

CRITICAL APPRAISAL OF *JIRGA* SYSTEM IN BALOCHISTAN DURING THE BRITISH INDIAN EMPIRE

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Abstract

The research paper explores Jirga, or a dispute settlement platform, as a fundamental tool in the administration of British India's North-West Frontier, specifically among the Baloch tribesmen. The paper argues that the very notion of preserving the anthropological wholesomeness of tribal customs in the form of Jirga system mocked the British façade of self-interest in every aspect related to the imperial domination. Besides, the amalgamation of tradition, the Jirga system was fundamentally another step toward oppression leading to slow assimilation of tribal society through political permeation. This macro-level paper follows a historical approach with empiric-analytic reason as a method and will help cover the gap on the theme in knowledge.

Keywords: *Jirga, Balochistan, British Empire, Frontier Crimes Regulation*

Introduction

The British colonial supremacy was thoroughly shattered by the 1857 insurrection, otherwise known as Sepoy Mutiny,

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when excluding 7,796 sepoy, 139,000 of the Bengal Army rebelled against their rulers (David, 2002). This opened a new chapter of British Empire in India, and a change in policy was introduced, by shifting direct rule to indirect supremacy. The 1857 uprising, more importantly, left bare the very rationale and core ethics of the colonial enterprise. A novel justification for policy was designed by recognizing and safeguarding the difference as remedy, rather than deeming the eradication of difference as a colonial assignment. Hence the conversion from direct to indirect rule took place in order to make the colonial undertaking more protected. Mahmood Mamdani termed this transformation as “a new form of colonial governmentality” (Mamdani, 2012). The declaration of Queen Victoria in 1858 highlighted the Empire’s reaction to the catastrophe. The foundation of this reaction was laid on the principle of non-interference in private realm and religious matters specifically (East India, 1908 Nov 13). But the notion of non-interference soon gave way to the unrestrained interference as the colonial authorities most haughtily assigned themselves the duty for designating the problems in which they would not interfere. In fact, the policy of non-interference made the British masters more powerful. This power also involved people (tribes or groups) who would be protected. With the passage of time, the motive to protect succumbed to the agenda of domination, anger, and indirect rule. The indirect rule aimed toward preserving, and not

the task of civilizing the relinquished; it was more interested in protection rather than integration. On the contrary, the indirect rule was not restricted to the benign state of affairs. The fresh rationale of such a state was to straighten and manipulate people's biases and partialities. This was an attempt to first define, and then rule instead of divide and rule (Hopkins and Marsden,2013,p.15).

During the 1870s, the British government was more than ever keen to understand the people it ruled. This temperament was nowhere more distinct than all along the Baloch section of the north-west Frontier, where the British officials tried to control the local tribesmen by applying their own 'tradition.' This mode of governance was simultaneously an attempt toward protection and revolution, which slightly innovated, slightly classified and slightly transformed local 'custom and tradition.' Ironically, however, it was colonialism that demarcated what should and should not be proper and suitable 'tradition' (Hopkins and Marsden,2013,p.15). The British endeavored to shape the tribal realm along the Baloch frontier according to their discretion and administrative necessities, and then mostly pulled themselves out of that concoction, i.e., from direct involvement in that world. The research paper explores *jirga*, or a dispute settlement platform, as a fundamental tool in the administration of British India's North-West Frontier, specifically among the Baloch tribesmen. This macro-level paper follows a historical approach

with empiric-analytic reason as a method and will help cover the gap on the theme in knowledge.

The Origin of Jirga

The word *jirga* belongs to Pushto language meaning a “loop” or a “round” (Ghayathdin, 1871). Thomas Henry Thornton linked the word *jirga* to Persian language meaning “circle” and he was of the view that perhaps the word had the same derivation as the Latin circus (Thornton, 1895.p.22). James W. Spain suggested that the word *jirga*, in its plainest form, only implied an assembly. In fact, all communal matters, whether public or private, are bound by its jurisdiction. In its format, it closely resembles the Athenian democracy that has been there since times immemorial (Spain, 1962). A *jirga* simultaneously functions as executive, judicial, and legislative bodies, and still repeatedly occupied itself with mediation. Syed Fida Yunas defined *jirga* as “a meeting of two or more people to debate and negotiate a matter pertaining to individual loan affairs and extending to a gory internal dispute”. He furthermore pointed out that the size of *jirga* depended on the extent and significance of problem, experience of its members as well as religious and social position, and understanding of the problem in addition to trust of the involved parties (Taizi, 2007). In simple words, *jirga* denotes a tribal or native body for judgement or resolution of quarrel, which assimilates the predominant local law, formal rites, and a group of rural elders whose joint verdict about the

settlement of a problem is socially and morally obliging on the altercating groups (Wardak, 2006).

Tribal bodies for serving justice were present long before the arrival of the British in Balochistan. The account that Sir Robert Sandeman “introduced” the *jirga* system in the tribes of Balochistan was based on the narrative of his native secretary, hence might be misleading; however, Thomas Henry Thornton contended that perhaps he meant to say that Sir Robert invigorated the system for settlement of disputes, among the Baloch tribes, which had fallen into oblivion (Thornton, 1895).

Jirga System Under the FCR

In a “Memorandum on the system pursued in the administration of the Punjab and Sind Frontiers,” drafted in 1878, by Mr. Lapel Griffin, Secretary to the Punjab government, and Colonel Sir William Merewether, Commissioner in Sind, the dire need for the specific steps taken for keeping peace and order in the frontier districts of the Punjab were scrupulously elaborated. It was explained that where the process in the districts diverged from the rest of the Punjab, it perhaps served the better purpose if it had incorporated current facts and accepted the distinct making of the tribal society. The tribes dwelling on the quiet eastern parts of the Indus had similar attributes as those inhabiting the border, but their integrity, was compromised by subjection to the British authority. The trained lawyers could never comprehend the tribal

ways; they only sought to right the wrongs or to reinstate the rights or claims of an individual. The integrity of the frontier tribes was somewhat maintained by an alliance with the external power against the common foe, which was considered essential by the denizens of the independent hills, and slightly by the willingness of the government to keep the tribal union, biases and prejudices alive for passing benefits. The motive behind the special formation and execution of law on the frontier sprang either from contiguity of relinquished region, or from the acknowledgment that away from Indus, the tribes and communities must be treated according to social eccentricities originating from tribal sentiment (The Frontier Regulations, 1919,pp1-2).

There were key guidelines that were considered essential for the fulfillment of the preceding principles in order to mitigate the severity of regular courts and provide room for situations that formal classification of law could not predict. Regulation 1 of 1872, 4 of 1873, 7 of 1873, and 11 of 1876 were formulated. 1 of 1872 comprised rules authorized by the imperial government and employed, under legislative approval, procedures that the local officials had to approve for administrative ease. One of the rules gave power to the Deputy Commissioner to impose fine on those Pashtun or Baloch elders, who might be found guilty of alleged crime, but who could not be indicted in the criminal courts owing to the formidable clan feeling or other reason (The Frontier

Regulations, 1919,p.1).A corresponding regulation (5 of 1872) (Sind Frontier Regulation) was given out on the 30th November 1872 for the administration and upkeep of peace in the districts of Kakar. The rule was applied on the 1st of January 1873 (The Frontier Regulations, 1919).

The hearing by Jirga or Council of Elders was officially recognized, for the first time, in the Punjab in 1873. It was legislated (Rules, Regulations 4 of 1873) that “whenever the Deputy Commissioner was of opinion that it was inexpedient that the question of the guilt or innocence of a person, should be tried according to the ordinary procedure, the Deputy Commissioner might cause such question to be referred to the decision of the elders convened according to the Pathan or Baloch usage, and imposed a fine according to that decision” (The Frontier Regulations, 1919,p.3).The Punjab Frontier Crimes Regulation was approved in January 1887 (Nichols, 2013,pp.25-49). This rule explained the Council of Elders, otherwise called Jirga, as “A council of three or more persons convened according to the Pathan, Baloch or other person’s usage” (Ginglair, 1893). Matters such as bloody disputes, manslaughter, misbehavior, and disruption of peace could be brought for settlement (section 10) to councils of elders (Nichols, 2013,p.33).

The Regulation of 1887 was in effect for a span of fourteen years, when circumstances necessitated further alterations, and the Regulation of 1901 was passed (*The*

Balochistan Codes, 1914). “An additional Regulation to provide for the suppression of crime in certain frontier districts” was put in effect in Balochistan from 1st November 1901. One of the major conditions of this Regulation was concerning civil or criminal references to the Councils of Elders, the Deputy Commissioner might deliver a verdict in agreement with the conclusion of the Councils of Elders, or according to the judgement of not less than three-fourths of the Jirga members, section 8 to 12 (The Frontier Regulations, p.5).

Jirgas, therefore, were officially founded under the Frontier Crimes Regulation 1901. The selection of members, the number was not less than three or four, was done by the Deputy Commissioner. The duty of the members was to resolve those issues that necessitated moral chastisement but not judicial indictment (Mathna, 1915, p.197). It was expected from the elders that their knowledge and expertise would prove helpful in providing the absence of legal proof. The Deputy Commissioner referred those issues to the Council of Elders, which most probably could result in “a blood-feud, or murder or culpable homicide not amounting to murder, or mischief, or a breach of the peace,” and he was obliged to execute their findings if they did not contradict “good conscience or public policy.” The domain of the tribal council included such issues as the payment to the wronged party, and the sharing of the responsibility to recompense among the close relatives or the fellow tribesmen of

the wrongdoers. However, the perpetrators were often detained, even though the practice was considered as an unwanted application of power by those who had experience of the system (Mathna, 1915,p.198)At times the Jirga seemed to fail in achieving the desired purpose as occasionally there was difficulty in getting honest men to be part of *jirga*, and sometimes the police officers or a magistrate assigned the case to the elders which otherwise more accurately fell under their domain (Mathna, 1915)

Types of *Jirgas* during the British Raj

In Balochistan, the *jirgas* were typically divided into five types during the British rule:

Local Jirga:

It was the most fundamental type of Jirga in Balochistan. Its members were local chiefs who would attempt to adjudicate family and clannish feuds, pertaining to manslaughter or infidelity, in order to check disorder and violence at the preliminary stages of a disagreement. All appointments to the local Jirga were authorized by the political agent (The Frontier Regulations,1919).

Joint *Jirga*:

The Joint Jirga (Jirgas) formed the second layer in the tribal legal hierarchy. The joint *jirgas* were arranged to deal with issues between tribal individuals belonging to two tehsils or to

sub-sections of the same district or to two districts or agencies. It consisted of the headmen and maliks from the tribes to which the disputing parties belonged. The administration had a compulsory representation at this stage of Jirga decision-making (The Frontier Regulations, 1919, p.34).

Special *Jirga*:

As the name implied, the special Jirga was summoned for special cases. Prominent men from Balochistan had representation on the special *jirgas*; whereas, at times the leading sardars of Dera Ghazi Khan and Dera Ismail Khan were requested to sit on them.

Shahi *Jirga*:

Shahi *Jirga* was called once or twice a year at Sibi and Quetta (Gazetteer of India, 1908, p.321). It was made up of chiefs and prominent men of the province who assembled to resolve the remainder of unsolved local or district-based blood disputes between the tribes that had serious repercussions for the whole territory. It served as the supreme court of the *jirga* system, which meant that the petition against its verdict could only be entertained by the Agent to the Governor-General (Nichols, 2013).

Inter-provincial *Jirga*:

Inter-provincial *Jirga* was held to resolve the issues between Balochistan on one side, and the Dera Ghazi Khan

District of Punjab, the Dera Ismail Khan of the North-West Frontier Province and Jacobabad of Sind, on the other side (Government of Pakistan).

All classes of *jirgas* followed their own rules and regulations. In certain areas, there were permanent local *jirgas*, which had members nominated for life, who would assemble once or twice a month on fixed dates, to decide on the local issues. At times, with the approval of the conflicting parties, minor committees were made out of the local *jirgas*, to give ruling on a special case.

Critical Appraisal of *Jirga* System in Balochistan During the British Indian Empire

Whether such permanent *jirgas* had any justification or advantage, there appeared to be multiple views on the subject. It was argued that this particular setup was feasible for those who had to be present at Tehsil or sub-divisional level on fixed dates, so that it would be unlikely that they should be asked for different cases at different times in different places. The bickering parties also found it easy to appear on fixed dates. However, the system had a downside as some members began to think that they had absolute right to judge, and were therefore, likely to misuse their authority (The Frontier Regulations, 1919, p.17).

As far as the Shahi and joint *jirgas* were concerned, the record presented before them was sometimes incomplete. It so happened that an important eyewitness had not been questioned or some document, which was vital for one of the parties, was missing or a map of the disputed land or a sketch of the scene of some grave matter was not attached. Sometimes, the particulars on the reference were insufficient or the nature of disputes unclear, which resulted in either the unacceptable ruling or postponement of the case. In addition, the *jirgas* seldom gave their judgement autonomously, as the British officials frequently attempted to overshadow the decisions (The Frontier Regulations, 1919).

It was also mandatory that the cases be tried under F.C.R. and the members of *jirga* be selected by the Deputy Commissioner or by the officer working under D.C. as well as the clear mention of names of the members constituting the *jirga* at its first get-together (Human Rights Commission of Pakistan, 2015,p.3). Besides, it was plainly specified that the Jirga would follow the terms of Mohammadan Law in issues pertaining to widow remarriage, although tribal practices were approved in matters which required payments to the late husband's family by the new husband as *walwar* (Deputy Commissioner Office Quetta, 1924, March, 12).

In a non-theoretic framework, on the other hand, Jirga's success in resolving social conflicts was financially connected

with the levy service. Lord Hardinge, the Viceroy of India, emphasized to the gathering of tribal chiefs in Quetta, in 1911 that they could not benefit from the honour of self-regulation through *jirga* unless they realized the government's requirement on them, that is, the curbing of crimes. Hence, if a tribe hesitated to hand over the convicted fellow, or resisted the implementation of a *jirga* decision, then they could be forced to follow the proceedings by denying their services and payments. The same procedure was applicable to a tribal head if he turned down a *jirga* ruling.

Jirga system was not only restricted by tribal rituals or economic oppression, it also had to function within the judicial context of Frontier Crimes Regulation. This Regulation sanctioned the political agent, serving as D.C. to condemn the culprit to almost fourteen years of laborious imprisonment in collaboration with *jirga* (Rai, 1922,p.iv). The D.C. or P.A. also reserved the right to exile any person from the district or agency, if that person is allegedly involved in extremism or activities that could result in blood disputes. The most severe clauses of the Regulation authorized the D.C. or P.A. and the *jirga* to take securities from families and sections, who would possibly be engaged in blood feuds. If there was murder while such a pledge was in place, the family or group of the convicted had to surrender the security. If a clan ordered to pay was not able to do so, the whole of them were incarcerated (Coen, 1971,p.163).

Such a relentless code, which severely oppressed the ones not actually responsible for misbehavior was the was the integral element of Baluchistan and nodded at by those who used such restraints as a contrivance.

Conclusion

In Balochistan enforcement of control seemed a logical weapon, whereas modernity was renounced to keep British interests alive. Imperial institution was invigorated and preserved by political authority and strategic-military domination. In Balochistan, the *jirga* system developed over a period of time in consonance with the shifting political and social complications. The British government's vision of the political and social structure in Balochistan was manifested in *jirga* system. Ironically, the very notion of preserving the anthropological wholesomeness of tribal customs in the form of *jirga* system mocked the British façade of self-interest in every aspect related to the imperial domination. Besides, the amalgamation of tradition, the *jirga* system was fundamentally another step toward oppression leading to slow assimilation of tribal society through political permeation.

On the other hand, the bitterness of foreign rule compelled the tribes to make certain shrewd choices, varying from association with the rulers to exploitation and misuse of its material assets to partial opposition. Despite transient mishaps, the *jirga* system in Balochistan did operate in service of the

British rule and fulfilled, though partly, the British vision to have a steady frontier zone unflustered by social upheaval, political discord, and foreign aggression.

The Jirga system was not, therefore, confined to just meting out penalties in local conflicts by the natives; it was closely, but underhandedly, connected with the delivery of Frontier Crimes Regulation. This furtive interrelation added a new punitive aspect to this system, very different from the customary dispute resolution forum. As categorized by the Frontier Regulation Authority of 1887, *jirgas* legally heard the cases and passed verdicts without concerning the subtleties and meticulousness of imperial court. This leniency in evidentiary criterion was allegedly counterbalanced by confining such *jirgas* to, in many cases, a mere application of fine. Apparently though, the Jirga was an institution for meting out justice that the British were proud of reviving, but the political agent or Deputy Commissioner maintained the privilege to reverse their ruling, implying that the final authority still rested with the colonial officials. In other words, the foreigners were now the driving force behind the tribal modes on the frontier. From the British perspective, *jirga* was an effective tool for executing oppressive and infamous dispute solution policy, which they, in a cloak-and-dagger style, applied through a local arbitrating body.

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