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Coexistence or Conflict? The Jirga, Legal Pluralism, and the Reform of Customary Dispute Resolution in Pakistan

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ABSTRACT

One of the oldest and the most enduring customary dispute resolution system in South Asia, the Jirga has been relying on the Pashtun moral code Pashtunwali and has been passing through different iterations of emperors and states. This article explores the tension between Jirga and the formal legal order of Pakistan with the legal pluralism lens and looks at the possibility of coexistence and/or conflict. It relies on doctrine and the comparison to study the Jirga in the context of constitutional protectors of Pakistan such as due process, equality, dignity and fair trial, and the obligations of the state in international documents such as ICCPR, CEDAW, and UDHR. The analysis confirms that some of the Jirga practices, in particular, swara (giving of girls in marriage to settle feuds), the tacit endorsement of honour killings and collective punishment are in serious derogation of norm-based constitutional and human rights. The analysis confirms that there are some aspects of Jirga which violate the constitutional and human rights based on norms seriously (swara – giving of girls in marriage to settle feuds, tacit approval for honour killings, collective punishment). The article also notes that the Jirga is easily accessible, rapid, inexpensive and culturally acceptable, continuing to use it despite the presence of formal courts, which are distant, slow and not trusted. Reviewing comparative experience from India, Malaysia and Afghanistan, and institutionalised alternative structures such as the Dispute Resolution Councils in KP, it concludes that neither abolition nor uncritical endorsement is appropriate, but rather, structured reform: A Jirga Regulation Act that limits the scope of the Jirga to consensual civil cases, incorporates women, and ensures against arbitrary action and a right of appeal; a judicial structure in which Jirga is integrated. The new Jirga, with the restored mechanisms, may help and not harm the constitutional provision of cheap and speedy justice.

Keywords: Jirga, Pashtunwali, Legal pluralism, Customary law, Human rights.

1. Introduction:

The Jirga is one of the oldest and most stable mechanisms of conflict resolution of the Pashtun people to resolve conflicts using the ethical code Pashtunwali. It is based on the principles of Pashtunwali: badal (justice/rightful retribution), nanawatey (seeking forgiveness/asylum), melmastia (hospitality), narkh (customary rules and scales of compensation), ghayrat (honour), wafa (loyalty). These principles will guide the Jirga to make decisions that are just in the eyes of the community (Ahmed et al., 2024).

Jirgas govern by consensus, without any formal courts. Jirgas take decisions based on personal testimony, knowledge of the community and history. It chooses elders who have the ability to

act impartially and a thorough understanding of Pashtunwali and are known as maliks and spin girey ("white beards"). They are known for their knowledge regarding the balance in society and the traditional values and family honour and their decisions are accepted by the community. There are two main goals of the consensual process of the Jirga: determining guilt or innocence and social reconciliation so as to bring disputants back into their community roles. This is a restorative orientation as a longstanding blood feud can tear apart the social fabric if not mended with honorable means.

The Jirga has been established throughout its history in a stable and flexible way. The Pashtun tribes kept their customary mechanism of dispute resolution despite the introduction of foreign legal systems and centralised legal authorities by the Ghaznavids, Mughals, Durranis and the British. The Jirga was under the rule of the Frontier Crimes Regulation (FCR) in colonial days, however it was altered by the introduction of outsiders, but its cultural role remained. It remained an independent entity following independence in 1947, and continued to be valued for its speed, simplicity and familiarity in rural population of Khyber Pakhtunkhwa and Federally Administered Tribal Areas (FATA). In Afghanistan, it was a custom and called Loya Jirga or great council for constitutional or political issues, practiced throughout the country.

In Pakistan's different cultures, the informal dispute resolution is in different forms: Jirga for Pashtun community, muchchi for Baloch community, panchayat in Punjab and faislo or jirgo in Sindh. Such mechanisms have been collectively called as 'alternative dispute resolution' (ADR) that deliver 'people-driven' and 'fast' results instead of 'formal justice system', raising the basic question of 'cooperation' or 'collaboration' of such systems in tandem (Naqvi, 2025). The situation is stark; these systems are culturally valued, but in many cases, these systems are in conflict with the Constitution of Pakistan and international human-rights conventions such as Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and Convention on Elimination of All Forms of Discrimination against Women (CEDAW).

This article will take a doctrinal approach, reviewing judicial decisions, legislation and field literature to determine the extent to which it can fit into Pakistan's justice system, or whether it is incompatible with it and, if it is, how the void can be filled to make it a lawfully, legally, and institutionally acceptable method of ADR. The picture that emerges is complex: the accessibility of the Jirga and its cultural legitimacy make it indispensable for a large part of the Pashtun community, whereas its unappealing, unsupervised practices, including but not limited to forced marriage (swara) and honour killing, call for reform (Ashraf et al., 2023; Chitlik, 2025).

2 Treatment of Women:

The most inhuman thing in Jirga is the treatment of women in the same. A negotiable instrument, woman is not included in decision making, and essentially even in this man led institution. According to Brohi (2016) women are held collectively guilty in instances of customs, such as killing of women for suspected improper behavior, as stated in provisions of UDHR. A type of marriage in which young girls are engaged into marriage to resolve conflicts, Swara is reported as a significant proportion of Jirga verdicts in Khyber Pakhtunkhwa and is a violation of child marriage and CEDAW (Sarfraz et al., 2022). A 14-year-old girl was forced to marry her brother in 2021, which was considered an example of gender discrimination in the Pakistani Constitution at Article 25(3) (Ashraf et al., 2023). Khan (2019) estimates that in a year some 1200 honour killings take place, many allowed by Jirgas and not reported to the police because of their lax practice of registering FIRs under Section 154 of the Code of Criminal Procedure. Moreover, collective sanctions, such as fines imposed on whole villages are inconsistent with ICCPR's demand for specific legislation that forbids punishment without a

clear law (Chitlik, 2025). A Balochistan case of 2023 involving the killing of the wife of a man shot dead for 'honour' from the hands of his family members for whom the funeral was paid out by diyat through the Jirga clearly demonstrates the issue (Sarfraz et al., 2022). There is also a form of discrimination against minorities, such as non-Pashtun being marginalised in Jirgas of the past FATA, which is a violation of Article 27 (Imran & Qadar, 2023). Others, however, find hope: "If it were not for its patriarchal nature, the Jirga's emphasis on 'repairing communities' would bear similarities to restorative-justice programmes like the Truth and Reconciliation Commission in South Africa" (Ahmed et al. 2024).

3. Pros and Cons of Jirga system and formal system:

The Jirga has some definite advantages, even though it has its drawbacks as a process of conflict settlement which is accessible, rapid and cheap. Unlike the multi-year pending cases in courts, Dispute Resolution Councils (DRC), which are a codified version of Jirga, in Khyber Pakhtunkhwa have been able to solve 85 per cent of cases within 90 days (Manzoor et.al., 2020). In remote areas of Balochistan, with less literacy rate and a smaller number of courts, the cost-free model of Jirga is a lifeline in these areas (Ullah & Khan, 2021). It is also effective: the great majority of Jirga verdicts are enforced by social pressure, as opposed to the courts (Khan et al. 2025). This is the constitutional principle which has been translated into Article 37(d) of the Constitution of Pakistan that provides justice at the doorstep justice is cheap and speedy or justice delayed is justice denied (Naqvi, 2025). The Jirga has been useful in the most difficult areas with Swat, having handled over two hundred cases of militancy from 2015 (Ahmed et.al, 2024).

The failure of the government in providing justice in the state can be seen in the persistence of the Jirga due to the state's incompetence and lack of provisions, particularly the tribal areas of KPK, Balochistan and the rural areas of Punjab and Sindh where formal justice is a luxury. There are only 0.7 judges for every 100,000 people in Pakistan which is much less than the global average of 2 (UNDP 2023), more than a million pending case load in Khyber Pakhtunkhwa and more than 60 per cent of villages in Balochistan without access to court. The situation is made more challenging by corruption and the message that the legal framework sends is mixed: The ADR Act, 2019 of the Punjab government mentions the panchayat in an ambiguous manner, and there is no effective regulatory oversight. (Ashraf et al., 2023) According to Khan (2025), the state policies (National Action Plan 2015) unknowingly enabled the Jirga, as the state used it when there was increase in militancy.

People's general view is that Jirga should continue but it should not be eliminated and it should be institutionalized and regulated. Chitlik (2025) and Khan et al. (2025) advocate for a Jirga Regulation Act that engages women, includes human rights and gender training, and includes court supervision. Naqvi (2025) suggests that, like in Malaysia, mediators of the Jirga should be licensed and that an arbitration law be given the same appeal mechanisms as those of court processes. Furthermore, Mehmooda et al. (2024) suggest that the mechanism of Jirga should correspond to the Constitution which can be facilitated through formal training of elders with some basic rights and models such as CEDAW and ICCPR, and extended by replicating the model of Dispute Resolution Council which is very successful in Khyber Pakhtunkhwa (Manzoor et al., 2020).

Constitutional status of the Jirga (2002)

The main issue is a violation of Article 10-A (right to a fair trial and due process). The jirga's procedures lack procedural features of the formal system: the right to an advocate, a formal hearing of evidence, and a reasoned decision subject to appeal to a higher court. This renders the decisions taken by Jirga a matter of chance and cannot be checked, which is contrary to the

constitutional provision of 'fair and impartial hearing'. The Jirga is also insulted by Article 4 which says that all will be treated according to the law - it is a parallel judicial system unapproved by law which subjects people to verdicts based on tradition rather than law.

Another contradiction relates to the principle of equality of all citizens before the law as stated in Article 25. It is a patriarchal Jirga, systematically excluding the women with regard to decision making and treating them as mere secondary, which goes against the Article 25. The case of Mansehra in 2021 in which a Jirga's order to have a 14-year-old girl wed a man was overturned by a court is a good example of the conflict, and the marginalisation of ethnic and religious minorities in the erstwhile FATA. Last but not least, many Jirga practices are in breach of the inviolable dignity of human beings as enshrined in Article 14. The exchange of women for the purposes of Swara to resolve conflicts and shaming and collective punishment are all acts of violation of dignity which are prevalent. These practices such as Swara for resolving the decision of Jirga, shaming and collective punishments all violate dignity. That battle is reflected in the Supreme Court's characterization of such decisions as "inhumane."

5. Lack of human rights and international obligations:

The practice of Jirga is not only contrary to the constitution of Pakistan, but also its international human-rights obligations. Pakistan has signed ICCPR and CEDAW which means that it has committed itself to ensuring the protection of the rights mentioned in the Convention on its territory, but the actions of the Jirga continually conflict with this obligation. The definition of marriage is different with Swara, in which girls are forced to marry men without their consent, which means they become property in the man's eyes, and reinforces gender-based violence in their lives. It is a denial of the right to life guaranteed by the UDHR and ICCPR and it is also an extra-judicial killing tool rather than an instrument of justice provided by the Jirga, which is responsible for an estimated 1200 honour killings every year.

The lack of procedural fairness of the Jirga also runs contrary to the ICCPR's guarantees of having access to a competent, independent and impartial tribunal. The spin giri are unskilled in law and largely affected by local power networks and a patriarchal approach. Collective punishments are founded on the principle of collective guilt, meaning that a whole family or a village is punished for the crime of one of its members—catering to a sense of collective guilt—that contradicts the principle of individual criminal responsibility. On top of this, the finality of Jirga's decisions means that people who are affected cannot appeal, and thus there is no fair judicial process.

After all these deplorable disadvantages, most scholars advocate for its pressing and total reform instead of its eradication, on the grounds that it is not possible for the State to offer justice that can be accessed by all its citizens. Lack of judges and huge pending cases in formal courts makes it impossible for the masses in rural and tribal areas to have access to it. Of all the villages of Balochistan, more than 60 per cent have no access to courts and jirga is the only forum available. It depends on its capacity to offer a substitute to the state – a fast, economical and culturally appropriate solution. The Dispute Resolution Councils of Khyber Pakhtunkhwa which have settled thousands of cases within a few months' time, instead of years in the formal courts, and the enforcement of Jirga verdicts reflects the degree of acceptance that formal courts cannot obtain. The Jirga has also helped in the process of reconciliation and communal healing in post-conflict contexts like the Jirga in the aftermath of the Swat conflict in 2015. Hence, a mere policy of 'abolition' without an effort to reform and to incorporate the Jirga system into the formal system of justice will create a void in the society's justice system. The more realistic alternative is going to revise and formalise the Jirga, and harness its strengths and mitigate its weaknesses so that it becomes more effective.

The study of comparative institutionalisation and regulatory models. The analysis of comparative regulatory and institutional models.

The issue of incorporating customary justice in formal justice is not unique to Pakistan and there are several examples to learn from. The village courts were established as a form of grassroot justice in the Gram Nyayalayas Act 2008, under the law, but recognised as panchayats and granted statutory status. This could be adapted to develop a legal framework that outlines the jurisdiction, power and procedures of the Jirga, and that provides for judicial review of its decisions (Mehmooda et al., 2024).

The Syariah Courts Act 1998 provides a model for the regulation of community mediation, which does not impede adherence to international human rights standards, and is suitable for allowing the Syariah courts to intervene in family and civil matters in line with Islamic principles without infringing fundamental rights (Khan et al., 2025). This model suggests a way to reconcile between Islam and the constitution in Pakistan. The Loya Jirga is a traditional institution that is now formally recognised in the Afghan constitution as a consultative body of people that is part of the state's decision-making process (Ahmed et al., 2024). The following examples illustrate that, if properly structured within a legal framework, Jirga can turn into a parallel instead of oppositional mechanism to the State.

7. Indian Constitution and the Rule of Law in India: Critical perspective:

The Jirga is appreciated for the social harmony it can produce, its role in keeping peace and its prompt resolution of conflict; it need not, however, be justice for the weakest. The following cases illustrate patterns and documented incidents where dignity, autonomy and even life could be sacrificed to fulfil the expectations of custom and tradition, which are directly at odds with Pakistan's constitutional and international duties.

7.1 The Price of "Honour": Balochistan (2023)

The case of Balochistan's remote area Mastung, in 2023, illustrated the harsh truth of honour killings that are condoned by the Jirga system. Untimely death that occurred when the young woman brought shame upon her family by her actions. It was also carried before the local Jirga where the council tried to resolve the matter between the offenders and the community, deciding not to prosecute the offenders, but to ask them to pay the diyat to the elders of the community (Sarfraz et al., 2022). The case is a failure of justice on many levels. This was an infringement upon the right to life, and essentially a personal license to kill being issued in the form of a profitable monetary reward. It took away the right to a fair trial under Article 10-A in the formal system, thereby placing the perpetrators outside formal system. It was an infringement on the Constitution's guarantee of equality (Article 25) and dignity (Article 14) of a woman and reinforced the view that a woman's life was cheap.

7.2 Bartering a Child's Future (Manshehra 2021)

In 2021, the High Court got involved in a case from Mansehra where a Jirga had ordered a 14-year-old girl to be married to her enemy's family to resolve a criminal dispute between her brothers, which is a form of swara that conceptualizes girls as commodities transferred as a means to settle disputes between men (Ashraf et al., 2023). The decision was an affront to child marriage, as prohibited by CEDAW, and to the right to voluntary marriage, as required by CEDAW, and could not be considered a treatment of the child as a child, but rather as an instrument; the decision was a challenge to the right to dignity, as guaranteed by CEDAW, Article 14. It was also definitely a gender discrimination against Article 25: the answer to the crime is a female child that has no relation to the crime. Even if the High Court's ruling that the Jirga's decision was null and void on the grounds of gender discrimination did not invalidate all decisions, it does show that the informal justice system is deeply rooted with a strong presence

of gender discrimination, with swara reportedly used in a large percentage of cases in parts of Khyber Pakhtunkhwa.

7.3. Collective punishment and economic coercion:

Jirgas routinely impose collective punishment, which is contrary to the ban on criminalisation unless there is a clear statute that sets out individual responsibility, and also engage in high profile violence and forced marriage. In the case of a family being held responsible for the transgression of a family member, a Jirga may impose a harsh fine on the family, or even ostracize or exile it. This is contrary to what modern law relies on, which is that a person is responsible for his or her own actions and that the potentially guilty must be punished alongside the innocent, thus creating a climate of fear, which is a violation of the due-process guaranteed by Article 4 of the constitution. These judgments have profound economic and social implications, plunging whole families into poverty and isolation without having to go to court, and show how the Jirga's influence is not limited to the hearing of individual cases but is also a social control system.

7.4 Ethnic Bias and denial of justice in the erstwhile FATA:

The tribal conflicts and ethnic prejudices that exist in Jirga in tribal areas of KP have been documented, while the non-Pashtun minorities in KP are marginalised (Imran & Qadar, 2023). Even though an original land document indicated that non-Pashtun family was the landowner, a Jirga consisting of Pashtun elders ruled out and decided that it was better to take land from non-Pashtun family and from non-Pashtun viewpoint, Pashtunwali code and tribal relationship was more important than land document. It was denial of the right to equality and non-discrimination guaranteed by Article 25, as an automatically-determined body on an ethnic basis is not an impartial tribunal, as well as the right of a fair trial guaranteed by Article 10-A. The recourse for these families may be restricted: appealing to state authorities is risky, formal courts are distant and feel like another world; and outcome of Jirga is final, and accepted by local power structures. It is a case that highlights potential of Jirga to exacerbate divisions among people and within ethnic groups and to serve justice not for all but for dominant group. These cases are not unique, but the expected result of a system with no legal or procedural protection and no regard for individual rights. They gave flesh to the bone of the seemingly abstract arguments between tradition and law. In other situations, however, the same institution can be a real agent for reconciliation, as in the following documented experiences.

8. The Jirga to restore – documented successes:

The Jirga is still alive because it reflects the trust, respect and values of the community and it is not imposed on the people but, it is moral in its very nature. Families, neighbours or tribes may become estranged, while the elders are chosen for their integrity and wisdom, and the community turns to them for their advice in an equitable, honourable and reconciliatory manner. The Jirga is an opportunity for the people to feel heard, respected and for decisions made to mean something as they have a sense of collective justice. This is a way for the villagers to be seen and heard, for the decisions made to have more weight, and for them to be respected. The utility also is evident: it provides fast, easy and cost-effective resolution, sometimes in a single resolution. This restorative ability is demonstrated in the four experiences below.

8.1. Swat Reconciliatory Jirga after Militancy (2015-2017):

When thousands of people returned from Swat (2007-2009) they experienced damaged homes, challenges in the family system, partially functioning courts and administration offices, which meant there was no justice. In 2015, a Reconciliatory Jirga was set-up in Mingora and adjacent tehsils comprising elders of the local community facilitated by community

organisations and the district administration and settled boundary disputes related to displacement, encroachment on land, financial problems, intra-family conflicts and lost houses. Since 2015, it has settled more than three hundred registered conflicts during 2015-2017 (UNDP, 2017). Complaints were voluntary, parties selected neutral elders (masharan) for the chair, and oral evidence, community knowledge and sworn statements (qasam) were used, and social guarantees (rukha) were used to reach consensus. The Jirga prevented 17 potential blood feuds (International Rescue Committee, 2016) and helped to reconcile families, restore civic trust after the trauma of insurgencies and to lighten the burden on already overwhelmed courts. This is recognised as a complement and not substitute mechanism for humanitarian action recognises that it has potential to complement the formal mechanism.

8.2 Khyber Pakhtunkhwa Dispute Resolution Councils (2014- Present).

The Khyber Pakhtunkhwa Police introduced Dispute Resolution Councils in each of the districts in 2014, to formalise the concept of Jirga in a legal system which would provide oversight, consent and written agreements. The councils, consisting of respected elders, retired civil servants, lawyers, and social workers, and organized under police station, but independent of police control, use the principles of musalahat, badal and nanawatey as outlined in the Pashtunwali. In the span of 2014-2020, they were able to settle more than 65,000 cases of land and boundary issues, neighbourhood and domestic issues, business issues and minor non-cognizable issues (Manzoor et al., 2020). Complaints are made voluntarily and are referred by the Police in the event that they can be compounded; hearings are open, attendance is recorded, settlements are negotiated and signed, and filed. In total, the councils have been able to resolve thousands of conflicts amicably without the need for court, thereby improving public confidence and not causing police-public confrontation, with approximately seventy per cent of the conflicts resolved, and had been introduced as a model of hybrid ADR (UNDP, 2018). They show how content of the Jirga can be maintained in a rights-aware-rule-boxed institution.

8.3 Inter-Tribal Boundary Settlement: Musa Khel and Zakhakhel (2008 to 2012)

There had been a contentious dispute between the Musa Khel and Zakhakhel tribes on grazing routes, use of forests and water management in the Tirah Valley for the past 40 years or more. State efforts at mediation were unsuccessful due to mistrust and geographical inaccessibility of tribes. Tension between the communities escalated in 2012 leading to armed clashes, and a Grand Tribal Jirga of neutral elders from Afridi, Shinwari and Orakzai communities convened by political administration in 2008, which continued until 2012. Oral information was gathered by the elders, maps drawn by representatives, claims were officially recognised by wak (power of attorney) and decisions were made when all the elders agreed, with an oath taken on the Qur'an and the tribal sword. The Jirga created demarcating boundaries for grazing and water usage, opened up trade routes, pacified armed conflict that was in the offing, and a monitoring committee that will prevent re-encroachment (CAMP, 2011; FATA Secretariat, 2012). The case shows how the Jirga was able to resolve complicated tribal issues where the court is unable to, related to land, resource and honour of the tribe.

8.4. Property and Inheritance mediation in Malakand (2010-2018):

In Malakand Division, family vendettas are often accompanied with violence as people dispute over inheritance and ancestral lands; the court is unreachable, expensive and slow. Over the last 10 years, peace committees and elders from within the community were able to resolve 300+ inheritance disputes, including with widows and IDPs who have returned. On one notable case that arose in 2014, three brothers disagreed over the partition of their father's land, and a widow was afraid the land was not registered in her name, and that she would lose her portion

of it. They collected oral testimony from neighbours, relatives and elders, employed community symbols such as trees and boundary stones, took sworn testimony, and insisted on fairness and honour by reaching a fair settlement and recording the widow's portion in writing. The peace committee registered the settlement and signed it by all the families, and therefore it will not be litigated any further. The case mentioned by UN Women (2018) about how women were able to claim inheritance quickly from a Jirga as compared to the formal court system is an example of how a reformed Jirga can strengthen women's rights, particularly when litigating is virtually impossible.

9. Recommendations:

The article puts forward some suggestions for reform of Jirga from various angles based on previous analysis. The aim is not to replace a strong-rooted cultural institution, but to reimagine it as a legitimate, rights respecting and viable component of justice system in Pakistan. The thorough Jirga Regulation Act at federal/Provincial level should be basis for reform. At least these laws should provide for scope of the jurisdiction of Jirga, restrict it to civil disputes: property, business, family related issues where both sides agree to mediation/arbitration proceedings and explicitly rule out criminal matters, in line with the Supreme Court's 2019 decision. It should ensure the representation of women in any recognised Jirga, by ensuring that there is meaningful proportion of women members in the Jirga, so that women voice is not heard and decisions made by the patriarchal norms. It should ensure fundamental procedural protections, including right to be heard, to present evidence, and to be informed of reasons for a decision for Jirga to move away from arbitrary decision-making to transparency and accountability. It should also provide a right of appeal to all the Jirga decisions before the formal courts, particularly before the District or Sessions Judge, to ensure that the authority of Jirga is checked and that it follows the Constitution.

Second, there is a need for capacity building and training a law is not enough to provide for a sustainable framework. Jirga members should be required to sign up for a certification and education programme on basic rights guaranteed by the Constitution, particularly Articles 4, 10-A, 14 and 25, as well as Pakistan's obligations under CEDAW and ICCPR; the impact of practices like swara and honour killing, and how these practices violate international law; mediation techniques consistent with values of restorative justice, teaching elders on mediation and how it promotes reconciliation without violating rights. Thirdly, judges' role in the monitoring of regulated Jirgas should be enhanced. In addition to appeal before the formal court, there should be periodic review of the decisions of Jirga to guarantee that it does not run afoul of public policy and fundamental rights. The Dispute Resolution Council model of Khyber Pakhtunkhwa, which is under supervision of judiciary, should be explored and implemented in other provinces and a formal link between Dispute Resolution Council and district judiciary would help integration. Fourth, public-awareness campaigns, organised with civil-society groups in local languages and using culturally appropriate media should raise awareness of citizens about their rights under the Constitution, scope of Jirga's powers, how to access legal assistance and how to challenge Jirga rulings, and should include advocacy on behalf of reformed Jirgas working in a lawful way as models for other communities. Fifth, the introduction of customary justice as a subject of law will give rise to a scholarship on customary justice like other common-law systems. Lastly, reforms should adopt principles of restorative-justice, stressing the "repair of harm" and reintegration of both the victim and perpetrator rather than punitive action, in mediated cases restitution should be provided to victim from funds created under Acid Control legislation, ensuring that victim's needs are at the heart of process.

10. Conclusion:

The old custom law or Jirga is a typical case of legal pluralism in Pakistan where old customary law exists alongwith modern legal order, in some cases in contrast to it. This study has demonstrated that the Jirga is a seriously flawed institution in some aspects of it contravenes the fundamental constitutional and human rights and still exists because of the weakness of the formal justice system. On which millions depend, it has replaced the state's courts for their slowness, cost, and inaccessibility. So, the future is not in 'abolition' but in 'transformation'. There does not have to be an opposition between the Jirga and the state, but there may be win-win cooperation. The Jirga could be institutionalized and reformed with a robust legal framework, compulsory education and robust judicial supervision. It offers benefits of access, speed and cultural acceptance that can be used in tandem with the formal system and its drawbacks of lack of due process and its unfairness towards women and minorities are managed.

The following section of cases is an illustration of what can be lost. The principles of constitutional law and human rights have a very real impact on the lives, dignity and future of the vulnerable. If someone doesn't speak against the abuse of the Jirga, one is responsible for it, if one removes it without a substitute, one is denying a good part of the people justice. A careful, considered, thorough reform is the responsible way. Pakistan has much to learn from other countries and should follow a pragmatic approach to make the Jirga an extra-legal and in many cases unlawful institution into a legitimate ADR tool that will fulfill the constitutionally guaranteed goals of cheap and speedy justice to all. It's not just the law, it's a moral and social responsibility for a more just, equitable and humane society.

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