



## JIRGA SYSTEM IN TRIBAL LIFE

This booklet was published by Area Study Centre (Russia, China and Central Asia), University of Peshawar (April 2007).

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About Tribal Analysis Center

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## **Preface**

The jirga system is not a new phenomenon but obscured by the constitutional way of life. In current affairs, when the jirga system caught attention of the international community, it created some doubts. The tribal groups normally are sensitive to constitutional way of life. In Pakistan, the tribal groups – particularly Pukhtun and Baloch – had defied the British writ for almost a century and compelled that world power to accept in this region the shariat and traditions beside their laws. The tribal territories in Pakistan are still administered under a complex political system. It is somewhat difficult to understand the situation without the background knowledge.

The Area Study Centre (Russia, China and Central Asia), realising its responsibility of presenting relevant and authentic information on various aspects of the life in Central Asia to research scholars, assigned Dr Sher Zaman Taizi to prepare an article on the jirga system. We are pleased to note that he did the job in time. In this brief but comprehensive article, Dr Taizi has come out with the historical background, definition and utility of the jirga system. Having confidence in his scholastic ability and impartial approach, we deem it necessary to publish the article in a pamphlet form.

For information of scholars interested in detailed study, we may add that Syed Fida Yunas, a former Consul General of Pakistan in Afghanistan and author of fourteen books on the history of Afghanistan, has brought out a more than 575-page book on the jirga and loya jirga system in Afghanistan with rare and valuable documents.

Dr Azmat Hayat,

Director

21 February 2007

### **According to Scottish philosopher David Hume “Custom, then, is the great guide of human life.”**

The tribes that we are dealing with in this brief article are called Pukhtun - Afghan by Persian and Pathan by Indians. They live mainly in Pakistan and Afghanistan. “There are certainly almost twice as many Pathans as Kurds, which makes them the largest living tribal society in the world. They inhabit an area of more than 100,000 square miles bisected by the Durand Line since 1893. Most Pathans love their own barren hills with so fierce a passion that they do not leave them.

The tribal area in Pakistan – officially called Federally Administered Tribal Areas - lying between the administered districts of NWFP and the Durand Line is spread over an area of 10,510 square miles. In this mountainous tract live over 2,500,000 people who speak Pushto or Pukhto and call themselves Pukhtuns. According to the census carried out in Pakistan in 1998 the total population of tribesmen was 1,410,193. However, the figures for tribal territory in the census reports as well as quoted by other sources are estimates. The tribe counts its fighting strength only and normally in thousands, which baffles the actual population.

Pashtuns are organized into more than 50 tribes, each divided into sub tribes, clans and sub clans. The leaders of tribes, known as khans, have limited power. Important matters are usually settled by sub tribe and clan chiefs, or by a tribal council. Pashtuns have always resisted efforts to impose government control on their society. Traditionally, a social code known as Pashtunwali regulates the behaviour of Pashtun men.

When there was no government and no state – the sword made the ruler and the ruler used the sword – the people had to develop some sort of ethics to regulate their life. These ethics were born by necessity and turned into traditions. Pakhtun tribes call the set of these traditions Pukhtunwali (The code of life of Pukhtuns).

Good or bad, these traditions provide for rapid and cheap justice as compared with the winding, expensive and time consuming legal system in Pakistan. However, influential and powerful figures and administrators normally exploit and abuse these traditions.

Some traditional institutions of Pukhtunwali are: hujra (public guesthouse), juma’at (mosque), godar (water point from where women fetch water) and warsho (meadow). Hujra and juma’at are built within the precincts of the fortress and administered normally by the Malik or the head of the dominant family and catered for by all the houses within the precincts. The mullah or pesh-imam receives food and nominal succour from the community for his services. The mullah is granted a piece of land as seraye (the land kept and used and but not owned) by the community. Similarly, other religious or spiritual families within the community also receive charity from the community.

Some traditional practices are: jirgah, waak (authority/delegation of power), tiga or kanray (stone; truce), nagha (restriction, fine), melmastia (hospitality), chegha (communal turn out for defence), ashar or balandra (voluntary participation in works on communal projects or help an individual of the community in construction of his house or in collection of harvest), badal (retaliation), machalga (surety), swara (the girl married to an enemy in order to compromise a feud), walwar (money fixed for the bride), khoon-baha (blood money), tor (any type of accusation, particularly an act of rape or adultery, which are considered unforgivable crimes), matiza (a woman who elopes with her lover or is enticed away – in both cases, she is liable to be killed by the nearest relative), nanawati (a formality through which an individual begs forgiveness for a harmful act or speech), badraga (local escort), baramta (recovery of claimed money or property by force), bonga (abduction for ransom), zhagh (when a male is disappointed to marry a girl of his choice, he manage to fire rifle shots in front of the house of the girl to warn the community that he had a claim on her. The girl’s family tries to prevent it, but, once it takes place, then no body would ask for marriage with the girl.)

One of these traditions is ‘meetings and consultations’ for solution of day to day problems and resolution of conflicts. In Pushto, such meetings and consultations are called jirgah-marakah. Jirgah means the board of elders who act as members of the jirgah and marakah means talk, conversation and consultation.

In fact, the jirgah system is not limited to Pukhtun tribes. It is universal. In ancient times some Indian villages had councils. In Greek city, the place where people gathered for consultation called agora and in Rome comitia curiata worked as advisory council.

The Arab tribal community use the term of shura for such meetings and consultations. Islam approves this tradition in the best interest of the mankind, as: “That which you have been given is but the fleeting comfort of this life. Better and more enduring is that which Allah has for those who believe and put their trust in Him, who avoid gross sins and indecencies and, when agreed, are willing to forgive, who obey their Lord, attend to their prayers, and conduct their affairs by mutual consent, who bestow in alms a part of that which We have given them and, when oppressed, seek redress of their wrongs.” Mutual consent has been put here in line with other religious obligations, which denotes its importance in social life of the mankind.

### **In Persian it is called majlis and in Punjabi and Hindi panchayat.**

The Aryan tribes, which came down in intermittent waves from Central Asia to present Afghanistan and then moved to India (5000 – 1500 BC), tribes practiced a sort of jirgah-system with two types of councils – simite and sabha. The simite (the summit) comprised elders and tribal chiefs. The king also joined sessions of the simite. Sabha was a sort of rural council.

Jirgah means ‘an assembly, a party meets for consultation, a sort of democratic council amongst the Yusufzi’s.’ However, it is not limited to Yusufzai. It is the important judicial institution of Pukhtunwali. The jirgah comprises two or more persons; they are normally family elders or their representatives. Religious elders also attend jirgahs. Authority and competence of the jirgah member depend on the nature of the problems the jirgah has to tackle.

The jirgah exercises both judicial and executive roles to settle all disputes pertaining to the distribution of land, properties, blood feuds, blood money and other important inter-tribal affairs on the basis of tribal conventions, traditions and principles of justice.

There are no hard and fast rules for the selection of jirgah members. All reputable elders - Speen Geeri (grey-beards) - are considered eligible for its membership. However, for effective enforcement of the decision taken by the jirgah, the jirgah members should have social status with sound economic position and sufficient manpower at home.

The jirgah assembles in a hujra or a village mosque or in an open field outside the village. The jirgah members usually sit in a circle without any presiding figure. This meeting, like the round-table conference, without a chairman reflects their love of democracy and principle of equality irrespective of birth, wealth etc.

Sultan Bahlol Lodhi (1451-1489), a famous Afghan ruler in India, had formed a jirgah of elders to decide important issues. Whenever it was convened, the Sultan used to sit among them in the circle as a member. The Lodi sultans established an efficient administrative system in their king-

dom's central provinces that served as a model for later rulers. Bahlol and Sikander survived in part because they distributed estates to their Afghan supporters and interfered little with their tribal or personal independence.

Similar practice was followed by Sher Shah Suri, another famous Afghan ruler in India. He also kept a jirgah of elders and used to sit among them in the circle. When their descendants behaved as rulers and tried to suppress the tribal elders, the tribes switched over to their rivals – the Mughals – to end their rules.

The jirgah conducts its proceedings in a simple manner. It interviews both the parties, gives them patient hearing and examines witnesses to ascertain the facts of the case, although the jirgah members may know well about the facts. After searching enquiries, the jirgah makes every possible endeavour to find an impartial and acceptable solution of the problem. The decision is generally based on shariat and local traditions. In serious cases the jirgah asks a party to clear itself of the imputed charge by taking oath on the Holy Quran. This seals the issue once for all, as the religion is the extremely strong force. The jirgah announces its decision only when the majority of its members reach an agreement. But jirgah members deem it prudent to obtain the consent of both the parties before making its verdict public. This practice is known as waak or ikhtiar (power of attorney). It is through the instrument of waak or ikhtiar that the jirgah commits both the parties to abide by its decision. The waak also gives a binding force or some sort of legal cover to the jirgah's verdict and it becomes incumbent upon the parties concerned to honour its verdict.

The jirgah reprimands the party, which declines its award. In such a case the jirgah may resort to punitive actions for enforcement of its decision, which includes fine in cash, burning of the house of the recalcitrant members. In a serious case, when a dissident party violates the jirgah's decision and threatens peace in the area, tribal lashkar (irregular force) is raised to punish the violator. Because of such stringent action no one dares violate a jirgah's decision. The jirgah does not interfere in small and petty family disputes until a formal request is made by a party to intercede on its behalf. Moreover in cases of grave concern and serious nature, the jirgah assembles on its own and persuades the parties concerned to submit to its award.

The jirgah meetings usually last for a day or two, but in complicated cases, its deliberations are prolonged to three or four days. It remains, however, the utmost endeavour of the jirgah to settle the dispute amicably as early as possible.

Some scholars describe the Pakhtun tribal structure as 'regulated anarchy', because no single authority is recognized by the tribes and their relation with central governments has always remained loose and distant. It is 'regulated' because inside the tribe all social and economic aspects of life are strictly regulated by the unwritten customs and codes of behaviour. The decision making body inside the tribe is called jirgah, which is generally composed of the elders who are the leaders of their respective clans and sub-clans. Sanctions for offences and crimes are: fines paid in form of cattle or cash money, burning of house and execution.

Larger jirgahs (inter-tribal councils) are also held in emergency situations. Inter-tribal jirgahs are formed when inter-tribal feuds erupt in clashes and the whole fighting strengths of the involved clans or tribes are supposed to be in the battle field. The elders from other clans gather, form the jirgah for intervention and inform the rival groups. The first step of the jirgah in such a case is to effect ceasefire – in local term called tiga or kanray.

Syed Fida Yunas defines the jirgah as "The jirgah is an assembly of two or more persons to discuss and decide an issue which may range from a personal loan affair to a bloody inter-tribal feud. The size of a jirgah depends on the scope and importance of the issue. Qualifications of its members are social and religious status and proximity to the issue as well as confidence of involved parties."

Dr. Akbar S. Ahmad explains the necessity of the jirgah as: “In a society where there is no written or formal law the importance of an assembly is critical in ordering society and preventing it from collapsing into anarchy. The jirgah regulates life through decisions ranging from the location of a mosque to the settling of conflict within sub-sections, to largest issues such as regulating foreign relations with other tribes and even conveying decisions of the tribes to the government. Decisions are based on a combination of Islamic law and Pushto customs. The jirgah’s sanctions may include ostracism and disobedience would result in extreme approbation leading to fines and might even include burning of the house. A jirgah member may be either a respected masher (elder) or, if young, some one who has inherited the maliki (chieftainship) from his father.

It may be noted that there is no law enforcing agency and judiciary in tribal life; hence it is the responsibility of the jirgah members to ensure implementation of the decision. Therefore, the jirgah member must have social status with sound economic position and sufficient man power at home.

In Paktia province of Afghanistan, the decisions of the jirgah are executed by a sort of tribal police called ‘arbaki’. According to a traditionally established order, each clan and sub-clan of the tribe has to appoint to the arbakis force 5 to 10 out of 100 or 10 to 20 out of a thousand of their fighting strength. When, according to a jirgah resolution, the arbakis punish someone by burning his house or executing him, no one has the right to oppose them or to take personal revenge.

With the passage of time, the jirgah widened its scope. However, in Afghanistan, it was manipulated successfully by rulers as a forum of consultations on vital national issues or a sort of referendum on a matter of policy. Such a jirgah, representing all strata, sectarian, tribal and regional groups, and convened by the ruler was termed Loya Jirgah. On the eastern side of the Durand Line, the then British rule, and now the government of Pakistan, controls the situation in tribal areas through the jirgah-system. In case of inter-tribal disputes, joint jirgahs are formed for their settlement.

Syed Fida Yunas has enumerated various forms of jirgahs as:

- Tribal Jirgah
- Majlis or shura: Majlis is Persian and Shura is Arabic, both standing for meaning similar to that of the jirgah. In order to give the anti-Communist struggles an Islamic touch the term Shura was applied exclusively to councils at various levels among the mujahideen and muhajireen in Pakistan since 1978.
- Local jirgahs; the local jirgah/shura in a tribal setup is called by an elder of a tribe for settling local affairs within the family, clan, sub-tribe, tribe. This term was used in the Law of Local Organs of State Power and Administration (1981) also with a view in exercising control by the government on the decisions of the local jirgah.

President Babrak Karmal, through the so-called Interim Constitution of Afghanistan, titled Fundamental Principles of the Democratic Republic of Afghanistan (April 1980), tried to give a constitutional cover to the jirgahs. Article 51 in Chapter 6 of the said Principles lay down under the heading Local Organs of State Power and Administration as under:

In provinces, towns, woloswalis, alaqadaris and villages, local jirgahs (local councils) will be established to settle all relevant problems. The method of electing people’s representatives to local jirgahs and other matters related to organisation, powers, responsibilities and activities thereto will be defined by law.

- The high tribal jirgah of Afghanistan

- The consultative jirgahs
- Wolosi Jirgah – the Lower House or the House of Peoples of the bi-cameral parliament of the Afghanistan
- Mesharano Jirgah – the Upper House or the House of Elders of the bi-cameral parliament of Afghanistan.
- Milli Jirgah; Article 48 of the Afghan Constitution of 1977 (Daud regime) defines this jirgah as: “The Milli Jirgah of Afghanistan is where the will of the people is manifested, and it represents the whole nation.”
- Loya Jirgah – restricted to Afghanistan. It is the supreme manifestation of the power and will of the people of Afghanistan. The Loya Jirgah of Afghanistan can almost be considered equivalent to the assembly of founders in other countries but with a difference that the Loya Jirgahs are not called in Afghanistan for promulgation and endorsing a constitution only but can also be called as the highest manifestation of national unity and the will of the Afghan people and as the highest gathering for conducting discussions and making decisions on vital and significant national issues, particularly, in hard moments of crisis and danger. The Loya Jirgah can discuss nationally vital issues, general guide lines, domestic and foreign policies of the state and elect leadership of the country.
- Jirgah-e-Momassila: A replica of Loya Jirgah held outside Afghanistan for unavoidable reasons. The first such a jirgah was held in Peshawar, Pakistan, on 11-12 May 1980 which defined itself as: “This is that important representative boy of the people of Afghanistan, fighting for their independence, which has come forward in the extraordinary conditions, prevailing at present, and this body, in actuality, expresses the genuine will of the Loya Jirgah.” The second was held in Quetta, Pakistan, on 24-25 September 1981.

In case of a national issue, all tribal, social, regional and other units are supposed to be represented in what is called Loya Jirgah. As the history of Afghanistan reveals, the Loya Jirgah has played effective role in the economic, social and political spheres. Although, the ruler may try or like to dictate and manipulate the Loya Jirgah, yet voices in opposition have been raised in many Jirgahs. For example, during the reign of Amir Habibullah Khan the Loya Jirgah held in 1916 proposed, against the wish of the Amir, declaration of jihad against the British in defence 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 Jirgah in 1924 for his Nizam-nama (Constitution). The opposition enjoyed the backing of the British, which led to an uprising and the ultimate ouster of Amanullah Khan. In 1955, only one member of the Loya Jirgah, Hazrat Mohammad Ibrahim Mojaddedi, opposed the government's stance on the Pukhtunistan issue. In 1964, Ghulam Mohammad Farhad raised the question of the official language in favour of Pushto, which resulted in modification of the draft constitution in spite of opposition by the no-Pushtun members. The state was declared bi-lingual, making Pushto the first and Dari the second language. Some jirgahs proved disciplined classes, which raised hands to approve what the government placed before them. Such Loya Jirgahs were:

- a) Loya Jirgah of 1976 convened by Sardar Daud as President for approval of his constitution;
- b) Loya Jirgah of 15 June 1981 convened by Babrak Karmal,
- c) Loya Jirgah of 23 April 1985 convened by Babrak Karmal,
- d) Loya Jirgah of 29-30 November 1987 convened by Dr Najibullah,

- e) Loya Jirgah of 20-21 May 1989 convened by Dr Najibullah,
- f) Loya Jirgah of 28 May 1990 convened by Dr Najibullah and chaired by Abdul Rahim Hatif,
- g) The First High Jirgah for the Frontier Tribes (PDPA Controlled) of 14-15 September 1985

These Jirgahs approved whatever was placed before them but the other side – mujahideen and muhajireen – defied their competence and validity. The problem is that the jirgahs convened by government or local authorities comprised most of the handpicked and obedient members. The people don't approve such jirgahs willingly.

In principles, the mandate of the Loya Jirgah is maintained and implemented by the government.

Syed Fida Yunas has summed up his valuable information as “The views of the Afghans in general”, saying:

Barring a very few exceptions, having some reservations and differences of opinion, the Afghans, in general, are of the firm belief that panacea for all of the ills of Afghanistan of today or tomorrow, and the resolution of its socio-political conflict, lay in the convocation and decisions of the Loya Jirgah, in whatever form or shape, with whatever name, Jirgah, Shura or Majlis, and wherever it is held, either inside or outside the country. But that the preference, however, would be that of the age-old traditions of Afghanistan are maintained, the name of Loya Jirgah or Jirgah preserved and, the venue, as always, kept inside the country, and all the nationalities and region represented therein.

Recently, Pakistan and Afghanistan have committed to settle their disputes through jirgah system. This is some sort of new experience. The diplomatic way is given to traditional way to settle inter-state conflicts. In this case, some questions have to be considered and addressed:

- a. to find the root causes of the conflict;
- b. participation of conflicting parties;

The matter before the proposed jirgah is the ongoing insurgency in Afghanistan in which several parties are involved, such as drug mafia, warlords, Taliban, Hizb-e-Islami of Gulbadin Hikmatyar and, of course, some foreign elements who want to harass USA. So, this jirgah should have representation from those parties as well, otherwise they would not be obliged to abide by the decision of the jirgah.

Syed Fida Yunas has discussed in details all Loya Jirgahs in his book titled Afghanistan – Jirgahs and Loya Jirgahs – the Afghan Traditions (077 AD to 1992 AD).

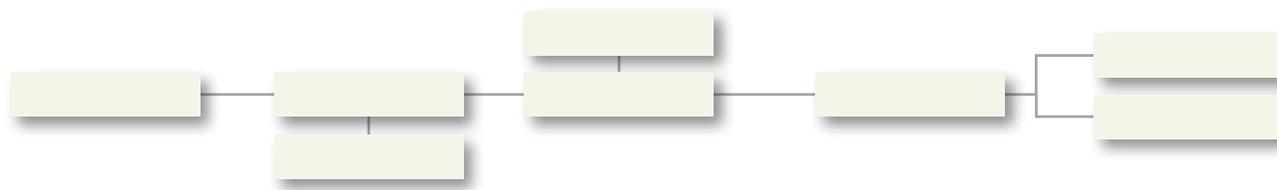
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# TRIBAL ANALYSIS CENTER

Traditional anthropological research conducted among tribes inhabiting remote areas where insurgents and criminals operate has become increasingly difficult to implement. Studies carried out among people living in small-scale societies now are nearly impossible due to the physical dangers associated with the civil and religious unrest found in those areas. Swat, for example, has become so dangerous that Frederick Barth's studies only could be repeated at the risk of the investigator's life. Similar research is not feasible among Burma's Rohingya tribes located on both sides of the border with Bangladesh, as well as with the Pashtuns in Afghanistan's interior and within Pakistan's Federally Administered Tribal Areas, where even Pakistan's army enters with reluctance.

Given the difficulties of conducting direct fieldwork in conflictive areas, the Tribal Analysis Center utilizes an indirect approach. Using multidisciplinary research, we seek to collect and analyze data obtained from a wide variety of sources, both current and historical. In the absence of new ethnographic fieldwork to update our base of knowledge, the Tribal Analysis Center compiles and summarizes existing research and documents on tribal societies, combining this material with contemporary press reports and articles. We assume that much can be gleaned from well-informed observers who are not anthropologists, ranging from journalists and travelers to government officials.



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