

Jirga – An Informal Actor of Civil Society

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Abstract:

Despite controversies about its role, Jirga does qualify to be an actor of civil society because its mandate is to represent masses on volunteer basis and not as representative of government (public sector) and nor as representative of business (private sector) while addressing an issue to get it resolved. Secondly, as it ensures somewhat people's participation and consultative process of decision making, it gets justified to be considered an informal actor of civil society. Also imperative is to consider its social and cultural acceptance among masses as a social phenomenon that has deep-rooted existence. In this paper, both concepts of civil society organizations and Jirga have been explored thoroughly to reach into some solid conclusion. Similarities and differences of both have been investigated and then highlighted to provide adequate understanding to readers and general masses about Jirga, its nomenclature, role and significance. In this regard, all possible efforts ranging from interviewing relevant key informants to literature review have been made. Based upon the findings of both primary and secondary data and information, the study was concluded while suggesting both wider guidelines and pragmatic suggestions to make better use of Jirga as civil society actor in addressing issues and challenges of everyday life.

Key words: Jirga, civil society, Pashtoonwali, cultural acceptance, constitutional rights,

Introduction:

Among the informal actors of civil society, Jirga is one of outstanding body of decision making which has widespread social sanctioning among rural masses particularly tribal and semi tribal societies of Khyber Pashtoonkhuwa, Balochistan and neighboring Afghanistan. Interestingly, Jirga system do prevail among Hazara and many other ethnic groups both in Afghanistan, Pakistan and many central Asian countries of this region with varying names, structure and areas of influence and nomenclature.

Jirga is basically a well known word of Mongolian origin, which referred historically to a large assembly of men forming a very broad circle, intending to lay siege around games or animals to be hunted for sports or for food (Jirga-wikipedia, 2019). The term Jirga is also used in Persian and Turkish languages more or less for

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gathering of elders for consultation over a prevailing local issue and finding solution to it. But regardless of the origin of the word and its initial purpose, now it is treated as traditional institution of decision making and dispute resolution among many Pashtoons of Afghanistan and Pakistan (Barakatullah and Sajid, 2013). Similar to Jirga, there is Panchayat, which is being practiced by Punjabis across borders i.e. Pakistan and India and Baitak by rural masses of Sindh. Let it be Jirga, Panchayat or Baitak, the bleak side is that both constituent parties do not get a chance to appeal against the decision of this out-fashioned justice system.

Among Pashtoons, Jirga is treated as part of the teaching of “Pashtoonwali” which is a non written ethical code and traditional lifestyle being followed by most Pashtoons particularly in rural areas where tribal norms still prevails. Typically, it is used to resolve local issues and conflicts that may arise from time to time among a clan, sub tribe of a community at large or even between communities. Initially, holding of Jirga among Pashtoons was confined to be addressing issues that were associated with social evils such as conflict over cultivable land, family disputes and similar other minute issues (Wardak, 2013). However, it got wider scope and area of influence in this region particularly Afghanistan, to address major political issues when it was held at national level after collapse of Government of Taliban as a result of the incident of 9/11 attack on Twin Tower in USA by so-called Islamist group led by Usama Bin Laden. But, it is a known fact that the idea of holding Loya Jirga in Afghanistan was first discussed and finalized after having decided all concerns and issues of Afghanistan in the Bonn conference being held in 2001-2 in Germany where almost every ethnic group and international peace-building organizations were present to discuss and agree on issues of distribution of power and resources among inhabitants of Afghanistan (Ramsha and Fields, 2011). In the light of Bonn conference, the Loya Jirga was than called upon, which got international coverage and recognition due to two major reasons. First, it was attended by almost all types of influential Afghans such as politicians, warlords, clergies, women and tribal elders belonging to both Pashtoon and non Pashtoon ethnic groups such as Hazaras, Uzbeks, Tajiks, etc. The second reason was obvious that the world community had already decided its agenda and decisions before recognizing it as indigenous council of people of Afghanistan, which they presumed to be representing as councils of elders who have both the capacity and capability to lead the scenario of Afghan issue towards a peaceful end.

Apart from its political dimension as a traditional mechanism of conflict resolution, Jirga is expected to be playing its role as an alternative to formal legal framework. The decisions of Jirga among rural Pashtoons do guide the life of individuals, families and communities with regard to ensuring an environment of mutual respect, peaceful coexistence and harmony through its unwritten rules and regulations. It is argued by a segment of Pashtoon people that decisions being made by Jirga do contribute into formation of new value system or as an act to alter old ones. In Federally Administrated Areas (FATA) and Provincially Administrated

Areas (PANA) Jirga system is still being practiced strictly with its ugly face of inhuman major punishment such as stoning of culprit or expulsion of guilty party from his hometown. “Through Jirga holds the prestige of a court in the tribal areas of Pakistan, this at the same time does provide adequate space to enforcement of Frontier Crime Regulation (FCR) to ensure law and order situation by political agent as representative of government, which is believed to be inhuman and is being criticized by informed citizen of the country (Wikipedia, 2019).

Structure of Jirga

Despite the fact that Jirga is treated as “council” of elders, a social institution and a traditional court of justice, it rarely has a constituted body/structure among its practitioners both Pashtoon and non Pashtoon. It gets constituted from case to case; however, few of its constituent members might get somewhat permanent membership due to their social status and influence such as Khan, Sardar and Clergy, etc. To constitute a Jirga, five components must be there. These are (1) there must be two or more parties (2) a conflicting issue between parties (3) all concerned parties must show their consent to get the issue/ dispute resolved (4) an arbitrator to be selected by parties involved and (consent to accept and abide decisions of Jirga at any cost). If any of the five components is missing, Jirga cannot be constituted to resolve an issue.

Function of Jirga

The main function of Jirga is to resolve an issue or dispute through consensus in order to avoid further mishap as a result of conflict between two or more parties and to ensure peaceful co-existence and social harmony among clans, sub tribes or ethnic communities. Mostly, proceeding of Jirga is presided by a notable such as Sardar, Malik, Arbab, Clergy or even an elder (Safed Rish) who is mandated to preside over and give the final verdict of the Jirga. The involved parties, both the guilty or complainant, are bound to obey the decision.

Types of Jirga

While reviewing relevant literature, various types of Jirga were found to be discussed such as Maraka, Quami Jiga, Loya Jirga, Sarkari Jirga and Majlis Shura as its types. Among these, neither Sarkari Jirga nor Majlis Shura qualify for the word Jirga, as the former one is a controlled and preplanned act of bureaucracy, which is used to give cover to their already decided agenda of influencing a particular situation for the sake of national interest, policy matter or protection of vested interests of a particular group in a peculiar situation, while the later is basically an assembly of selected people by the government, who is mandated to legislate and contribute into mainstream legal framework of the country entrusted to them by the constitution.

Jirga can widely be bifurcated into the following types;

a) Maraka or local Jirga

Jirga and Maraka are sometime used interchangeably without noticing the thin line between the two. Maraka deals with issues that exist between sub cast system within a particular tribe and its members include elders of sub castes that

have adequately acceptable social acceptance among their peculiar (Pisha in Pashto) and (Taifa in Hazaragi) over relatively smaller issues between clans. According to different writers and researchers, the term Maraka refers to an environment which describes the situation by illustration that “The fact that members of Maraka comprise of elders of one khel (often a single village-based kinship group) clearly indicates that it is generally a local village institution. Therefore, we will use the term Maraka, throughout this section; to refer to the micro-level village (or inter-village) based local mechanism of conflict resolution (Ibrahimi, 2012). Maraka as a local institution of conflict resolution is closely related to the social and economic organization of villages. As the overwhelming majority of Afghans are agricultural farmers, it is mainly the agricultural farm, the orchard, the water-spring and canal, the water-mill, animal husbandry, orchard and the manufacturing of basic agricultural tools around which village is socially and economically organized. Resultantly, issues pertaining to utilization of common resources are resolved by Maraka at village level.

b) Qaumi Jirga - Tribal Jirga

Another level of conflict resolution mechanism commonly known among Afghan people residing both in Pakistan and Afghanistan is known as Qaumi Jirga, which is different in ways that it forgives one specific inhabiting tribes, who blames to be prominent. Qaumi Jirga deals relatively with major issue and conflict that lie between various tribes.

c) Loya Jirga

Loya Jirga is an assembly of leaders and elders from across provinces of Afghanistan, which is held over national political issues. Jawad ur Rehman – a research scholar puts it in the following phrase” Loya Jirga is a Pashto phrase that consists of two words – ‘loya’ which means 'grand', and ‘jirga’ which means gathering, or 'assembly'. Loya jirga in Afghan political culture means a ‘grand assembly’ of Afghan tribal leaders, elders and others who gather, in order to discuss vital national issues and make collective decisions. For centuries, Afghanistan has convened loya jirgas, and therefore, the whole terminology is deeply rooted in Afghan culture and history (Jawad-ur-Rehman, 2013). Despite its important role, Jirga of almost all three levels are predominantly male dominated. It was in 1974 that for the first time 15% of its participants’ membership was allocated to women. Compromising over repetition of narrative, the last successful Loya Jirga was held in Kabul Afghanistan after the Bonn Agreement in 2001. The prime objective; however was to bring about an end to ongoing Afghan issue by equitable distribution of power and resources among various ethnic groups of Afghanistan. Unfortunately, due to various reasons such as lack of capacity, absence of political will and vested interest of neighboring countries including influences of Saudi Arab and Iran the issue is still un-solved to towards a peaceful country in the region.

Civil Society

Volunteer association of masses into public affairs for safeguarding the interests of masses in mechanisms of policies and decision making is the true spirit of civil society activism. It can be practiced at various levels and with multifaceted interventions and areas of influences. Already bifurcated by experts is “associational life, “public sphere” and “good society” (Edward, 2012). Associational life refers to volunteer association of masses both into policy formulation and its true implementations. The prime purpose of this association is to influence decisions and their implications according to needs and will of the masses. While “public sphere” refers to having adequate space, time and resources for deliberation over the issues and concerns into avenues of public debates, which influence or may influence public opinion over a particular issue before it is finalized to be responded by relevant stakeholders including government. Whereas the term “good society” despite being generic deals with bringing about equilibrium between expectations of citizens and actual performance of state and government in a country. According to dictionary “civil society is the arena outside of the family, the state, and the market where people associate to advance common interests. It is sometime considered to include the family and private sphere and then referred to as the “third sector” of society, distinct from government and business” (Civil Society-wikipedia, 2019). Whereas Dr. Aisha Ghaus Pasha in her paper presented in an international forum quotes “civil society is composed of autonomous associations, which develop a dense, diverse and pluralistic network. As it develops, civil society will consist of a range of local groups, specialized organizations and linkages between them to amplify the corrective voices of civil society as a partner in governance and market (Pasha, 2004).

Another working definition of civil society comprehensively compiled by the London School of Economics; Center for Civil Society, is one illustrative example. It says, civil society refer to the arena of uncorked collective action around shared interests, purpose and values. In theory, its institutional forms are distinct from those of the state and market, through in practice, the boundaries between state, civil society and market are often complex, blurred and negotiated. CSO commonly embrace a diversity of space, actors and institutional forms and are often populated by organizations such as registered charities, NGOs, professional associations, community groups, women organizations, faith based organizations, trade union, social movements coalitions and advocacy groups (Lewis, 2001). The World Bank has adopted a definition of civil society by a number of leading research centers: According to its report “the term civil society do refer to the wide array of nongovernmental and not for profit organizations that have a presence in public life, expressing the interests and value of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations CSOs, therefore, refer to a wide array of organizations, community groups, nongovernmental organizations, labor unions, indigenous groups, charitable organizations, faith based organizations and foundations.

Types of Civil Society Organizations

Compromising the definitional differences they are broadly bifurcated into two major categories of formal and informal set ups. Additionally, there are differences of opinion between experts about inclusion of media and political parties into mainstream of civil society. Both, media and political parties proclaim to be representing masses in efforts pertaining to protect interests of general public, but practically their acts do not actually match with their proclamation.

Informally, civil society organizations comprise organizations and institutions which still require social sanctioning and recognitions. Jirga, for instance, has been proved to be very useful set up in resolving issues and conflicts and making consensus between divided public opinion over disputed issues. Formally, organizations and groups having a definite hierarchical set up and registration are considered to be formal types of civil society organizations.

Jirga and Civil Society

Despite being widely bifurcated into formal and informal types, there are similarities between the two while considering their differences too.

Similarities:

- Both Jirga and civil society proclaim to be helping and supporting masses on their efforts pertaining to resolve either a particular issues or bringing about changes to improve the entire deteriorating prevailing situation
 - Jirga as traditional social institution and informal actor of civil society is not registered under any law of the country, but has social acceptance among a peculiar segment of citizens
 - Jirga and civil society both believe to have the mandated and support of masses in their efforts in order to influence policies and decisions making mechanisms of whatsoever nature for the interests of people
 - Civil society in general and its formal and informal actors in particular including Jirga proclaim for in-built grass-root support of masses, therefore both do not follow any organizational nomenclature or organizational structure. However, its formal organizations such as NGOs, Trade Union and Professional Association etc do follow all legal requirements to function.
 - Both Jirga and civil society feel free to explore and investigate into any issue of whatsoever nature at international, national and local level without considering their scope, limitations, areas of influence, capacities, capabilities and actual mandate.
 - Neither Jirga nor civil society in its totality has media and political support for their roles and contributions to be promoted and protected at international, national and local levels, which indicates an alarming situation for their existence in future.
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Differences:

- Jirga is primarily a temporary body and its decisions are questionable within the framework of present world scenario, while civil society activism is regular and future oriented.
- Jirga is being practiced and adhered to its decisions by tribal set up characterized with jargons such as unschooled and illiterate audiences, while civil society activism is the outcome of the feedback of informed and sensitized citizens.
- Jirga members get selected on the basis of their social, economic and tribal influences, while civil society activism is based on altruism, selflessness and human values.
- Jirga as traditional assembly of elder is confine to be addressing only local family and communal issues, while civil society has the mandate to address any issue of whatsoever nature globally and at all possible forum and with all present and future strategies and possibilities.
- Jirga's recognition is community specific, while civil society is an avenue to everybody irrespective of cast and creed and belongingness.
- Decisions being made by Jirga, mostly contradict constitution and legal framework of the country as it follows conventional and outdated traditions, while civil society organization's mandate is updated and in accordance with international conventions and national legal framework.
- Jirga members authenticate its decisions while taking support from religious leaders and clergies, which is irrational and not supported elsewhere, whereas civil society do not give verdict before reaching consensus over a particular issue.
- Tribal set up does provide somewhat protective shield to Jirga and an alternative traditional court of justice, otherwise it has no legal justification according to constitution, intellectual discourses and international development agenda.

Conclusions And Recommendations:

Since Jirga is an informal actor of civil society by its very nature, therefore, there strong need to get it re-structured and reorganized for its effective utility. In this regard it must be given due recognition at national level while broadening its vision, perspective and approach to address issues concerning to social problems, environmental degradation and advocacy related issues and challenges instead of letting it exist to focus minutes issues of tribal set up ranging from family affairs to distribution of water resources among various clans or sub tribes.

At present the approaches of Jirga to address issues are outdated which do not match neither with progressive approach of modern world community nor requirement of genuine issues that has international significance such as gender disparity and climate change etc. Violation of women rights is a common feature of Jirga's decisions, where girls are given to the affected ones of the case to compensate graviencies. It is now a high time to restructure Jirga's role and contribution while defining its scopes and limitations while addressing an issue. Furthermore, it is advisable to ensure

participation of women in it at-least on issues where fate of an woman is to be decided.

Currently, Jirga has a “post operative / reactive” approach to deal issues after it has happened, which must be replaced by proactive approach. Jirga as an actor of civil society must be helped to become active by working on prevention of social evils and problem.

As participation of masses is a key towards sustainable development and social sanctioning of new concepts and program, therefore, this feature of Jirga must be kept in mind while striving to get it restructured or redesigned. Presently, there is representation of ones while constituting a Jirga, where notables get a chance to participate must be replaced by ensuring participation of everybody from all strata irrespective of their socio-economic status and gender.

The issue pertaining to mainstreaming of Jirga and its decisions as an indigenous and culturally acceptable court of law into national legal framework is a complex issue that requires lots of research work to get better insight. Any haphazard decision to reach any final decision ought to be avoided.

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