decision. *Jargah* members give their verdict in the light of available evidence and which is clear. The decision is based on *Pukhtoonwali*, local traditions and fair play.⁵⁷ Wealth, Social status and political power of any party cannot influence the decision of *Jargah* in any case. In case of very sensitive matters like murder, kidnap etc a Quranic oath is taken which is necessary to prove one’s virtue, as religion is the highest authority in *Pukhtoon* society.⁵⁸ The role of Malaks and Khans of the locality does not influence *Jargah* decision. *Jargah* decision is binding on parties because parties have mutually agreed upon *Jargah* members. If there is any clerical mistake in decision then *Jargah* members have right to modify it. It is necessary to mention here that the scope of appeal is highly limited in *Jargah* system. It

⁵⁵www.ohchr.org › OHCHR › English › Universal declaration, (Last accessed 10.09.2013)

⁵⁶Universal Declaration of Human Rights (UDHR), Article (10).

⁵⁷www.khyber.org/pashtoculture/Jirga/Jirgas.shtml (Last accessed: 10.3.2013).

⁵⁸www.cia.gov/cia/publications/factbook/docs/profileguide.html (Last accessed: 10.3.2013).

is different the judgment as in ordinary court of law. Usually *Jargah* members call people to group together and then announce their decision publically.

The decision is based on the consensus of majority members of *Jargah*.

The *Jargah* members ask the related parties before it announces its decision to the public. The decision of *Jargah* becomes an obligation and both the parties have to respect the *Jargah* decision.⁵⁹

1.3.4.1 Types of Decision

As mentioned-above that the decision of the *Jargah* is the most important part. However, it is classified into types which are as follows. The decisions are based on right (Haq) and authority (Waak).

1.3.4.1.1 Haq (Right)

In the case of Haq parties are called to assert their arguments before concluding *Jargah* proceedings. *Jargah* gives right to the parties to challenge the decision of the *Jargah* even. If one of the party has any objection then party has right to show past judgments and rules laid down in previous decisions. *Jargah* members may decide the matter in the light of established rules and precedents. Parties may give application to challenge the neutrality and impartiality of the *Jargah* member.⁶⁰In the case of *Haq*, the trailing party

⁵⁹Yousafzai and Ali, *Pukhtoon Jirga*, 22.

⁶⁰www.pakhtun.com/Aboutpakhtuns.htm (Last accessed: 10.2.2013).

may apply for another *Jargah* to review the decision. After review the decision on given is final and cannot be challenged in any context.⁶¹

1.3.4.1.2 Waak (Authority)

Parties have usually confidence and trust on *Jargah* Members. They never expect biasness or partiality from them. *Jargah* members decide matter of the parties in accordance with the prevailing customs and traditions. Decision is binding on parties and scope of appeal is highlighting limited in *Jargah*.⁶² The Members of the *Jargah* take *waak* in a written form with some heavy guarantee of cash money a huge piece of land and also some weapons.⁶³ This practice is mostly same in the case of *waak* in Bajaur, Muhamand, Khayber, Kurram, Orakzai, and North and South Waziristan Agencies. All these have same tribal custom and tradition.

1.3.5 Right of Appeal in a *Jargah* system

The *Jargah* system does not give the right to either party of appealing against the decision of *Jargah*. The unsatisfied party can appeal on the basis of precedents and rules called “*Narkh*” and have the right to reject the decision of *Jargah* Council. The *Jargah* council may face difficulty in revising its decision in case when different tribes have different *Narkhs* on the same issue. In that case the appealing party can call for another *Jargah*.⁶⁴

⁶¹Ibid.

⁶²Yousafzai and Ali, *Pukhtoon Jirga*, 22.

⁶³www.khyber.org/pashtoculture/Jirga/Jirgas.shtml (Last accessed: 10.3.2013).

⁶⁴Ali Gohar, *Indigenous Institutions for Decision-Making in Pakistan*. Apr 30, 2008.

The scope of appeal is highly limited but it is allowed in few cases. *Jargah* never completely prohibits appeal. *Jargah* gives the right to appeal to both the parties in Haq cases. If any party is not satisfied they have the right to appeal for review, to carry an additional *Jargah* to reconsider the conflict. If one member of the *Jargah* is not satisfied with the decision then he may object to it but argumentation should be strong. There should be sound reason behind it. It should not only on the basis of bias or impartiality. If the reason given is genuine and original, *Jargah* members may on the request of the party consider such objection. If decision is given thrice, it becomes last and final.⁶⁵

The implementation process of *Jargah* is not technical but it is speedy and easy as compared to ordinary judicial system. Once the *Jargah* has implemented the decision both the parties have no right to appeal. Both the parties give *waak* (authority) to *Jargah* members. The *Jargah* make a decision for the betterment of both parties. The satisfaction and betterment of public at large is taken into account in order to do justice. Authority rests with the *Jargah* members. There is an instrument of authority on which *Jargah* members give their decision. It is different than award as in arbitration. The authority has binding force and it becomes precedent for other persons of the area.⁶⁶

Jargah approaches to the parties concerned. Both the parties have duty to abide by the decision and appeal is limited. The decision made by the *Jargah* is so strong that it is implemented by force within the tribal areas. The elders and respectable persons of the locality also help *Jargah* members to implement *Jargah* decision. In this type of cases *Jargah* follow Shariah or local custom or tradition of the *khel* (sub-tribe) or families and

⁶⁵Yousafzai and Ali, *Pukhtoon Jirga*, 21.

⁶⁶Ibid.

make a decision on faire trial acceptable to both the parties. Usually Decisions of the *Jargah* are according to the Islamic law.

1.3.6 Implementation of the Decision

Mostly, *Jargah* members announce the decision publically but before announcement they may take approval from the parties. As compared to ordinary proceedings and execution, the *Jargah* implementation is easy and not too much lengthy. Implementation of *Jargah* is easy because parties have assented on *Jargah* members. After pronouncement, the decision becomes final and parties are supposed to respect the decision and each other. If any party objects to it then implementation may be delayed but after his satisfaction the decision becomes bonding on parties. Implementation does not involve long procedures and technicalities. It may be implemented on the same day on which decision is given.⁶⁷

In terms of execution and implementation of *Jargah* judgment, *Jargah* members have right to compel parties to implement and enforce *Jargah* through sanctions. Sanctions may include the involvement of any other person. However, *Jargah* members have authority over sanctions. *Jargah* may select one person or group of people.⁶⁸ The punishments are in the shape of compensation and damages. It includes money payments, fine, custody, apology or retaliation. These punishments become precedent and symbol for others and in this way the ratio of crimes is controlled in tribal areas.⁶⁹

Group of elders tribal people implement and enforce the decision of the *Jargah* members. Though *Jargah* has not any enforcement agency but as a custom, the respectable and honored persons enforce it. These are *Qawmi lashkar* in Bajaur and

⁶⁷Yousafzai and Ali, *Pukhtoon Jirga*, 21.

⁶⁸ www.khyber.org/pashtoculture/Jirga/Jirgas.shtml (Last accessed: 10.3.2013).

⁶⁹ Ibid.

Muhamand, *Salwaikhtee* (40's) in Waziristan, the *Lashkar* in Afridi areas, and the *Rapakian* in Kurram Agency. Typically, this body is comprised of about forty members in Waziristan, and different size in different Agencies. It depends on the existing situation and nature of the case.⁷⁰

In the case of *waak* the "*Jargah* can also impose heavy fine for the non-compliant party to pay to the complying party in the dispute. If non-compliance persists, the *Jargah* can use force by sending men to burn down the party's houses. If someone still remains disobedient and does not comply with the *Jargah's* orders, he is considered to be '*Kabarjan*' the superior one. He loses the security promised by the *Jargah*".⁷¹

The *Pukhtoon Jargah* wholly enjoys the role of Judiciary, Executive and Legislature.⁷² In case if any party fails to respect the decision of *Jargah* called "*Makh Arawal*" meaning (turning of face) than the *Jargah* council has the right to impose its judgment by any means. The disobeying of the decision of *Jargah*, the protestor party may lose the protection right ensured by the *Jargah* and may be killed by his opponents.⁷³

Conclusion

From the above discussion, we can conclude that *Jargah* has a long history which dates back to Aryans in 500 BC. It evolved and stood the test of time. From domestic disputes, it extended its spikes to cover and resolve large tribal and national issues. It played and has been playing a commendable role in settling disputes.

⁷⁰ Ibid.

⁷¹ Yousafzai and Ali, *Pukhtoon Jirga*, 22.

⁷² Taizi, *Jirga system in Tribal Life*, 4.

⁷³ Ibid

Its working procedure is very simple and indigenous. Due to simple procedure it is traditional and cost effective. It follows local language, customs and traditions thus create ownership in the local populace. The *Jargah* provide proper opportunity of hearing to both the parties. It implements its decision, thus, is an effective tool of dispute resolution.

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Chapter 2

Kinds and working of *Jargah* in FATA

Introduction

In society raven by cultural, social, political and economic stratification, disputes are natural to arise. In this socio-economic milieu, the justice system must be quick, responsive, time and cost effective. Since a formal justice system on the pattern of settle districts are not in practice in FATA, therefore there is a strong urge that the institution of *Jargah* must be an effective substitute. While the procedure for settling disputes may be the same, *Jargah* has a number of kinds. This chapter, after examining the existing scholarship, discusses the different kinds and the working procedure of *Jargah*.

2.1 Kinds of *Jargah*

There are many kinds of *Jargah* system. Different kinds of *Jargah* are practiced and working in FATA. As this study focuses on the Bajaur agency in FATA, therefore the applicable types in Bajaur agency are taking into consideration. Few important types are as follows: which shows some similarity to formal justice system. Such kinds of *Jargah* settle issues which come in its Jurisdiction same likes to lower and upper courts. The most important kinds of *Jargah* are following:

2.1.1 Local *Jargah*

Local *Jargah* investigate and resolve conflicts which arise at the village level.⁷⁴ As the vast majority of the tribal people are farmers. They usually belong to agricultural farm. It is mainly the agricultural farm. The timber, forests, kindling, channel, passage, inland water way, water-spring, and copse are the basic things used for the generation of their income. They are economically and socially organized and well-established. Local *Jargah* members belong to the elder families who have influence on society. They are from different tribes.⁷⁵ *Jargah* resolves the disputes efficiently and the members are chosen from influential tribes and *khel* (sub-tribe).⁷⁶

The local *Jargah* usually starts by the recitation of verses from the Holy Qur'an, and ends with du'a. Depending on the physical location of the place, where a *Jargah* is held, elders, in *local Jargah* from the meeting inside circle of the meeting. Ordinary members belong to other villages. Although outsiders have choice to participate and sit in *Jargah* proceedings but usually, they are not allowed to interfere with decisions and findings of *Jargah* members.⁷⁷

The normal participants are not allowed to deal with investigation and inquiries processes. However, they listen to the whole proceedings of the *Jargah*. "Their presence is a reminder to the *marakachian* or *Jargahmaran* (*Jargah* members) that the people of the village are watching them. What they say and what they decide. Thus, local *Jargah* is a multi-dimensional process of communication between the various parties involved. It is not only a form

⁷⁴Ali Wardak, "Jirga: A Traditional Mechanism of Conflict Resolution in Afghanistan", (University of Glamorgan press), UK., September 3, (2004).

⁷⁵*Khel* is a sub section of a tribe.

⁷⁶Atayee, I, "A Dictionary of the Terminology of the Pukhtoon Tribal Customary Law", 1978 .1272

⁷⁷Ali Wardak, "Jirga: A Traditional Mechanism of Conflict Resolution in Afghanistan", University of Glamorgan press, UK, September 10, (2004).

of communication between the disputants, but also a communication among all of these and actually silent village".⁷⁸

This composite course of express and direct communication plays an important role. This also signifies the unity of the people of the village. It shows that village has different cultural and social practices and values, the violation of which is not satisfactory at any level. There are restrictions on the violators' i-e they are supposed to pay compensation as a punishment. Punishment depends on the nature of the case. Harm can be inflicted by putting up such punishments.⁷⁹

"If the disputants and *khel* see a *prikra* as unfair, they can reject it. This often happens when a wrong *narkh* (precedents and rules) is applied. This is called *kog-narkh* (wrong rules) which means the application of a wrong *narkh* or the misapplication of the prevalent *narkh*. In this situation the party who dissatisfied must have the support of the *khel*, in order to be able to appeal to another *Jargah*. If the second *Jargah* proves that a *kog-narkh* has been applied. The *marakachian* (*Jargah* members) lose their reputation and the right, to participate in future at any *Jargah*".⁸⁰

The proceedings and nature of the Local *Jargah* depends on the stature of the case. It is according to the principles of customary law and morality.⁸¹ For instance, the situation of the criminal case differs in nature with civil case and disputes.⁸²

In toting up, Local *Jargah* mostly concerns with civil matters. However, petty criminal matters and family disputes are also resolved. The main focus of local *Jargah* is on rights attached to property, agricultural rights on its margins, and relatively minor

⁷⁸https://www.google.com.pk/?gws_rd=cr&ei=BRnIU4TEFcmOO7XGgPgC#q=www.restorativejustice.org%2Farticlesdb%2Farticles%2F4712%C3%BD+ Last access: 08.03.2014).

⁷⁹Ibid.

⁸⁰Ali Wardak, *Jirga- A Traditional Mechanism of Conflict Resolution in Afghanistan*, (University of Glamorgan), UK...3 sep 2004

⁸¹Ibid.

⁸²Ibid.

Bajaur Agency Grand Jargha at Khar



bodily harm. However, local *Jargah* is normally held in a specially designated open and public place or in the village mosque.⁸³

From the preceding discussion, it is well established that local *Jargah* process and outcome are useful and helpful to people. It is a best way to resolve disputes of the people. People follow it because of its organized and legitimate proceedings. Group disputes are also resolved through Local *Jargah*.⁸⁴

2.1.2 Qawmi *Jargah*

Qawm means society and group of people. *Qawmi Jargah* is an assemblage of the expert and experienced people. They belong to different villages and households. Section 5 of the Frontier Crimes (Amendment) Regulation 2011 recognized the *Jargah*, means *Jargah* consisting of respectable elders and representatives of the tribes.⁸⁵ The jurisdiction of this type of *Jargah* is much wider than any other type of *Jargah*. The *qawmi Jargah* can take up any issue of national or community interest.⁸⁶

In the case of *Qawmi Jargah*, most important and sensitive issues are addressed. For example, crime of murder, hurting someone, injury to other person, severe attack on goodwill and reputation of person dispute of immovable property, theft, robbery etc. *Jargah* members consider such issues with deep attention and care and then punish according to the cultural traditions followed by the tribal people. Severe punishments are

⁸³https://www.google.com.pk/?gws_rd=cr&ei=BRnIU4TEFcmOO7XGgPgC#q=www.restorativejustice.org%2Farticlesdb%2Farticles%2F4712%C3%BD+ (Last accessed: 15.03.2014).

⁸⁴Ibid.

⁸⁵ The Frontier Crimes (Amendment) Regulation, 2011.

⁸⁶Ali Wardak, *Jirga- A Traditional Mechanism of Conflict Resolution in Afghanistan*, (University of Glamorgan), UK..3 sep 2004.

given to the offenders who commit such kind of crimes and these become guidelines for the rest of the public at large.⁸⁷

In a murder case, for example, *Jargahmaran* (members of *Jargah*) carefully evaluate the favors and disavors of punishments, such as, *badal* (direct punishment), and *khoonbaha* (blood money). The objective of giving severe punishments is to stop unnecessary and unreasonable brutal killing of the people. Revenge is also prohibited after the verdict given.⁸⁸

Therefore, in murder cases retaliation is taken to promote balance among people. It is most preferable tool to avoid extra unnecessary killings and murder. At that time when retaliation is taken, the representatives or heirs of the victims are also present. They have option of compromise or they may leave the offender on the basis of *razi-nama* or apology. They may pardon the offender subject to the rules and regulation given in Islamic law.⁸⁹ This aspect of conflict resolution through *Jargah* is based directly on Islamic law. It also brings compatibility between *Jargah* and Islamic law. The problem area of this aspect is that normally female legal heirs of a dead are not involved in the *Jargah* for settling a murder case.

Nanawate is aspect used in the case of murder or severe attack. It is most significant aspect which addressed the case in Qawmi *Jargah*.⁹⁰ Members of *nanawate* take permission from *Jargah* members to enter in the house of the victims. Then, they pardon in the house or publically. If victims are of the opinion that pardon should be

⁸⁷https://www.google.com.pk/?gws_rd=cr&ei=BRnIU4TEFcmOO7XGgPgC#q=www.khyber.org%2Fpashtoculture.shtml (Last accessed: 05.04.2014).

⁸⁸https://www.google.com.pk/?gws_rd=cr&ei=BRnIU4TEFcmOO7XGgPgC#q=www.tribalanalysiscenter.com%2F...%2FJirga%2520System%2520in%2520Tribal%25... + (Last accessed: 10.04.2014).

⁸⁹A'uda 1964

⁹⁰*Nanawatay* means repentance over past hostility or inimical attitudes and the granting of asylum.

made publically then the members of *nanawate* are bound to implement it in front of public at large.⁹¹

An example of *nanawate* is mention in this study of Bajaur Agency this conflict was arose before thirty years ago. Two families quarreled with each other in Bajaur Agency Tehsil Mamond. During quarreled one person was killed. The elders of the area have decided according to the custom that the home of murderer must be burnt and member of his family be expelled from village. The murderer family has approached to the Malak of another village for asylum and he accepted their request.

After some years an elder of murdered family has died. The murderer family has organized a *Jargah* of respectable elders for *nanawate*. The *Jargah* entered to the murdered family and requested them for pardon. They pardon all the members of murderer family accept the killer and the killer has declared *kashunda* (the murdered family kill him everywhere he found).

Round about fifteen years latter another person of murdered family has died. The other family again organized a *Jargah* of respectable elders for *nanawate* to pardon the killer. The members of *Jargah* (*nanawate*) and the elders of the village requested to the murdered family to pardon the murderer. They accept *nanawate* and all the *Jargah* members decided that the murderer family be paid blood money. As a result both the families are reconciled and it's called *rogha*.

All participating persons are allowed to speak subject to certain conditions. Usually most of the participants observe only and listen to the *Jargah* members. *Jargah* members listens the parties one by one and after it the evidence is taken. Parties have

⁹¹Atayee, I, "A Dictionary of the Terminology of the Pukhtoon Tribal Customary Law 65,67.

opportunity to describe facts of the event or dispute without any hesitation and restriction. They present major facts of the case and argue in front of *Jargah* members. After evidence stage, the *Jargah* members sit together in circle and discuss the facts of the case which are given from both sides. They discuss it in the light of relevant laws and traditions. At last, they reach to conclusion and announce their verdict which is final and binding on part of parties.

2.1.3 Sarkari or FCR *Jargah*

It is also known as Sarkari *Jargah*. The FCR has its origins in laws that were enacted by the British rulers. Its origin was in northwest part of India. Such rulers organized and prepared people for countering opposition of *Pukhtoons*. They want to defeat the rebellion of *Pukhtoons* actually. Their objective was to protect rights as given by British rulers. Since its introduction in 1901, the law remains to be applied to FATA residents by the Government of Pakistan.⁹² The Sarkari *Jargah* is constituted under FCR and the Political Agent nominates it for dispute resolution.

In FATA, the British rule made an agreement with the *Pukhtoon* tribes. They made compromise with people and allowed them for settling issues between people in tribes. They settle the disputes of group of people and government by constituting local *Jargah*. This compromise was enforced through "Frontier Crimes Regulation, of 1901". In such regulation, one representative was appointed to govern the working and managing the *Jargah*.⁹³

⁹² Summary of Frontier Crimes (Amended) Regulation 2011.

⁹³ [https://www.google.com.pk/?gws_rd=cr&ei=BRnIU4TEFcmOO7XGgPgC#q=www.cssforum.com.pk+%E2%80%BA+...+%E2%80%BA+Group+H+\(Regional+Languages\)%E2%80%BA+Pashto+](https://www.google.com.pk/?gws_rd=cr&ei=BRnIU4TEFcmOO7XGgPgC#q=www.cssforum.com.pk+%E2%80%BA+...+%E2%80%BA+Group+H+(Regional+Languages)%E2%80%BA+Pashto)
(Last accessed: 11.3.2013).

Under Frontier Crimes Regulation (FCR) 1901 amended in 2011 section 5 (2) (b) council of elders, three or more respectable elders appointed by the Political Agent or District Coordination Officer, will from the *Jargah* in the headship of an Assistant political Agent.⁹⁴ *Jargah* members are usually appointed by the government in some cases while in major cases parties to dispute usually mutually agreed on the names of the *Jargah* members.⁹⁵

The *Jargah* members decide time, place and date for the proceedings of the *Jargah*. A tribunal was also established for examining and dealing decision of the *Jargah* at appellate level.⁹⁶ Section 55-A (1) -A revision shall lie to FATA tribunal within ninety days against any decision.⁹⁷

Here the nomination of the *Jargah* members is very important because the *Jargah* members should be well versed and experts. If one party chooses one member who is not eligible or competent to be a *Jargah* member then definitely the decision or result of the issue will be invalid. There are no formal requirements for selection of *Jargah* members. However, they should know something. The influential Malaks and Khans of the particular locality can not vitiate the *Jargah* proceedings. They are also obliged to consider the decision given by *Jargah* members and supposed not to create disturbance.⁹⁸ If disagreement is there in the selection of *Jargah* members, then parties are allowed to mutually decide and nominate the number of *Jargah* members. If one party is unable to join *Jargah* proceedings, he is supposed and required to nominate his representative. In

⁹⁴ The Frontier Crimes (Amendment) Regulation, 2011

⁹⁵ Evaluation report of Sindh Judicial Academy, study on informal Justice in Pakistan November 2008.

⁹⁶ Frontier Crimes (Amendment) Regulation, section 48, (2011).

⁹⁷ The Frontier Crimes (Amendment) Regulation, 2011.

⁹⁸ https://www.google.com.pk/?gws_rd=cr&ei=BRnIU4TEFcmOO7XGgPgC#q=www.tribalanalysiscenter.com%2F...%2FJirga%2520System%2520in%2520Tribal%2520Li.++ (Last accessed: 06.05.2013).

case of disagreement, Jury or more number of experts may be constituted for carrying further the proceedings of *Jargah*.⁹⁹

2.1.4 Loya or Grand Jargah

Loya Jargah means 'grand' *Jargah*. In Afghan culture it refers to group of elders and leaders.¹⁰⁰ It is followed and favored by most of the people because it is an open forum for all people irrespective of their gender. Ahmad Shah Abdali was the first ruler who constituted *Jargah* in Afghanistan in 1747. He was also appointed as a first king of Afghanistan. He strived hard for the rights of the Afghans and laid the basis of State of Afghanistan. He used to resolve issues of people in Afghanistan through *loya Jargah* in 1748 and 1749.¹⁰¹

The sole purpose of *Loya Jargah* was to appoint and select a new ruler through consensus of the people of Afghanistan. "Some of the other main purposes of convening a *Loya Jargah*, in the history of modern Afghanistan, have been, declaration of war or adoption of treaties of peace, adopting a constitution, and deciding on the status of the country".¹⁰²

The main targeted area is to discuss national issues which are in the interest of the State. Open discussions and conferences are also conducted in such way because of the nature of sensitivity of the national issue. Questions are answered by the elders of the society and at the end they all reached on a unanimous solution which is helpful for

⁹⁹ Yousafzai and Ali. *Pukhtoon Jirga*, p19.

¹⁰⁰ Ali Wardak, *Jirga- A Traditional Mechanism of Conflict Resolution in Afghanistan*, (University of Glamorgan), UK. sep 2004.

¹⁰¹ https://www.google.com.pk/?gws_rd=cr&ei=BRnIU4TEFcmOO7XGgPgC#q=www.restorativejustice.org%2Farticlesdb%2Farticles%2F4712%E2%80%8E. + (Last accessed: 15.05.2014)

¹⁰² Roashan, R. *Loya Jirga: One of the Last Political Tools for Bringing Peace in Afghanistan* (2001)

maintaining peace in the locality.¹⁰³ Representatives of the parties are trustworthy and truthful persons. People have confidence on them. It is presumed that representatives of any party can never go against the party or *Jargah* members.¹⁰⁴

Loya *Jargah* is followed in Afghanistan because of its long practice. It has gained legitimacy in terms of resolving disputes among the people. In case of vulnerable groups, such as, children and women, the nominees are there to speak on their behalf. Each member is supposed to listen the argument of representative and nominee. The framework of the *Jargah* system is well established. The human rights of the people are protected and promoted according to the standards established by people through customs, traditions and culture. *Jargah* helps all individuals and minorities as well. The favoritism and prejudice is not allowed in any context. The purpose is to dispense justice among people with deep care and attention and in speedy and simple way.¹⁰⁵

The selection of representatives is right of the parties concerned. Parties are at their liberty to nominate their representatives. The procedure of *Jargah* varies from case to case but usually some customs and traditions of different areas of *Pukhtoon* tribes are similar in nature. For example, the parties are examined in their mother tongue i-e *pukhto* language. There is no language barrier on tribal people. They are investigated and inquired in that language which is easy for them.¹⁰⁶ Geographically the accent of language is different but *Jargah* members understand the meanings of the words used by the parties. If the *Jargah* members are confused on any word or the word used is

¹⁰³https://www.google.com.pk/?gws_rd=cr&ei=BRnIU4TEFcmOO7XGgPgC#q=www.khyber.org%2Fpashtoculture%2FJirga%2FJirgas.shtml+ (Dr. Mumtaz Bangash)

¹⁰⁴ Yousafzai and Ali *Pukhtoon Jirga*. 50.

¹⁰⁵https://www.google.com.pk/?gws_rd=cr&ei=BRnIU4TEFcmOO7XGgPgC#q=www.khyber.org%2Fpashtoculture%2FJirga%2FJirgas.shtml+ (Dr. Mumtaz Bangash)

¹⁰⁶ Yousafzai and Ali *Pukhtoon Jirga*. 51.

ambiguous then members stop parties and asks for explanation of the particular word. In *Loya Jargah*, Usually parties use easy and simple language which is helpful in understanding.¹⁰⁷

2.2 *Jargah* working in FATA

Under the Constitution of Islamic republic of Pakistan, 1973, FATA is included among the territories of Pakistan (Article 1). As per decisions of the courts of Pakistan, it is integral part of Pakistan. "It has representation in the National Assembly and the Senate of Pakistan but remains under the direct executive authority of the President (Articles 51, 59 and 247). The laws made by the National Assembly do not apply here unless so ordered by the President. It is administered by Governor of the KPK in his capacity as an agent to the President of Pakistan".¹⁰⁸

"Each tribal Agency is administered by a Political Agent who are assisted by a number of assistant Political Agents, Tehsildars (administrative head of a Tehsil) and Naib Tehsildars (Deputy Tehsildar), as well as members from various local police (khassadars) and security forces (levies, scouts). As part of his administrative functions, the Political Agent oversees the working of line departments and service providers. He is responsible for handling inter-tribal disputes over boundaries or the use of natural resources, and for regulating the trade in natural resources with other Agencies and the settled areas".¹⁰⁹

¹⁰⁷https://www.google.com.pk/?gws_rd=cr&ei=BRnIU4TEFcmOO7XGgPgC#q=www.restorativejustice.org%2Farticlesdb%2Farticles%2F4712%E2%80%8E + (Last accessed: 15.05.2014)

¹⁰⁸The Frontier Post, "Frontier Crimes Regulation, a black law", Abid Mehsud, Posted on 23-06-2012.

¹⁰⁹ Ibid.

Section 5 (e) FCR defines “*Qawmi Jargah*” as one consisting of respectable elders and representatives of tribes, and Section 5 (f) explains that “*Riwaj*” means usages and customs of the tribes in FATA.¹¹⁰

In FATA, *Jargah* is the only way in the course of dispensing Justice. It must be free, fair and available to all. *Jargah* is well thought-out as casual traditional institution, because little documentation involved. The procedure and processes of *Jargah* are easy accessible and flexible. *Jargah* has gigantic collision on the life of *Pukhtoos*, mainly those residing in the tribal areas.¹¹¹

Jargah is the most effective and suitable mechanism used in tribal areas of Pakistan. It is means to resolve disputes and conflicts of the people. The *Jargah* is an association of *Pukhtoon* ancestral communities and societies and operates as per instructions given by the *Pukhtoonwali*, and may even ignore the laws of both Islamic law and the central Government. In tribal areas of the Pakistan, *Jargah* is followed as an effective tool for solving and resolving issues and concur of the people.¹¹²

2.3 Tribal Judicial System

The Article 1 of Constitution of Islamic republic of Pakistan, 1973 says that FATA is a part of Pakistan but the reality is that because of the FCR, its inhabitants are not treated like other citizens of the country.¹¹³ The FCR is the primary law applicable in FATA region. The FCR is followed by the people. Such resolutions are amended time to time. The main

¹¹⁰ The Frontier Crimes (Amendment) Regulation 2011

¹¹¹ Yousafzai and Ali. *Pukhtoon Jirga*, 18

¹¹² https://www.google.com.pk/?gws_rd=cr&ei=BRnIU4TEFcmOO7XGgPgC#q=www.tribalanalysiscenter.com%2F...%2FJirga%2520System%2520in%2520Tribal%25 (Last accessed: 2.15.2014).

¹¹³ Published in The Express Tribune, December 28th, 2010. By Arshad Mahmood

objective to follow FCR is to give basic rights to the people without discrimination but in reality, it is not so. People in FATA region are deprived and are poor.¹¹⁴

The fundamental rights which are consistent in the 1973 Constitution of Pakistan the provision of FCR violate these rights. Under Constitution of Pakistan, the basic human rights of individuals are protected. No one is allowed to violate rights of others. It is also the theme of FCR. These lack due process and a limited right to appeal leading human rights activists define to dub the FCR black law.¹¹⁵

Pakistan is purely a Muslim state and Islam is the state religion of Pakistan. Islam describes every aspect of life and based on purely divine instructions. Holy Prophet (P.B.U.H) said that there is no difference among the Muslims on the basis of language, cast, color etc. for example, the president of France has no special privileges though he act as president. As per French Constitution, he is supposed to act as ordinary person. He is not treated as superior than others. He used to travel in public transport vehicles. His position is same as ordinary citizen of the State.¹¹⁶

The most important problem in FCR is that the power of judiciary rests with executives. Executives deal with the people in discriminatory manner. People follow their dictates subject to limitations. "In a setup similar to that of former executive magistrates in Pakistan's four provinces, the local executive authority (political agent) in FATA exercises all judicial powers, serving as the final arbitrator of justice in all cases, including those where he is the accused or otherwise involved". In FATA region, usually the Commissioners, Additional Commissioners, Political Agents and Assistant Political

¹¹⁴ Ibid.

¹¹⁵ Zaid Haider, "Mainstreaming Pakistan tribal belt: A Human Rights and Security Imperative", *Harvard Kennedy School Press*, January 2009.

¹¹⁶ Abid Mehsud, "Frontier Crimes Regulation: A black law", *The Frontier Post*, Posted on 23-06-2012.

Agents are appointed and they act as executive officers. They have powers to resolve individual's disputes.¹¹⁷

The amendments introduced in 2011 in FCR regarding *Qawmi Jargah*. A *Jargah* comprises of respectable members of the area in tribes. "According to the reforms, "the Political Agent or district coordination officer may take cognizance of any offence or civil dispute in special situation, if so recommended by a *Qawmi Jargah* of the tribe in the interest of justice and peace".¹¹⁸

In *Qawmi Jargah*, Political Agent plays an important role. He has authority therefore tries to solve disputes and conflicts of the individuals and community. His recommendations and suggestions are considered in number of cases. The duty of agents is to understand the problems faces by tribal people. In some cases, political agents also resolve issues of the people, as he has administrative post. 2011 reforms have a number of irregularities and are not sufficient. Such reforms need further improvements.¹¹⁹

The tribal people of Pakistan have been living according to their standards since time unknown. They have their own needs, requirements and culture. Tribal societies face conflicts and quarrels among them. It is common in every society of the world. They have right to promote their culture and no one is allowed to snatched away their rights on the basis of discrimination or on the basis that they are tribal.¹²⁰

¹¹⁷ Summary of the Frontier Crimes (Amended) Regulation 2011

¹¹⁸ See Section 11 (b) of the Amended Frontier Crimes Regulation, 2011.

¹¹⁹ Frontier Crimes (Amended) Regulation 2011. Summary

¹²⁰Maqbool Wazir, *Administrative justice in FATA*, 21 June 2012 (Last accessed: 07.02.2013).

2.4 Formal and Informal Justice System

The international human rights mandate is to provide Justice, peace and safeguard without discrimination on the basics of sex, race, religion, color, wealth and political status. The institution of human rights is providing justice to every human being through formal or informal justice system.¹²¹ One of the objectives of international human rights law is to promote equality. According to article 1 of the United Nations charter, international peace and security is purpose of the UN. Justice should not only be done but it seems to be done.

There are different forums available in every state for dispensation of justice. *Jargah* falls in informal method. The difference between formal and informal justice systems includes the powers that enforce justice and the standardization of the process. Formal justice systems refer to codified laws and court proceedings. Informal justice systems can refer to cultural and societal judgment and punishment and in many parts of the world especially developing countries or remote villages. Informal justice systems are the best to provide justice to the people.¹²²

The sole purpose is to solve the issues of the people in speedy way; therefore, informal justice system focuses on the protection and preservation of fundamental human rights. Justice can be achieved easily in case of informal justice system. In informal system, cooperation with one another is essential ingredient. Public at large is supposed to cooperate with the *Jargah* members. Members strive hard for the betterment and

¹²¹Ewa Wojkowska, "Doing Justice: How informal justice systems can contribute", *Oslo Governance Centre*, December 04, (2006), 8.

¹²² Ibid

satisfaction of the people. One of the key focuses of human rights law is equality and in *Jargah* equality is considered and ensured. In this context, *Jargah* system has also challenges. In informal system the discriminatory and distinctive practices are condemned. Influential people of the locality are also bound to follow the decision of the *Jargah* members. If the case is serious then the opinion of other experts may also be taken in *Jargah*. For the protection of informal system of justice, developmental efforts are required. Key initiatives must be taken by the government in order to promote and protect basic rights of the citizens. It is responsibility of government to consider the method followed by people and make necessary changes and reforms where required.

The details of both the system are as follows:

2.4.1 The Formal Justice System

The formal justice system includes criminal and civil matters. It has its own system of judiciary. The purpose is to dispense justice for the people. In this system the law enforcement agency is police. Federal Shariat Court is also established for dealing with religious issues. In this case the procedure is technical and lengthy. A number of procedural technicalities are involved in formal justice system. For example, in ordinary court of law hundreds of cases are pending.

This system is time taking and expensive as well. In civil case the procedure is different. In criminal prosecution the procedure is different and it is time taking. From initial till end formal justice system involves a lot of processes. Usually steps are followed. A number of procedural technicalities are attached in formal system of justice.

Ordinary civil Court insists to follow steps in an order. The cases of formal justice system receive a full measure of rights and procedures

2.4.2 The Informal Justice Systems

Informal system of justice can be operated by members of the society in the light of customary rules and laws. Respected and experienced members of the locality are chosen as *Jargah* members. Traditions play an important role to resolve individuals and communal issues. Informal word is used because it is not a State method but non-state.¹²³

Custom based mechanisms are less technical. Reforms in infrastructure, measures and actions approved by informal institutions are likely to be adopted by the community and thus become sustainable. It is argued that informal system of justice is better than formal justice system. It is easily accessible and less-expensive. Remedies are provided to parties on the basis of merit and nature of the case. No lengthy procedure is involved and followed. In FATA, traditions and customs and cultural rules are followed. Informal justice systems can comprise recognition of children's right to be heard. In FATA, in Informal justice system cases within the family, children are generally represented by a family member who speaks for the child's interests. The vital worth in this description lies in its importance on what can be achieved because access to Justice is universally recognized right of every individual.

¹²³Tilmann J. Roder, "Informal Justice Systems: Challenges and Perspectives", *Max Planck Institute for Comparative Public Law and International Law*.

2.5 Comparison of Formal and Informal Justice System

Formal system		Informal system
Well trained educated Judges select under through proper channel by government.	< 1 >	Respectable and experienced elders of local community select by both the parties on their mutual consent.
Prosecution system police, Magistrates, and similar bodies formal institution	< 2 >	Processed under customary norms.
Slow and time-taking implementation mechanism.	< 3 >	Fast and useful implementation mechanism
Work load Pendency of cases increased day by day.	< 4 >	No pendency. Speedy and quick justice.
Its Legal basis is decision under State constitutional law and other relevant statutes.	< 5 >	It is followed under Customary law, Traditions or riwaj.
Protection is subject to making written request to an authority. Writing is must without any exception.	< 6 >	Without written request give protection. It neglects formalities of writing for Protection.
Lack of accessibility, affordability and effectiveness at lower level. of the law, fear, and pressure;	< 7 >	Accessible and affordable to everyone on their door step
Language used is difficult and procedural technicalities are involved therein.	< 8 >	Proceedings are usually conducted in the local language and follow local customs, therefore people are less likely to be intimidated in these settings

<p>Hierarchal in nature. Every step is linked with another step and takes time.</p>	<p>< 9 ></p>	<p>Non Hierarchal. Steps are followed but in speedy way. Its implementation is also easy.</p>
<p>There are a lot of financial restrictions on the parties. For example, court fees</p>	<p>< 10 ></p>	<p>It is voluntarily and no such financial restrictions are there. It is cheap.</p>
<p>It involves long processes.</p>	<p>< 11 ></p>	<p>It involves simple and short processes.</p>
<p>The rules of evidence and procedure are rigid and complex.</p>	<p>< 12 ></p>	<p>The rules of evidence and procedure are flexible and simple.</p>
<p>Usually suits are pending for long time and people face problems and difficulties.</p>	<p>< 13 ></p>	<p>It has local legitimacy and authority. It may not lead to further problems.</p>
<p>Adjudication</p>	<p>< 14 ></p>	<p>Resolution</p>

Conclusion

Keeping in view the above discussion, we can conclude that there are four main types of *Jargah*. The local *Jargah* settles local and village based conflict between individuals and families. The *qawmi Jargah* deals with serious matters. *Qawami Jargah* resolves major conflicts between families and tribes. Its members are not from one tribe. They belong to different tribes. The FCR *Jargah* is constituted by the Political Agent or the Political administration for dispute resolution. It is known as council of elders. Its members are usually selected by the Political Agent. The *Loya Jargah* deals with issues of international or national level.

Chapter 3

Challenges to *Jargah* System

Introduction

Despite being an effective tool of dispute resolution, *Jargah* faces a host of challenges. It includes this regard for human rights issues, lack of proper implementation mechanism lack of education, disregard to the concept of fair trial to name a few. This chapter highlights some of the challenges faced by the *Jargah* system. It also suggests how these challenges could be overcome.

3.1 Challenges

In present era, *Jargah* system has challenges. Although it is followed in tribal areas but it is criticized by some people. They argue that *Jargah* does not have any legal basis and against law and natural justice. The weaknesses of *Jargah* systems are well known. *Jargah* systems are sometimes seen by government themselves as backward, undemocratic and traditional practices.

3.1.1. Lack of Government Support

Jargah systems are easily accessible to poor and disadvantaged people and grant swift, rapid and speedy justice. Throughout the World, informal system of justice is used. These are followed in developing countries as well as least developed countries. In FATA,

majority of people use it because of its speediness and efficacy.¹²⁴ Informal system is a method of dispute resolution and famous for its implementation and application among people.

For instance there is no training for *Jargah* members in FATA. The local *Jargah* members perform their function indigenously, having no formal capacity building is the art of negotiation, conciliation and mediation. Even for the political administrator, there is no formal hearing on *Jargah* laws.

Justice sector reform is a rapidly expanding area. However *Jargah* systems still remain largely ignored by Government of Pakistan in tribal areas. The *Jargah* system recognized by FCR but the government of Pakistan does not provide any support to the tribal *Jargah* system. The legal support of government is essential for the improvement of *Jargah* system to provide justice to poor and needy people.

There is an ADR system in India which is called Loke Adalat. This system is legally recognized by the Indian constitution.¹²⁵ A Loke Adalat has been given the same authority as rests with civil court in lieu of matters such as summoning of testimony, documents production and recovery, evidence taken on affidavit, public records and inspection of documents. It has also been granted liberty to lay down its own procedure for determination of any dispute before it. Loke Adalat of India resolves disputes and helps the court.¹²⁶ As against this, under FCR, *Jargah* has no such power. Moreover the decision of

¹²⁴ The Centre for Humanitarian Dialogue, "Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives", July 04, (2005).

¹²⁵ Madan B. Lokur, Judge of Supreme Court of India, *Lok Adalat & Mediation*, 2013

¹²⁶ *Ibid.*

Jargah is binding on a court under FCR. Indeed the FCR is more bureaucratic than judicial.

The formal justice system of Pakistan also ignores the tribal *Jargah*. Although Pakistani laws have recognized *Masalihati Jargah*; yet this is not the case in FATA. The government of Pakistan and the formal justice system cannot provide any support for its improvement. This challenge is still faced by tribal *Jargah* system.

3.1.2. Favoritism

Favoritism literally means the unfair treatment of a person or group in preference to another. Favoritism is prohibited and not allowed in any case. In few cases, *Jargah* members are found to favor one party but now the system is better. If one party finds that *Jargah* member is favoring another party then party has right to expel *Jargah* member from the proceedings.

The purpose of *Jargah* is dispensation of Justice. Therefore, *Jargah* members are required to act judicially and impartial. If one party offers anything to *Jargah* member's i-e bribery etc then *Jargah* members are allowed to punish them. Usually it is not so and no one do this because of maintaining peace and safe environment. Favoritism results are bad decisions. It is strictly prohibited in pukhtoon culture. Everyone is supposed to follow and respect *Jargah* members and no one is allowed to do an act which is inconsistent or repugnant with the customs and traditions.

“The *Jargah* or the *Panchayat* consists of only influential people like Malaks, khans, waderas, sardars and chaudhrys. There is a strong likelihood that

such influential's may provide cover to their friends and relatives and decide against the poor".¹²⁷

The *Jargah* members are selected from the entire community. Every member of the *Jargah* has friendship and relatives. If there is conflict between two individuals or families the *Jargah* members have some relations or friendship in one of them, they try to give benefits to relatives and friends. This is a challenge to the neutrality of *Jargah* system, but if someone favors one party during the process of *Jargah*, he is directly expelled from the *Jargah*.

Yet favoritism is still present in *Jargah* system. It's necessary to improve the *Jargah* system and abolish favoritism form *Jargah* system. This challenge faced by *Jargah* system in tribal area. The *Jargah* members provide their support to influential people. If a dispute between a poor family and influential's like a Malak, khan and Nawab of the area the *Jargah* members may be give relief to the influential.

While the tribal *Jargah* works independently and there are rear chances of these types of cases still the possibility of favoritism could not be ruled out. Thus the challenge of favoritism is a difficult one and needs serious efforts to be weeded out. It is a challenge to the tribal *Jargah* if these practices are practice continually it is sure that no one can be refers their disputes for resolving to *Jargah* system in future. So it's necessary to abolish these type practices for the betterment of tribal people because the *Jargah* system is the first and the last hope for justice in FATA.

¹²⁷Zaheer Abbas, Islamabad, Dawn News, 29th March, 2013

3.1.3 Corruption

“Corruption has a devastating effect on poor people - especially corruption in the public service. Corruption costs the government millions every year, money that could have been spent on delivering services. Corruption also means that some people get an unfair advantage because they can afford to bribe officials to do them special favors. Where resources are scarce and many people need those resources, corruption can often set in”.

Corruption is not only done at top level but it is also found in the roots institution include *Jargah*. According to the law of the land, the corruption is prohibited completely. All aspects or modes used for corruption are condemned and avoided in various departments of the country. The element of corruption leads to quarrels and disputes among people. It prevents and blocks the development of the country. The term corruption refers to get unfair advantage over the other. It is obligation on Government to delete the element of corruption from every institution which contributes to the development of the country. Moreover, reforms should be made in public and private sectors in order to avoid corruption. In *Jargah*, usually the members are not corrupt and they are bound to do fairness and equity among all parties and people. If one of the members found guilty of corruption, he may be punished.¹²⁸

The *Jargah* members are exemplary and role models for the rest of the society at large. The respectable and elders of the communal society always try to reconcile with the people. Their objective is to understand and analyze the situation of the case and then at the end they give landmark decision. *Jargah* members have influence on the lives of

¹²⁸ <http://www.klaus.cz/clanky/2223> (Last accessed: November 20, 2013)

the other people. Their attitude and conduct is exemplary and kind towards the tribal people.¹²⁹

Corruption and biasness exist almost equally in both the justice systems. Accusations of being biased and taking bribe from the wealthy have been heard frequently about the *Jargah* members. *Jargah* members who are accused of being corrupt are expelled from the *Jargah* proceedings. This is a symbol for other people as well. For community development it is necessary to avoid such bad practice. The community collapses if corruption is there. No one is allowed to disturb other or taking bribes and usury. Moreover, corruption, bribery and biasness also prevail in the court systems as evidences and witnesses are altered according to one's needs.¹³⁰

Jargah is the strength of *Pukhtoon* communal society. The shape and procedure of *Jargah* system changes time to time and it differs from case to case. Previously, the experiences and practices of people are different but now the practices are different. However, the element of corruption is somehow controlled in present era.¹³¹ *Pukhtoon* societies neglect corruption and bias during the proceedings of *Jargah*. Corruption is present everywhere in every level the tribal *Jargah* system also faced this challenge some *Jargah* members are very greedy they ignore justice and changed the decision for some money and bribe.

¹²⁹ Yousafzai and Ali Gohar. *Towards Understanding Pukhtoon Jirga*, 65

¹³⁰ Syed Uzair, *Justice through the Court Of Law and through the Jirga*, www.hamariweb.com
> Urdu Articles > Society and Culture Articles

¹³¹ Report made by Community Appraisal and Motivation programme (CAMP), "*The Jargah Justice and conflict transformation*", March 09, (2012).

3.1.5 Implementation

The past history of *Jargah* system shows powerful implementation of its decisions, but gradually, the *Jargah* system loses this unique feature. A powerful implementation is the guarantee of a successful *Jargah*. If the *Jargah* members do not implement the decision it means that the *Jargah* is failed.

In the present days in FATA, the *Jargah* members very rarely implement the decision of *Jargah* for both the parties. Due to this the conflict are laying unresolved between both the parties. The *Jargah* members are mostly elders and influential people of the area and they practiced the formula of divide and rule. The *Jargah* members make a reliable decision but do not give full attention to implementation for their future aims.

They thinking if they implement the decision the families will be out from their influence for this the main members keep and engage both the parties. The implementation of *Jargah* decisions in the present days not that one which was implemented by the previous elders of tribal community. The proper implementation of *Jargah* decision is the guaranty of a happy and prosperous community, peace can also restore through this practice.

3.1.6. Human Rights

The international human rights mandate is to provide Justice.¹³² *Jargah* is the only formal justice system in FATA. In order to combat violations of human rights, at domestic level in FATA, there is need of amendments and reforms. People especially of vulnerable

¹³²Ewa Wojkowska, "Doing Justice: How informal justice systems can contribute", *Oslo Governance Centre*, December 09, (2006), p8.

category seek attention i-e minorities, women and children. The needs of women and children should also be protected and ensured in this regard. These reforms and amendments are implemented in effective way which is useful and helpful for the people residing in FATA region.¹³³

3.1.6.1. Equality and non discrimination

The general principle of equality and non-discrimination is a fundamental element of international human rights law. The right to parity and non-discrimination is universally accepted. For example, number of human rights instruments speaks about equality and non-discrimination. Everyone is supposed to equal before law and same treatment is there for everyone on the basis of humanity. Discrimination of all kinds is prohibited and no one is allowed to discriminate others on the basis of race or gender.

The principle of non-discrimination and equality is also listed in national laws. Definition of discrimination is enshrined in Article 1(1) CERD, Article 1 CEDAW, Article 2 CRPD, Article 1(1) ILO 111 and Article 1(1) Convention against Discrimination in Education.

The *Jargah* or “the *Panchayat* consists of only influential people like Waderas, Sardars and chauthrys; honor crime and rape cases normally involve women from poor families and men from influential families; there is a strong likelihood that the Waderas provide cover to their friends and relatives and decide against the poor”.¹³⁴

¹³³ Report made by Community Appraisal and Motivation programme (CAMP), “*The Jargah Justice and conflict transformation*”, March 09, (2012).

¹³⁴Zaheer Abbas, Islamabad, Dawn News, 29th March, 2013

There is no leading officer and no hierarchal position in a tribal *Jargah* system. Wealth, Social status and political power of any party cannot influence the decision of *Jargah* in any case. These practices might be done in Sindh and Punjab but it's impossible in tribal area because the *Jargah* and both the parties are independent in this whole process. Those people who don't know about tribal *Jargah* system they used *Jargah* and *Panchayat* in one sense. If a *Jargah* is called for resolution of a dispute between two parties or individual, both the parties have the right to change or expel a member or members from the *Jargah*. If both the parties have the right of changing or expulsion of any members from *Jargah* then how a *Jargah* members can give a decision against of any individual or a party or in favor of one.

It is true that the *Jargah* system is a good conflict resolution mechanism according to the tribal customary law. The tribal people followed their customs and traditions for conflict resolution. The international human rights laws have some demands from those countries which are signatory of such conventions of human rights law.

If we analyze the tribal *Jargah* in the light of human rights law discrimination is present in this institution in the base of sex and race. Women cannot participate in any process of *Jargah* and no one can express her felling in the tribal *Jargah*. The influential and political influence also affects the *Jargah* decision. If a conflict between poor and a powerful family of the area and the *Jargah* members give the decision against the powerful family they directly reject the decision and don't obey the *Jargah* decision. Article 2 of UDHR prohibited these types of discrimination in every matter. Pakistan is a signatory country of many international human rights conventions.

3.1.6.2 Role of Women

The pukhtoon societies are male dominated but it does not mean that women are maltreated. They have their rights and protections. Their protections are ensured through various statutes in State jurisdiction. In Pakistan, the Constitution recognizes the rights of women. Women protection bill was also assented and passed by Parliament in 2006. After the promulgation of Bill, women become more empowered. Moreover, non-profit organizations also focused on women and award them through a number of methods and techniques. For example, discussions, seminars, programme initiatives. UN agencies are also working in Pakistan to protect and promote basic human rights of females.

“At present, women are not allowed to participate directly in *Jargah*, however they can be represented by entrusting a male member to advocate for them. Women’s engagement has traditionally been constrained by the predominance of male *Jargah* members and their reluctance to encourage female participation. The *Jargah*, a purely male institution, neither sanctions women as member, nor witness or a complainant. Women may access *Jargah* only through a male relative. In case of grievances against her male relatives, no recourse whatsoever is available”.

If the issue is related to family or custody of child then in such case, women is asked and examined. Her representation is also practiced. *Jargah* members decide in the best interest of the child. In criminal cases, women presence is necessary and in civil cases her representation is sufficient. The process of implementation of the decision here is also easy as compared to ordinary judicial system.

However, if women are involved in serious crime, such as, murder etc then her presence or at least her representation is required. A woman has to give evidence if she is not involved in said crime. They may be required by *Jargah* members to take oath. It is necessary to mention here that normally the *Jargah* members are male members and not the females. Male members are chosen by parties. Women can not lead best as compared to men. In male dominated societies women are more respectable. The major decisions of households are taken by the male member with the consultation of the female. In *Jargah*, the elders of the locality do not consult women but they take consultation from the senior members of the locality. They are also supposed to look into the prevailing and past experiences, practices and traditions.

As women are vulnerable throughout the world, they need special attention. Their rights must be promoted and protected in order to address their issues. In *Jargah*, women do not participate usually. However, if the matter is urgent and special then the representative (usually his husband or father) speaks on her behalf. *Jargah* members determine the rights and liabilities of women without any hesitation and discrimination based on gender. Women are not inferior to men but are more respectable and honored. Various institutions are established and a number of programmes are organized to protect women's rights. However, in this regard more reforms are necessary because of their vulnerability. In pukhtoon society, women have rights and such rights are protected. Discrimination and distinction with women on any basis is prohibited and not allowed during *Jargah* proceedings. Members of the *Jargah* may listen to a woman in *Pardah*. Usually the representative speaks on her behalf.

Women have no right to attend the sessions of *Jargah*. Women play no role in the proceedings of *Jargah*. She is not allowed to participate in *Jargah* proceedings. Due to these reasons, International human rights activist criticize the tribal *Jargah*. According to the tribal customary practice women are not allowed to sit in any *Jargah*.

This is a challenge in the light of human rights to the tribal *Jargah* system. Right of equality is the primary concern of International human rights movement, but the tribal customary law does not recognize the participation of women in a tribal *Jargah*. A women have right to nominate her representative, if dispute is related to women.

Human rights law speaks about equality on men and women. However, in pukhtoon culture women are not allowed to go outside from their homes without any reason. They are considered as more respectable and supposed to take care family and households. Responsibilities are there on the shoulders of husband in terms of earning money whereas women are required to control and manage homes. Both husband and wife are supposed to live a happy life and there are no restrictions on them. They are supposed to help each other in aspects and spheres of life. They can fully enjoy their lives without any external disturbance. Women in pukhtoon societies are happy.¹³⁵

The tribal women have no role in the tribal *Jargah*. This is a violation of international human rights law according to human rights activist. The presence of women in tribal *Jargah* is violation of tribal customary law according to the code of pukhtoon wali. The role of women is not acceptable to pukhtoon community of FATA to participate in *Jargah*.

¹³⁵ Report made by Community Appraisal and Motivation programme (CAMP), "*The Jargah Justice and conflict transformation*", March 09, (2012).

3.1.6.3. Due process Rights

Due process means the regulations and rules which are granted by the state and guaranteed and protected by the courts. In ordinary Court of law, such principles and rules are followed. In fact, these are the legal principles. These concern with the protection and promotion of individual's and public rights. These rules are interpreted by the Courts of law. These include administrative, legal, and moral principles and provisions related to immovable property. In administration of Justice, Courts of law are bound to interpret such rules and principles in the interest of public at large. Laws are usually made for the betterment and satisfaction of the people. *Jargah* system also recognizes such guidelines and principles.¹³⁶

The process of fair trial is necessary in *Jargah* proceedings. The tribunals are established for ensuring protection of rights and justice. The right to be heard is recognized fully in *Jargah* system. Moreover, fair trial is also ensured. Due process connotes the right to get remedy and fair trial in terms of implementation and application of law of the land. It signifies that the rights of the people be protected in the light of existing State legislation and it should be according to human rights standards.¹³⁷

The due process give the right to every person means man and women to defend himself. The women cannot participate in tribal *Jargah* system in any process such as hearing and explanation of her view for defend. The international human rights do not recognize these types of practices but the tribal customary law prohibited these practices.

¹³⁶https://www.google.com.pk/?gws_rd=cr&ei=BRnIU4TEFcmOO7XGgPgC#q=www.humanrights.is%2Fthe-human-rights+project%2Fhumanrightscasesandmaterials%2Fcomparatveanalysis%2F+therighttodueprocess%2Fprocess%2F+ (Last access 10.03.2014)

¹³⁷ Ibid

This is a clash between the international human rights law and tribal customs and traditions faced by tribal *Jargah*.

3.1.6.4. Right of Appeal

The modern human rights activist and some other people criticize the *Jargah* system. They argue that *Jargah* system do not give the right of appeal to any party. Mr. Zaheer Abbas is one of them he describe that the “Decisions of the *Jargah* or Panchayat are considered final and binding by the illiterate people and there is no system of appeal if one is not satisfied with the decision.”¹³⁸

The *Jargah* system does not take the right of appeal from either party. The unsatisfied party has the right of appeal for review and also can reject the decision of *Jargah*. The non satisfied party brings another *Jargah*. Mr. Zaheer Abbas said illiterate people to the *Jargah* members, the *Jargah* members are highly experienced people. They have a good knowledge of Shariah, local tradition and a positive reputation in the society.

Right and authority are two elements on which *Jargah* focuses. In the case of waak both the parties have no rights to challenge the decision. The *Jargah* members take waak in a written form with some heavy guarantee of cash money a huge piece of land and also some weapons. After this procedure the parties have lose the right of appeal. The modern human rights activists criticize it. This

The above discussion is true but it is also a fact that the decision is binding and final in some cases. In some special cases the *Jargah* members take waak form both the

¹³⁸Zaheer Abbas, Islamabad, Dawn News, 29th March, 2013

parties in a written form. When the *Jargah* announce its decision no one can challenge or go against the decision given. The international human rights cannot recognize these types of practice in any justice system.

Conclusion

The *Jargah* system has many challenges in the present era. The most important and serious challenge is that the system does not get support from governmental as well as non-governmental organizations. Fingers are also pointed out that *Jargah* system has no regards for human rights. The procedural aspect of the *Jargah* has also attracted the concerns of the critics. It is argued that the un-written procedure may lead to irregularities. While the system ignores women, it is also argued that the system is also tainted with favoritism. The international human rights concerns are that a review or an appeal against the decision is a right of a disputant. The tribal *Jargah*, in many cases do not give the right of appeal to the parties. These inherent defects have seriously affected the overall *Jargah* system.

Chapter 4

Data Analysis

Introduction

This chapter presents and analyse empirical evidence regarding *Jargah* system in FATA. The reasons for quantitative research have already been mentioned in Introduction. The greatest benefit of field research is that it helps explore the views of the service-users, as the ultimate beneficiaries. The chapter is divided in two parts. Part I describes sampling of data. In Part II, the data is analyzed.

I. Sampling of data

The field survey focussed on Bajaur agency only. The survey was in the form of a questionnaire. Responses were solicited from as many as 101 people. In order to have views of different segments of the target geographical area—Bajaur agency—efforts were made to ensure diversity in the target population. Key variables of target population included age, education and occupation, such as, businessmen, public servants and *Jargah* members. Most respondents were literate; majority of them, graduates. Opinions were taken personally from the residents of Bajaur Agency. Personal profile of respondents included, a total questions were asked.

The questions were reflected seven major themes. They were: kinds of *Jargah* (for example, which kind of *Jargah* people usually prefer); constitution of *Jargah* (particularly, consent of parties) hearing procedure (how evidence is recorded? Importance of cross examination); integrity (such as impartiality, confidentiality); human rights considerations (most notably, the role of women); the pace of dispute resolution

(speedy disposal of matters); comparison with formal judicial system (why people do people prefer *Jargah* (informal) dispute resolution mechanism technicality, complexity, poor friendly); and role of *Jargah* members and influential people (biradri consideration, Impartiality, favouritism, implementation). For the convenience of the reader, the questionnaire is annexed to this thesis.

II. Analysis of Data

In this part the responses of the targeted people and key themes mentioned above are analyzed one by one. Themes which have more than one question are grouped together and analyzed.

The age of majority of them is 15 and above. Most of them are married and living within joint families. Most of them are literate and employees, such as, government employees, self-employees, *Jargah* members and businessman.

1. Kinds of *Jargah* (For example, which kind of *Jargah* is usually preferred by people)

In FATA, kinds of *Jargah* include local *Jargah*, Qawmi *Jargah* and FCR *Jargah*. Local *Jargah* is practiced by the tribal people in respect of their local conflict resolution. Results shows that 58.6% people used local *Jargah*. The Qawmi *Jargah* is used by 23% people and they practice this tool for their conflict resolution. The FCR *Jargah* is very rarely used for dispute resolution in tribal area, such as, 18.4% people follows it. Responses showed that usually the tribal people prefer local *Jargah* for conflict resolution. Majority of the respondents prefer local *Jargah* i-e 46%. Qawmi *Jargah* is followed by 33.3% respondents and 17.6% respondents follow FCR *Jargah*. The local

disputes arise in a large scale. The local *Jargah* deals with less serious disputes at local level. The table below shows the interest of tribal people that they prefer local *Jargah* more than *qawmi* and FCR *Jargah* for conflict resolution.

	%	Percent
Local <i>Jargah</i>	58.6	58.6
Qawmi <i>Jargah</i>	23.0	23.0
FCR <i>Jargah</i>	18.4	18.4
Total	100.0	100.0

2. Constitution of *Jargah* (particularly, consent of parties)

Some people criticize the *Jargah* system. They argue that the *Jargah* members are not selected with the consent of the disputants. Responses of people showed that the ratio of the persons who are of the view that *Jargah* members are selected with the consent of both the parties is 78.2%. The parties have the right to expel a member or members from the *Jargah* before initiating the *Jargah* procedure. 21.8% people said that it is not constituted without the consent of parties.

2. Hearing procedure (how evidence is recorded? Importance of cross examination);

The tribal *Jargah* is a traditional institution and it works according to the tribal customary law. The *Jargah* system is practiced in the tribal people since time immemorial. 43.7% respondents showed that tribal *Jargah* usually does not record evidence. On the other hand, 56.3% respondents said that the tribal *Jargah* record

evidence. However, the *Jargah* system works on its unwritten nature, now a day's by documentation is somewhat used.

The investigation process of the *Jargah* regarding the causes of conflict between parties is important in proceedings of *Jargah*. The *Jargah* members are the local elders of the areas. They have knowledge about the conflict resolution. When dispute arises between two or more parties, the *Jargah* member plays his role as a mediator to resolve the conflict. The concerned parties select the *Jargah* members for resolution. The tribal elders who are the members of *Jargah* investigate the facts before the decision. They investigate the matter from the reliable people in order to know facts of the case. While considering the response of the people regarding reality of investigation process before taking any decision by the *Jargah*, majority of the respondent, i-e 88.5% are of the view that *Jargah* investigate, the facts before taking any decision and rest of the respondent i-e 11.5% are against the *Jargah* members that they do not investigate the facts of dispute and take the decision blindly.

4. Human rights Considerations (most notably, the role of women):

Human rights are universally recognized rights of every individual. After World War-II numbers of human rights instruments were drafted in order to secure international peace and maintain security in every part of the world. Such rights are purely based on equality and non-discrimination. No distinction is allowed on the basis of color, sex, language, caste, tribe etc. All States of the world are requires to observe such rights. Such rights can never be snatched or taken away in any context. Such rights are incorporated in the constitutions of different States. These are also based on customary rules, general

principles of morality and are directions for every State. It is obligatory on States to follow the standards established by human rights instruments and apply all provisions at domestic level. No individual is allowed to disconsider observance and respect of such rights. Such rights are interlinked with each other. Each year, States are obliged to submit report regarding the application and implementation of said rights. There are restrictions on individuals to refrain from the acts which are against humanity.

“Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others”.¹³⁹

The People are of the view that it is not possible and in this respect, her representative will follow. The tribal people practice gender boundaries (*parda*) in their life style. The tribal women follow *parda* in their daily life. The views of 62.1% of respondents are that the representative is there for hearing procedure for *pardanashin* lady in a tribal *Jargah*. The views of 28.7% respondents are that there is personal hearing for *pardanashin* lady in tribal *Jargah*. However, the tribal women cannot directly participate in the procedure of a *Jargah*. The representative hears and speaks on behalf of a woman.

The tribal people oppose women participation in *Jargah* since long. 70.1% oppose the participation of women in tribal *Jargah*. The ratio of respondents of this

¹³⁹ <http://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx> (Last accessed: December 30, 2013)

survey who recognize women in tribal *Jargah* is only 29.9%. On the other hand, the international human rights concern is equality and non-discrimination. This practice of tribal *Jargah* is a serious challenge in the norms of international human rights.

The international human rights law focuses on equality. All are treated as equal citizens of State. No discrimination is allowed on the basis of gender. The tribal *Jargah* provides no space for women. The informality of *Jargah* system also received criticism from the modern human rights activists. 64.4% people say *Jargah* violates basics human rights. These who says *Jargah* does not violate the basics human rights are 35.6%. The following table shows the role of women in tribal *Jargah*, most people are oppose gives any role to women in *Jargah*.

	%	Percent
No	70.1	70.1
Yes	29.9	29.9
Total	100.0	100.0

5. The pace of dispute resolution (speedy disposal of matters);

The tribal *Jargah* provide quick and speedy justice to the tribal people. Considering the workings of *Jargah* system, 27.6% of respondents are of the view that dispute is usually resolved in two weeks and 13.8% are of the opinion that *Jargah* resolve a dispute in 8 days. The opinion of 10.3% people is of view that it resolves a dispute in one month.

This question was asked survey in order to compare judiciary with *Jargah*, and to explain which system of conflict resolution is expensive. 83% people are of the view that

Jargah system is cheap. The views of 16.1% respondents are that the *Jargah* system is expensive. It is quite obvious that the *Jargah* system is very cheap if we compare it with ordinary judiciary system. Majority's point of view clearly shows that *Jargah* system is cheap and easily accessible to everyone at their door steps.

6. Comparison with formal judicial system (why people do people prefer *Jargah* (informal) dispute resolution mechanism, technicality, complexity, poor friendly).

It is a well established fact that the tribal areas of Pakistan have no formal judicial system. The *Jargah* system is the only tool for conflict resolution in FATA. 73.6% said that the *Jargah* system is the best alternate of judicial system. The ratio of people, who do not accept *Jargah* as an alternative of judicial system, is 26.4%. The *Jargah* system provides quick and speedy justice to the tribal people in the absence of formal justice system. The question is that the *Jargah* system is more or less technical in nature. The answer is that the tribal *Jargah* system is very simple and easy in its manner. The tribal people are satisfied with *Jargah* system. The views of 60.9% are that the *Jargah* system is less technical as compared to ordinary judicial system. It proceeds according to tribal customs and follows local language. 39.1% people are of the view that it is more technical. The tribal *Jargah* system is easily accessible and very simple in understanding. The views of 72.4% are that the *Jargah* system has no complexity in understanding. Everyone can easily understand tribal *Jargah* system. The view of respondents whose opinion is in favor of complex understanding is 27.6%. The tribal *Jargah* system proceeds in local language and tradition. Formal system of justice is very procedural.

Most of the people have no knowledge about the process of this system. The views of 58.6% respondents are that the formal Justice System is poor friendly. The informal justice system consists of local elders members. The following table shows that the informal justice system provides friendly environment to the disputant.

	Percent	Percent
judicial system	26.4	26.4
<i>Jargah</i> system	73.6	73.6
Total	100.0	100.0

7. Role of *Jargah* Members and Influential people (Impartiality, biradari consideration, favouritism, implementation)

Some Scholars argue that the *Jargah* members are partial. They are of the view that such members are appointed by the influential, Malaks and khans of the locality. 77% respondents say that the members of tribal *Jargah* are Impartial. Further, respondents are of the view that usually, the disputant selects *Jargah* members and they have right to expel the members. 23% people said that *Jargah* members are partial. It is concluded according to the majority's opinion that *Jargah* members are impartial.

The views of 60.9% of people are that biradari affect the decision of *Jargah*. 21.8% views of people in terms of monetary consideration affects the *Jargah* decision, and 17.2% are on the view that some other reasons also effect the *Jargah* decision. Some people said that once if a member favours or shows partiality then for the next time he is

not selected as member. 67.8% are those who are satisfied with the implementation of *Jargah* system. The implementation of *Jargah* system is not the same one which was practice in the past. It is a serious challenge to the *Jargah* system of the present time. Responses showed that the tribal people are satisfied with the *Jargah* implementation. The tribal *Jargah* members are impartial and their selection takes place with the consent of both the disputant parties. The *Jargah* member shows favouritism some times for some people. It is a big challenge in the present time. Some people criticize this act of tribal *Jargah* system. Responses of the people show that favouritism is still present in the tribal *Jargah* system.

The tribal Malaks and Khans are the influential persons of the area. They are authoritative and commanding persons of the area. Mostly, the Malaks and khans act as *Jargah* members. They implement the *Jargah* decisions. The implementation of decision is the guarantee of a successful *Jargah*. However, the implementation of decision is a challenge to the *Jargah* system in the present day. It is a fact but the above table shows that the tribal people are satisfied with the implementation mechanism.

Major Findings:

Major finding of this research work are following:

- Most of the respondents are of the view i.e (51.4%), that the local *Jargah* system works for dispute resolution in tribal area.
- Majority of the respondents (78.2%), are of the view that the member of the *Jargah* system are selected with the consent of both the conflict parties.

- Most of the respondents (77%), are of the view that *Jargah* members are impartial and it takes decisions impartially with justice.
- Most of the respondents (75.9%) are of the view that the Tribal Bradari affects the decision of the *Jargah* system.
- Majority of the respondent (62.1%) are of the view that women are duly represented before *Jargah*.
- Majority of the respondent (73%) are of the view that the *Jargah* system is valid, cheap and a speedy justice system.
- Most of respondent (71.3%), are satisfied with proceedings of *Jargah* system because the *Jargah* system follows local customary laws; known as (Rewaj) in local language.
- Majority of the respondent (64.4%), are of the view that there are some weakness in *Jargah* system. They said that the *Jargah* system violates the basics human rights.
- Mostly the local khan's and Malak's are the authoritative persons. They regulate its rules and regulation and have the ability to implement the decision of *Jargah*.
- The views of (88.5%) people are that the *Jargah* members investigate before taking any decision in a *Jargah* process.

Conclusion

The ordinary disputes are resolved through FCR. However, *Jargah* system, as method of dispute resolution, is preferred by majority of the people. The *Jargah* system is preferred

due to its speedy nature, cost effectiveness and easy accessibility. It is proved through field survey that Baradris and role of Malaks and Khans influence *Jargah* currently. They do not play vital role in implementation of *Jargah* as compared to previous era. Some people criticize *Jargah* and holds that it violates basic human rights. There are challenges in the implementation of *Jargah* decision. In this regard, the researcher suggests that such challenges should be resolved keeping in view major instruments of Human rights. Further, efforts should be made in order to overcome said challenges and human rights of the people should be protected.

Conclusion

This study analyzed the working and implementation of *Jargah* in tribal areas of Pakistan. The study has established through empirical research that *Jargah* system is used and preferred by most of the residents of FATA. Further, the objective is to sort out the challenges to *Jargah* system in terms of human rights concerns and to explore the present day challenges to the system. The purpose of the study is to analyze the *Jargah* system, particularly in FATA.

In *Jargah*, group of experts of the locality take decisions. This is followed in Afghanistan and FATA in Pakistan. *Jargah* is followed as a speedy tool of dispensation of Justice in *Pukhtoon* societies. The group of experts are similar as in United States and England, such as, important national and international issues are considered. It is common in all agencies of FATA. Most of the issues and disputes are resolved through *Jargah* mechanism.

The *Jargah* system has a long history. *Jargah* is used particularly in FATA as it is best method to resolve disputes of people. It plays a vital role for solving issues and disputes of people in speedy and efficacious way. The procedure followed in *Jargah* is very simple and clear. *Jargah* system is cheap as compared to ordinary judicial system. The *Jargah* provides equal opportunity to parties. In terms of implementation, the decision is binding on parties.

Chapter two argued about kinds of *Jargah*. The methodology used is descriptive and analytical. This chapter has established that there are four kinds of *Jargah* in tribal areas. The local *Jargah* settles local conflicts between families and individuals. The

qawmi Jargah resolves disputes at national level. It also resolves disputes between different tribes. The FCR *Jargah* is administered by political agent of the locality. Members are chosen by political agent and they resolve disputes among people. The Loya *Jargah* is considered as the forum like parliament. It resolves international or national disputes.

Chapter three argued about challenges to *Jargah*. The approach used is critical. It has established that the *Jargah* system has challenges. The major challenge is that the *Jargah* system faced criticism from government and NGO'S. People criticize that *Jargah* is against human rights standards. The other challenges include; un-written procedure, irregularities, ignoring women, favoritism and limited scope of appeal.

Chapter four is quantitative in nature and survey based. According to result from the respondents, it is well established that majority of the people in FATA prefer *Jargah* system. People prefer it because it is less expensive, speedy and easily accessible. Role of Malaks and Khans influence *Jargah* system. Some people criticise on *Jargah* that it vitiate and violate basic human rights. In this context, it is argued that such challenges should be addressed universally by considering human rights treaties.

Recommendations

In the tribal areas of Pakistan the *Jargah* is a useful system of justice. There is no formal justice system in FATA. *Jargah* system is used for conflict resolution. This system should be encouraged with the following recommendations:

1. Government should support the *Jargah* system as it is followed by majority of people in FATA. *Jargah* must be given complete governmental support in order to provide easy, cheap and effective access to justice for all the tribal People of Pakistan.
2. There is need to train *Jargah* members. They should be trained morally and legally. The training of *Jargah* members is of highest importance in order to update their knowledge according to the tribal custom usages and tradition, and to get guidance from past decisions. They should be trained in order to solve disputes among people with due diligence.
3. Government should take special measures in order to strengthen *Jargah* system. These measures may be temporary or special but key challenges should be considered. Reforms should be made for improvement of *Jargah* system.
4. State should make efforts to upgrade the procedure followed by *Jargah* and in this context; Government participation and contribution can play a vital role in the development of *Jargah* system. Time may also be fixed for *Jargah* proceedings.

5. It is necessary to consider effective measures to promote the way of evidence taken in *Jargah* proceedings. Special attention should be given to vulnerable groups including women, children and disable persons. The needs and necessities of the tribal people should be addressed in order to protect their integrity, dignity and status. Reforms should be made for the betterment of society at large through legislation in *Jargah* system keeping in view relevant Laws.

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