

## The Process of Jirga and Maraka (common negotiation) amongst the Pashtun Tribes

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Research Article

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**Abstract:** Of the many traditions of the Pashtun tribes, one of them is the practices of Jirga and Maraka. After a crime has occurred, if the victim chooses the path of peace instead of taking revenge, they have chosen either Jirga or Maraka. The Pashtun Jirga has a regular flow and progresses at various stages. The Pashtun Jirga is created by taking both parties of the dispute and having them take part in a mediation meeting in order to begin the process of inquiry. After the investigation, the Jirga council makes a decision based on the tribal law and once decided, shares the decision with the members of the Jirga. If it was acceptable for the council, they then announce the decision to both sides of the dispute in the presence of tribal elders, Mullah Imam and the youth. If agreed, conciliation will be made and the appropriate compensation will be given to the victimized party. If the decision is not accepted, they will be invited for the second and third stages of the discussions. The third attempt is final and must be the conclusion of the Jirga.

**Keywords:** Pashtuns, Jirga, Maraka, Marakchay (councilor), compensation, tribal law, agreement

### Preface:

Pashtuns have a set of customs, habits and special cycles called Pashtunwali. Among the Pashtun traditions, there are the Jirga and the Maraka traditions which are widely practiced by Pashtuns. Alternative resolutions for the dispute are presented and instead of hostility between both parties, there is a restoration of peace. There are many tribes in Afghanistan, all of which have the tradition of Jirga and Maraka, however, there are many differences between the Pashtuns tribe's Jirga and the other tribal Jirgas. There has been a lot of research regarding the Pashtun Jirga, yet the steps and stages have not been properly investigated and categorized. Due to this issue, I have chosen this subject as my essay article. This essay aims to clarify the concepts of Jirga and Maraka as well as the differences between them, the terms/nature of the council and the stages of Jirga and Maraka from the beginning to the end.

### Research issue:

All tribes of Afghanistan have the Jirga and Maraka tradition; however, the Pashtun's Jirga and Maraka have ordered stages and flow which differentiates the Pashtun's Jirga from other Jirgas among

the tribes. Although Pashtuns' Jirga and Maraka have been researched, the stages and flows have not been categorized properly, which is the main point of research in this essay.

### **Research purposes:**

- Introduction of Pashtuns' Jirgas and Maraka
- Getting familiar with Pashtuns' Jirgas and Maraka stages
- The clarity of Pashtuns legal interactions

### **Importance and necessity of research:**

Narrations of Pashtun magazines and interviews have been cited by various domestic and foreign scholars; however, the flow and stages of conducting the Jirga and interviews are not regularly mentioned. Also, the description of the Jirga and Maraka in some of the recent writings only take into account past practices and do not include the current situation. Therefore, it is necessary to conduct a thorough investigation and to clarify the status of the Jirga, the Maraka and the procedures on a regular basis.

I am convinced that this research paper fully clarifies the narratives of the Pashtun Jirga and Maraka and provides more and more accurate information on the Pashtunwali and Pashtun traditions.

### **Research Methodology:**

This study is a qualitative-analytical study in which information is collected at both the library and via the community members/actions. Telephone interviews were conducted with ten tribal elders and men of Logar, Paktia and Nangarhar using local methods and the data was analyzed qualitatively.

### **Literature Review:**

Various domestic and foreign scholars have written and researched on Pashtun traditions, particularly Pashtun Jirga and Maraka. Many scholars have introduced Jirga and Maraka in the Pashtunwali Hall, highlighting the historical background and importance of this tradition. The process of Pashtun Jirga and Maraka has not been fully explained, so the first part of this research discusses the tradition of Jirga and Pashtun Maraka.

### **I: A brief introduction of Pashtuns:**

Pashtuns make up a large percentage of the population of Afghanistan with an ancient and rich history and Pashtuns are Aryan. The Aryans are the largest nation in the world who immigrated to their native island, Ariana Vijo, about 4500 years ago. They settled in Balkh after crossing the Amu River and established a high civilization.

The book, Ragweed, mentioned 10 tribes of Aryans, one of which is named "Pak-hat", therefore we can say that Pak-hat tribes (Pashtuns) existed approximately 14 centuries ago. Herodotus, a Greek historian who lived in the fifth century BC, called Pectius one of the Aryan tribes. The Pakhat tribe later migrated from Balkh to the southern part of the Hindu Kush and settled in the south-eastern part of Ariana. The area where these people live is called Paktia, Pakhtia, Pashtunkhwa, and Pakhtoonkha. Herodotus, the Greek historian, named their area Paktia. Ptolemy, the Greek geographer, named their main area as Pekteen. (Meya kheel, 1383, p 3-5)

According to the above information, the Pashtun name is derived from Pak-hat and Paktius. There is another view of how the Pashtun tribes were named which states it had been derived from two

words, Pasht and Tun. In the Pashtu language, the word ‘Pasht’ means a high place or area and the word ‘Tun’ means an area that is not elevated, an indication of people living in the mountains and highlands. According to traditional Sheikhs, Pashtuns are divided into five social groups, which include Sarbani, Betani, Matuzi, Karlani, and Gharghashti Pashtuns. (Ahmadzai, 1359, p 14)

## **II: Pashtu and Pashtunwali:**

Professor Qiyamuddin Khadim states in his book about Pashtun and Pashtunwali entitled *Pashtunwali*, “Pashtun is a tribe’s name and when they say “Pashtunwali”, it means Pashtunwali with all its content, meanings and properties that a person might relate to.” (Khadim, 1331, p 18).

Professor Habibullah Rafi quoted professor Sediqullah Reshtin’s article about Pashtunwali as follows: “patriarchy, acceptance, granting of asylum, standing up for words and language, protecting the honor, respect for elders, respect for women, helping the poor, and so on. Good manners are embodied in the ideal Pashtun and Pashtunwali concept and all the historical honor of Pashtun, national spirit and ethnic dignities are portrayed in these words.” (Rafi, 1380, p29).

## **III: Getting familiar with Jirga and Maraka:**

### **1. Jirga**

The Jirga is one of the most important judicial organizations for effective use of Pashtunwali. This is a meeting of tribal elders to discuss and make decisions regarding their families’ quarrels and disputes. Members of the assembly are elected leaders of the tribes that participate as a representative of their respective tribes in the assembly.

The Jirga not only determines the extent of damage to one side, but also holds the other side accountable for its decision when necessary.

In other words, a Jirga or council is a meeting of two or more people to discuss issues ranging from personal affairs to tribal matters. The numbers of members of parliament depends on the importance of the issue or problem. The power and eligibility of the participants in the Jirga depends on social and religious position (Kargar, 2003, p4).

Jirgas and Maraka have been highly positioned in Pashtun narratives and as a historically import aspect of Pashtun society (Rafi, 1380, p 190).

### **2. Maraka**

In the early stages leading up to Jirga, interviews are the primary advisory body with the powers of the judiciary to hear the claimants and make their decision (Kargar, 2004, p13).

The English author, Elphinstone, refers to the interview process as the judicial gathering (Elphinstone, 1359, p 182).

Maraka does not need to be held in a particular place such as government court. Whenever both involved parties ask for Maraka in order to solve the problem, they call an arbiter (Marakchi) who deals with these kinds of trials and the next individual of a higher status than the Marakchi is the Narkhai. These courts which are formed to solve problems do not exist like permanent governmental courts. They don’t have any special or chosen members but can be created if it would be necessary and do their judiciary duties. (Kabul university National Policy Research Center, 1389, p33).

Marakas are a unique Pashtun tradition. All Pashtun tribes practice this type of traditional negotiation but Ahmadzai’s system of negotiation is nationally recognized. If events in other tribes are not resolved through their traditional system of negotiation, people often request Ahmadzai tribe to

solve their dispute, because the decision made by them is final and cannot be violated by other tribes (Wakil Abdullah, 1321, p22).

### **3. Differences between Maraka and Jirga**

Maraka is similar to Jirga but have some notable differences. If the elders of the community come together to solve the problem, this meeting is called the Maraka (interview or discussion). This type of Discussion has the same meaning as the Jirga, but the difference between the two practices is that the Jirga is large and has many participants whereas the Maraka is on a small scale. The Jirga is also used to solve more complex or important issues which include the participation of the different tribe Jirga elders, where Maraka is only the elders of the same tribe (Wakil Abdullah, p23).

The council (Jirga) looks at the scale of damage and decides based on the tribal laws (Nerckh) to compensate women to the family of victim.

In small cases of incident the family of the perpetrator offers one, two or three woman, in big cases of the family of perpetrator offers from three up to seven woman, in case of murder the family of murderer offers seven women, if the family of the murderer offers apology and the family of the victim accept it, the number of the woman comes down to three.(Robinson, 1934, p 15).

Jirga gives women due to the type of accident and the amount of damages instead debt to the injured sides. (Robinson, 1934, p 15).

Note: the victim family men marriage with these women according to Islamic law and these two families become relatives of one another and there will not be enmity between them anymore. This Pashtun traditional law is against Islamic and Afghanistan criminal law.

### **IV: Pashtun Traditional Law**

Tribal laws (Nerckh) are referred to as legal and criminal interactions. The law introduces a general concept known as the scope of all crimes and the types of punishments within it. The (Nerckh) is a tribal law and all tribes are obliged to adhere to it. Those who disagree with the tribal laws are welcome to leave the tribe and community, however have no choice but to accept the law. Ahmadzai and Razmak's (Nerckh) laws are the most famous laws among Pashtun tribes. (Wakil Abdullah, 1979, p44).

### **V: Jirga and Maraka flow among Pashtuns:**

In most cases, after an event or problem occurs the Jirga is held by a number of members of the Jirga who are knowledgeable about law (Nerckh). Those members chose a jury from the members of the same Jirga to make decisions in the Jirga. (Marakachi) councilors or Dreman, begins its work and eventually submits the report to the Jirga. In small cases Marakas are suggested by government agencies to solve the problem as it is less time consuming and more cost effective for both parties. If the accused does not attend the Jirga, a unilateral decision will be made against them. In some tribes, either the offender is wanted in the Jirga or the (Mullahs) clergy threaten him from amongst the crowd and seize his wealth (kargar, 2003, p17).

### **VI: Jirga and Maraka stages:**

Jirga and Maraka among the Pashtuns are conducted on a regular basis in steps as described below.

### 1. **Getting power:**

If a problem is presented to the Maraka(council of negotiation) and the (Marachis) councilors are selected, they will first meet with the parties involved and ask for authority to make a decision. If both parties give them the authority of making decisions and promise to accept the decision, the councilors will start their work. If the authority was given with conditions then most of the Marakachis will avoid participating in the Maraka.

### 2. **Getting guarantee:**

After getting the authority, the Maracchi Councillors ask both parties involved to provide money and goods in an amount which is related to their own wealth as a guarantee which is called Machalga. The size of the guarantee depends on the issue. If the problem or event is large, the guarantee is high and if it is small, the guarantee is low. (Pazhwok, 1318, p345)

It is also possible that the negotiators are satisfied with the authority alone and will negotiate without any guarantee. If the negotiators ask for a guarantee and one of the parties does not provide the specific guarantee, then the negotiator will leave the negotiation.

In large and complex cases, the guarantee is necessary as one party may refuse to continue with the Maraka or discuss the decisions. In that case, the guarantee will be lost and the Maraka will be dismissed without any decision.

### 3. **Investigation:**

After the Jirga or Maraka, (Dareman) appoints a highly experienced individuals to investigate the incident. First, they visit the scene to identify the crime, in order to find evidence such as blood, footprints, hair and clothing etc. which may help in identifying the details of the crime. Investigators also talk with any eye witnesses on the scene and ask them about the incident. The eyewitness's statement can help to provide a clearer understanding of the situation at hand.

### 4. **Taking precautions:**

In regards to weapons, the Maraka take measures to help prevent further incidents by confiscating any type of weapon such as rifles or knives and withhold them until the matter is resolved. As soon as reconciliation is reached by both parties, the weapons will be returned.

### 5. **Locating the conversation:**

Determining where the negotiation takes place is an important issue. Jirga and Marakas are usually held in Masjids, shrines, or an agreed location. The Maraka location must be agreed upon between both parties. In some cases, the Maraka may be held at the home of a scholar, knowledgeable individual or influential person, therefore agreement is obtained from both parties and the interview takes place at that person's residence. (Wakil Abdullah, 1371, p33\_37).

### 6. **Making decisions**

After the negotiators carefully observed the scene, received information from witnesses and listened to the statements from both parties, the decision making begins based on the tribal law. The decision is then announced to the members of the Jirga and meeting. It is worth noting that if the

decision and tribal laws (Nerkh) contradict each other, then the members of the Jirga may request for alterations to correct the issue.

#### **7. Announcement of Sentence:**

After the negotiators reach a conclusion, both parties invite their family members, members of the tribe, elders and even children to the location where the Jirga or Maraka is being held. They then announce the final decision for all those invited to hear. (Wakil Abdullah, 1371, p 39).

After the decision is made in some Jirgas and Marakas, they swear on the holy book, The Qur'an. This ceremony is performed in the way that each party swears on the Holy book expressing loyalty to accept the decision. (Kargar, 2003, p9).

#### **8. Accepting and Rejecting the Decision:**

In some Pashtun tribes, the parties have to accept the decision made during Maraka but in the case of Ahmadzai laws, both parties are given the opportunity to prove that the decision was not based on truth and honesty. If a party is not satisfied with the decision made, they may request to go through the process again and appeal. Therefore, the individual can invite the Maracchies Councilor of his choice and talks with the former members of Maraka. Those who do Maraka sit together and argue on the basis of the tribal law (Nerkh) and both sides agree with each other with refusal or confirmation of the original decision.

If those involved in the second Maraka are still not satisfied with the new decision, then the third and final investigation will be deemed sufficient and must to be accepted by both parties.

The negotiators who were requested to participate in the review examine the first and second jury of negotiators on the decision to determine whether the tribal laws, Nerkh, are met or not. If the penalty or decision is made in accordance with the tribal laws, then only the individual who appealed will be informed of the decision. After the issue has been investigated, should there be any problems found with the decisions and the penalties in relation to the Nerkh, the negotiators will then point out the shortcomings of the first and second decisions and a final decision will be made based on all three reviews.

There is no right for the protester to show dissatisfaction against the decision that is made for the final time.

A good decision brings joy, peace, satisfaction, a better understanding of the problems and a satisfactory solution to both parties and therefore must be accepted by both parties and then implemented (Wakil Abdullah, 1371, p40).

#### **9. Peace and Reconciliation:**

Reconciliation and peace go hand in hand in order to successfully settle a dispute. Following the above steps the negotiators call both parties informing them that they need to prepare themselves for reconciliation, peace and the payment of penalties. Then the offending party of the case goes to the victim's house along with all those involved in Maraka as well as the village inhabitants to offer them a sheep. Those involved make peace amongst them and hug each other in front of everyone to show they are satisfied with the outcome. The debt which was determined by the Maraka is left near the victim. The victim has the authority to accept the compensation or may forego it maintain their honor during Maraka.

The sheep is slaughtered and food is prepared by the elders of both parties and eaten by all. (Wakil Abdullah, p 43).

If someone is killed or injured in the incident, then the Jirga pays the victimized party a woman as the penalty. Where the victim agrees with Maraka, then the offending party may pay an agreed sum of money to the victim instead of a woman.

Nowadays, the Maraka attempts to give a certain amount of money instead of women to the victimized party and this action has helped to reduce the habit of using women as a payment. (Ahmadzai, 1397, p 164).

### **Discussion:**

The Jirga and Maraka process in Pashtuns differ from other Jirga and Maraka in many ways. The process of Pashtun Jirga and Maraka in various Pashtun tribes is quite similar but the stages in some tribes are different. Wakil Abdullah writes in his book that in some Pashtun tribes the Jirga meeting is called upon, however the decision and conclusion do not begin immediately. A date is set between the two sides of the dispute to determined when to begin to discuss the matters. With every conversation I have had with the elders of Pashtun tribes, there are now strong efforts made to ensure a quick reconciliation and avoid delays, especially in cases involving death and injuries. Mohammad Akbar Kargar writes in his book that a Jirga will be formed if something happens. The Jirga decides on the basis of tribal law, but if the accused does not attend the Jirga, some tribes make unilateral decisions. In some tribes, the criminals are sent a notice by the Jirga to attend or the (Mullahs) clergies threaten them or expel them from the people and confiscate their wealth. Nowadays this tradition has ceased in most tribes.

According to Abdullah's information, the parties involved in the decision-making process are obliged to accept, but the parties involved in the Ahmadzai laws may request another Maraka if dissatisfied with the first Maraka.

Robinson writes in his book that, according to Pashtuns, in the case of murder there are seven women owed to the victim. If the victimized side accepts to participate in Jirga, then the number of women to be owed will be reduced to four. However, according to my information there is no reduction in debt based on accepting to participate in Jirga.

Accepting Jirga allows for the victimized side to avoid personally taking revenge and move to the Majlis or Jirga. When both parties participate in the Jirga, the Jirga receives guarantees (wealth or properties) from both sides. Pazhwak writes if there is a major incident or problem the guarantee is large and if the accident is small the guarantee is small.

### **Conclusion:**

Pashtun Jirga and Maraka has a regular process, that's performed in different stages. First stage of Pashtun Jirga and Maraka is getting authority from dispute sides. After that, Jirga and Maraka Start their affairs. Receiving guarantee (Money or goods) from both sides is the second stage. The third stage of Jirga and Maraka is inquiry and investigation. Through this stage, the Jirga council observe incident place and also gather information from observers of the incident and dispute sides. After that, the Jirga Council make decision and announce it to both sides in the presence of region elders and youth. If it was acceptable for both sides, conciliation will be made and compensation will be given to the affected side. If the decision is not accepted, both sides can invite second Jirga. In case of not acceptance

decision of the second jirga, they can invite third Jirga too, but decision of the third Jirga is the final decision, that cannot be rejected according to tribe rules.

### Suggestions:

1. Religion scholars must probe the methods of the Jirga and Maraka process from the Islamic viewpoint.
2. Universities and the other scholarly academies must carry out scientific investigations about Pashtuns traditions and other tribes.
3. Researchers must do critical investigations carefully and set the priority for the discussable issues.

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