

Original Article

Legal Pluralism in Balochistan: Comparative Analysis of State Courts and Jirga Practices in Qila Abdullah District

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Abstract

The study aims to explore the co-existence of formal legal system and Jirga system in Qila Abdullah District as a case of legal pluralism. It examines Pashtunwali-inspired Jirga practices and the dynamics that communities experience between these alternatives, focusing on state courts that advocate for constitutional rights and procedural protections, and Jirga practices that offer culturally anchored remedies and solutions with a focus on Pashtunwali traditions. It is found that although Jirga is a means of accessibility and community trust, it is not inclusive and lacks oversight which may result into concern over equity and human rights. On the other hand, courts protect the constitutionality and are unavailable because of delay, cost and corruption. The analysis exposes the overlap, conflict and dependence on customary practices in the communities. The study concludes that ensuring social cohesion, fairness and accessibility in Balochistan calls for a balance of cultural legitimacy and constitutional protection to enhance the quality of justice delivery.

Keywords: Jurisdiction, Balochistan, Qila Abdullah, Jirga system, State courts, Pashtunwali, Access to justice, Human rights.

INTRODUCTION

Legal pluralism is characterized by the presence of more than one system of justice in the same society. The pluralism is most visible in the Baloch region of Pakistan where the formal legal system is based on British colonial law and on codified statutes, while the Jirga system is a customary legal system that is deeply rooted in Pashtun tribal law. This duality presents challenges and opportunities for justice delivery, especially in rural areas where the use of Jirga is prevalent, like Qila Abdullah. The formal, legal system is based on the principle of individual rights, constitutional guarantees, and judicial hierarchy and provides a set of rules for resolving conflict. However, it's not readily available in rural areas due to corruption issues, costs and delays. The Jirga system, on the other hand,

provides a quick, culturally fitting and restorative justice system with consensus of the tribal elders and principles of Pashtunwali. It is accepted on the basis of the trust of the community and cultural appropriateness, but has been criticized for the lack of regulation, non-representation in communities, and the possibility of violations of human rights.

This paper takes the example of Qila Abdullah district to explore the interaction, overlap and differences between these two systems. It discusses the similarities and differences among the role of court and Jirga as two structures of conflict resolution and legitimacy, inclusiveness, rights protection, and procedural safeguards. The study has implications for the general literature on legal pluralism, justice delivery and the problem of cultural legitimacy and constitutional compliance in Pakistan in this

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comparative context.

Background of the Study

Pakistan has two systems of administration of justice, formal and informal, the latter being informal aspects such as the Jirga and the former, elements of the law left behind by the British colonial regime. This co-existence is particularly evident in Balochistan where traditional values of the tribes have taken root in social life. The formal system relies heavily on codified laws, a system of courts, and protections of individual rights and consistency. However, it is not always possible to have access to it in more remote areas due to the time required in the bureaucracy, high litigation costs and a sense of “cheating”.

Jirga system based on Pashtunwali provide a swift and culturally-appropriate answer to conflicts, achieved by consensus between elders of the Pashtun. It is about conciliation and co-operation, rather than confrontation. In Qila Abdullah District, the Jirga is also beneficial in the way of settling conflicts since it is more economical and timely than the traditional court for these people. But, its limitations are pointed out such as lack of supervision, exclusion of women and minorities, and possible infringement on constitutional and international human rights standards. These twofold dimensions of justice delivery pose important questions of legitimacy, equity and efficiency. An enhanced state/court-Jirga relationship may lead to similar or conflicting interpretations of law, ultimately undermining people’s confidence in state court systems and/or increasing their confidence in customary systems. In this context Qila Abdullah is a fascinating case study for exploring the dynamics of legal pluralism, the relationships between the different legal systems and the implications for the delivery of justice and social integration in Balochistan.

Problem Statement

The presence of formal legal system and Jirga system in Balochistan creates duality in system of administration of justice in many cases giving rise to conflicted verdicts. The courts are primarily concerned with the codified law, rights and privileges as provided in the constitution, involve judicial review and tend to be slow, expensive and not readily available in rural areas. The Jirga, on the other hand, provides quick, culturally-appropriate solutions with no impartiality, legal status or protection for women and minorities. This conflict has resulted in a lack

of trust in the formal justice system, raised the importance of using customary justice and raised compliance concerns with human rights. The main concern is understanding the interaction, overlap, and clashes between these two systems, and the consequences of it for justice service delivery, social integration and legal legitimacy in Qila Abdullah District of Balochistan. Learning outcomes and purposes of the study.

Significance of the Study

The study is significant because it raises the delicate question of legal pluralism in Balochistan where the state courts and Jirga exist, and are operating side by side in the presence of overlapping and conflicting justice systems. The study is original in its approach to-Qila Abdullah District which uses the formal and customary mechanisms to gain insights about the strengths and weaknesses of these formal and customary mechanisms. The findings are relevant to academic studies of the delivery of justice and the human rights and governance of plural legal systems, and useful for any practitioners interested in how to enact policies that reconcile traditional norms with constitutional and international norms. In conclusion, the study assists in developing a greater understanding of the potential of cultural legitimacy and legal authority, as an adjunct to access to justice and social cohesion in Pakistan.

Research Questions

- What are the main similarities and differences between the formal legal system and the practice of Jirga in resolving disputes in Qila Abdullah District?
- Why Jirga practices are preferred by residents of Qila Abdullah District over the formal legal system in resolving conflict?
- What is the impact of the practices of Jirga on the perception of and effectiveness of the formal legal system within the communities of Qila Abdullah District?

Limitation of the Study

The limitations of this study are that it uses qualitative methods, such as interviews and documents, which may not represent all of the opinions in Qila Abdullah District. Results do not represent the views of the entire population, since large-scale surveys or statistical data were not used. Further, the study is restricted to one district which makes the results not representative of the other districts of

Balochistan or Pakistan. The use of community narratives also opens the possibility of biases, with people focusing on the cultural legitimacy of Jirga system and underreporting its problems. Lastly, comparisons with the formal legal system are drawn from secondary sources and local perceptions, which may not adequately reflect the wider legal system.

LITERATURE REVIEW

Historical background of Jirga

The Jirga system is one of the traditional tribal customs that has been existing for centuries in the Pashtun society. A “Jirga” is a gathering of elders to discuss conflicts, social issues and governance issues (Khan, 2022). It is based on the concept of Pashtunwali, a code of conduct that values honor, hospitality, and justice (Smolucha, 2024). Jirga decisions are traditionally made in a consensus building manner, and are based on collective wisdom rather than written law. The Colonials legalized jirga through the Frontier Crimes Regulation (FCR) and the Jirga system was used by the British to settle disputes in accordance with customary norms, and the authoritativeness of tribal elders was recognized (Pant, 2018). This codification helped to establish Jirga’s legitimacy and secure its continuation in Pakistan today.

Jirga’s Relevance in the Present Times

Though modernized, the system of Jirga is still the most prevalent ritual in Balochistan’s rural and tribal communities. It is quick, easily accessible, and culturally relevant; it provides justice at the community doorstep (Khan et al., 2021; Egbunike-Umegbolu, 2024). The remedies are restorative in nature, rather than punitive, and are aimed at reconciling and remedying. But critics suggest that Jirga reinforces the inequality and absence of women, and may be a violation of human rights, especially in honor killings and forced marriages (Hussain, 2022, Ali, 2021). There are no formal checks and balances, which could be problematic with regard to bias, partiality, and the abuse of power (Röder & Shinwari, 2015).

Formal Legal System in Pakistan

The formal (legal) system in Pakistan is derived from British colonialism and is based on codified laws, hierarchy, and precedents of past cases (Hasan, Faiz, & Azeem, 2023). Judiciary includes Supreme Court, High courts and subordinate courts, which protects constitutional rights and

provides judicial review (Lustig & Weiler, 2018). In the course of time, reforms have established specialized courts (family, anti-terrorism, environmental tribunals) as well as technology innovations to make the courts more efficient (Abbas & Ahmed, 2016). However, there are still issues to overcome, including delays, the backlog of cases, corruption, and restricted access for people who are most affected (Ooko, 2018; Tait, 2021).

Relationship between Jirga and Formal Courts

Jirga–state court relationship is complementary and conflictual. Jirga is efficient and is used by courts to settle disputes, and when Jirga decisions are dissatisfactory, they can be taken to formal courts (Burgelman et al., 2018). This duality gives rise to overlapping jurisdictions which make it difficult to deliver justice. Jirga is a cultural institution, but its opinions are sometimes at odds with constitutional state guarantees of equal treatment and fairness, particularly for women and minorities (Röder & Shinwari, 2015). There is a need to strike a balance between cultural legitimacy and legal protection, in finding justice that is accessible and rights-compliant (Galvanek & Planta, 2017; Hellsmark et al., 2016).

Legal Pluralism and Justice Delivery

The presence of Jirga and formal courts is an example of “legal pluralism,” the presence of multiple legal systems within a society. This pluralism is evident in Balochistan, both in terms of the strength of tribal traditions and the weaknesses of state institutions. Jirga offers a quick fix, but the inadequate system of supervision has caused concerns about equity and rights protection. On the other hand, the formal system guarantees constitutional compliance but has problems of accessibility. The challenge is to couple both systems together in order to enhance justice delivery and social cohesion (Selznick, 2020; Gul & Fayaz, 2022).

Gap in the Literature

Although some studies have focused on the colonial history of Pakistan’s courts (Hasan, Faiz, & Azeem, 2023), the history of the Jirga (Pant, 2018; Khan, 2022), and conflict between customary and formal justice (Röder & Shinwari, 2015), most of these studies have been national and broad in scope. Lack of district level analysis on functioning of legal pluralism in Balochistan, especially in Qila Abdullah. There are limited

studies that examine the role of community perceptions in influencing community dependence upon Jirga as opposed to courts, and few policy suggestions for ways community legitimacy can be balanced with constitutional protections. Based on this, this study seeks to fill these gaps and provide a localized comparative case study of Qila Abdullah, with implications for justice delivery and social cohesion.

Main Argument

This study suggests that the parallelism of formal justice and jirga in Qila Abdullah District also revealed strength and weakness of legal pluralism, which although courts guarantee constitutional rights, are inaccessible in most cases; Jirga systems provide quick and culturally legitimate justice, but vulnerable groups do not have their voices heard. There is a need for a balance between cultural legitimacy and constitutionality so as to ensure fairness and access to justice.

METHODOLOGY

Research Design

This study is a qualitative research design appropriate for the study of socio-legal phenomenon and hard to quantify. The study takes a case study approach with the focus on the Qila Abdullah District, providing contextualized insights on the functioning of parallel and concurrent state courts and the functioning of Jirga.

Research Approach

An interpretive approach provides a guide for research that focuses on community perceptions, cultural legitimacy and institutional practices. The analysis is based on the socio-legal theories of legal pluralism which help to explain the interactions between formal and customary systems.

Data Collection Methods

The study is based on secondary sources of information as well as community narratives which include interviews, academic documents, books, peer-reviewed documentation, policy documents and reports pertaining to the justice system in Pakistan. Additionally, local accounts and interviews, demonstrating dependency on Jirga by the community. In addition, the comparative analysis of the principles of human rights in the Constitution and under the international law. In addition, comparisons with

constitutional and international human rights principles.

Data Analysis Techniques

The research is conducted by qualitative content analysis which aims to discover shared themes in the issues of access and legitimacy of justice systems, rights protection and inclusiveness and overlapping jurisdictions and conflicting outcomes. The similarities and differences between the practices of state courts and Jirgas are highlighted through comparative analysis and contextual analysis places the findings in the broader context of the Pakistan legal system.

Sampling Strategy

The researcher applied purposive sampling technique consisting of selection of those stories and sources, which were most relevant to the coexistence of courts and Jirga in Qila Abdullah. This depth and the alignment to goals of the study.

Theoretical framework and conceptual framework

Legal Pluralism

The study is grounded on the concept of Law Pluralism, which is the essence of the existence of more than one legal system in one social system. This is manifested in the parallel mode of operation of the state courts and Jirga functioning based on two sources: constitutional and cultural, where both are 'legitimate'. The lens of legal pluralism is used to look at intersections, differences and relationships between these systems and how they impact justice delivery.

Customary Law Theory

The traditional rationale for customary law is to account for the existence of traditional institutions, such as Jirga. Jirga's legal validity depends on the continuity of the community and its cultural traditions; and trust in and consensus among community members. This framework is useful to explain the reasons behind the use of a Jirga by communities in Qila Abdullah, even when formal courts are available, highlighting the importance of cultural embedding in dispute resolution.

Constitutionalism

Its counterbalance is the principle of constitutionalism which focuses on the rights enshrined in the Constitution, judicial review and

equality before the law. It defines the boundaries of Jirga including in the arena of human rights, gender equality and protection of minorities. This is a view that emphasizes the conflict between cultural legitimacy and constitutional protection.

Access to Justice Framework

Access to justice theory focuses on access, availability and timeliness of the legal system. The Jirga is good for access and speed, but has problems relating to costs and procedure; courts are good for procedure, but have problems with delays and costs. This can be used to evaluate or compare a systems' ability to meet or not meet the needs of a marginalized community.

Integration of Frameworks

The study adopts a legal pluralist perspective of customary law, constitutionalism and access to justice, thus putting Qila Abdullah as a microcosm of the problems of justice in Pakistan. The theoretical framework, in turn, gives context to the analysis of the interaction of culture and constitutionalism as ways to further the ideals of fairness, access and social cohesion.

Data Analysis

This study uses content analysis of a qualitative approach to interpret the results of the interviews, community stories and secondary sources. Analysis is broken up into thematic categories, reflecting comparative dynamics of state courts and Jirga practices. The feedback received suggests that Jirga system is more accessible and efficient from Qila Abdullah due to its affordability, immediacy and familiarity of the community culture. In contrast, state courts are slow, expensive and inefficient; and they are not available in rural areas. The Jirga is credible in terms of Pashtunwali and community approval whereas the courts have a legitimate basis in terms of the constitution and written laws. The results show that local people trust Jirga more, however, there are problems with the trust in courts and there is a correlation between the lack of trust in the courts with the perception of corruption and inefficiency.

The statistics indicate that there is a huge disparity in the number of women and minorities in Jirga and a few issues have been raised on equity and human rights in the court. The theme stresses this question of legitimacy and constitutionality in the context of this conflict. Some could be problems of jurisdiction, where the problems are dealt with by the Jirga

and then taken to court, and the rulings could be inconsistent. The duality affects the trust in the formal system, which brings together customary practices.

The stories from Qila Abdullah highlight that although it is important for Jirga to ensure social cohesion, some of the decisions are not necessarily impartial or unbiased. Legally binding, but court is seen as off the ground. The data indicates that the legal pluralism in Qila Abdullah is both strong and weak; on the one hand, jirga has the power to reach the people, and has cultural legitimacy, and on the other hand, courts protect rights and constitutional compliance. The challenge is to join both systems to create a fair, inclusive and community trusted justice.

CONCLUSION

Duality of justice delivery in Balochistan is manifested as the presence of both formal justice system and Jirga system in Qila Abdullah district of Balochistan. While courts provide constitutional safeguards and uniformity, the process is delayed, expensive, and too far away for many rural communities to travel, and many are concerned about corruption within the court system. The Jirga is a quick, culturally responsive, and restorative process that offers culturally appropriate and community trusted solutions, rather than time consuming and formal processes. But there are worries about impartiality and it's exclusion of women and minorities and about no legal oversight. In this study, it has been found that the effective justice delivery in Balochistan is a balance between the cultural legitimacy and constitutional compliance. The merging of these two systems can enhance fairness, access and social cohesion and foster trust in justice.

Recommendations

There is a need to strengthen the justice delivery in Balochistan through policy measures like integration of Justice in Jirga system and integration of the concept of Jirga in the constitution. This can be achieved through setup of oversight mechanisms, the provision of a central point of contact to facilitate community-based solutions, setting up of community-based processes that meet national and international human rights standards, especially for women and minorities.

Accessibility of state courts is also important. Expand Legal aid and minimize bureaucracy delays, and mobile/court in rural area would

be beneficial to fill the gap between formal institutions and marginalized communities. This would make them more confident of the judiciary and less reliant on traditional approaches.

Last but not least, establishing inter-institutional and inter-tribal dialogue and mutual legitimacy building processes among state institutions, tribal elders and civil society can enhance discussion and build a sense of shared and active citizenship. It will be a harmony of culture which will bring about a more comprehensive, just and sustainable justice system in Balochistan that will guarantee social harmony and legal legitimacy.

Competing Interests

The authors did not declare any competing interest.

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