

IMPLICATIONS OF PARALLEL JUSTICE SYSTEM (PANCHYAT AND JIRGA) ON SOCIETY

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ABSTRACT

The Colonial judicial system was a complex system. Panchyat system was its alternative that took decisions on the basis of norms and customs. During the Mughal period the panchyat comprised of laymen. The kings had always been sanctioning the panchyat system ever since the medieval era. The panchayat dealt with the petty matters, administration and tax affairs at lower level. Currently, the judicial system of Pakistan is overburdened therefore people resort to panchyat. It is usually believed that the panchyat is ultimately controlled by the ruling class of the society. Cases of the exploitation by Karo Kari, Vanni and other violations of human rights have been taking place in this parallel justice system which sometimes uses superstitious methods to determine the truth. Instances of Mukhtara Mai case, Aba Khel Vanni case and Kashmore case can be mentioned in this regard. No Doubt this system provides justice at the doorstep of a layman but the examples of exploitation and injustice have increased very much. Moreover the working of this parallel justice system is not being monitored by the Government of Pakistan unlike India as a result this system has become a tool of injustice in the hands of feudal and tribal lords. The reforms should be introduced in the judicial system so that this parallel justice system may be kept in its proper limits. The jirga and the panchyat cannot replace formal judicial system which is the result of hundreds of years of evolution of human mind and experience.

Keywords: Justice, Parallel Justice, Jirga, Human Rights

INTRODUCTION

Implications of Parallel Justice System Panchyat and Jirga on Society

After independence, Pakistan adopted the colonial legal system which was working in British India a long before the creation of Pakistan. This system was prepared to anglicize the people and to create the English legal culture in subcontinent. It was time tested system but its lengthy, expensive and cumbersome court proceedings were creating too many difficulties for the people hence needed reforms. Arbitration, Jirga and panchyat systems were the parallel justice systems prevailing in different parts of the country.

Panchyat has been a source of justice for a very long time. Different kinds of courts could be found in Mughal period dealing with different cases. Revenue courts were for matters about revenue and Qazi courts were for civil and criminal proceedings. The caste or village panchyat was also working at that time but it was outside the normal judicial institutions. (Sharma, 1965, p. 197) Justice in panchyat was done with the help of customs and Hindu law. The administration of villages continued to remain in the hands of Hindu officials. There was a panchyat in every village settling most of the disputes. In Mughal period the panchyats were comprised of non-professionals working independently without any government influence. (Sharma, 1965, p. 199) Akbar allowed Hindus to preside over their courts thus panchyats seemed to have received royal recognition. (Sharma, 1965, p. 200)

The people of the village looked after their affairs themselves and ordinarily they were not interfered with by the Sultan. (Awan, 1991, p. 537) So panchyat has been a source of justice since medieval ages and in present days it is working as a system of justice. In Mughal period justice was a ceremonious affair of the emperor. He has special staff to look after the judicial matters. In Auregzeb era, Diwan e Mazalim was formed for the legal complaints. Amir Adl was the Minister who had to deal with the judicial affairs. At that time there were Qazi courts for Muslims but for the Hindus panchyat system was also a source of justice besides other forums. A villager can originate its case anywhere as there were Parganah courts, Sarkar courts, Subah court and the Imperial court at the capital. (Awan, 1991, p. 198)

Village Act was passed in 1888. Panchyat Act was passed in 1912 to solve the disputes of petty nature while the Panchyats were earlier considered as arbitration committees only. Punjab Village Panchyat Act was enacted in 1922 to restore the authority of Panchyat. It was amended in 1939 to work in three dimensions i.e. firstly for the judicial purposes handling petty disputes, secondly for the administrative functions at the lower level and thirdly it had some legislative functions also for the generation of taxes to improve the standards of life at the lower level. (Waleed, 2008)

It is important to elaborate the Parallel justice system. In Pakistan, formal legal system is working quite well. People contact with the panchyat and jirgas to solve their disputes which is a routine matter in rural areas. Problem arises when the panchyat and jirgas act as institutions that take evidence, interrogate into the matters, give verdicts and inflict cruel and inhumane punishments upon the people by coercion. panchyat and jirgas are usually controlled by tribal elders.

Parallel justice system is informal system which is based upon customs and traditional norms. In Pakistan it works with the written or formal legal system. Ruling class is responsible for the continuance of panchyat and jirga justice system which is parallel to the prevailing judicial system. (Manto, 2004) The Judicial system of Pakistan is already overburdened and the people tend to avoid it. Tribal chiefs, feudal lords run this parallel system of justice through jirgas and panchyat in Pakistan and people use these forums for justice. (Bellamy Jr., 2008, p. 606)

People of backward areas use these forums for justice which quite oftenly violate the human rights. Hundreds of women have been killed while implementing verdicts of tribal courts on the name of Karo Kari, Vanni etc. These forums are not recognized by the law and constitution but the people have to obey their orders and rulings.

It is generally required by a legal system to be impartial. Justice demands that the punishments associated with criminal law be enforced only where people have opportunity to know in advance what the law requires and they also have the capacity to conform to that law and they actually have committed the offence in question, otherwise punishment is unfair. (Cambel, 2001, p. 248) In Tribal justice system high penalties for minor offences are given and even the commission of offence is difficult to detect. So we can't see moral seriousness and ethics in that kind of justice which exhibits utilitarian approaches. The Jirga verdicts in settled areas of NWFP are implemented by the Government as there it is recognized by law. But the verdicts from the illegal Jirgas are heinous in nature. They can pronounce even rape in their verdicts as it happened in Meer Wala. The other punishments including stoning to death, expulsion from area, destruction of the house, fine and physical punishments can also be given.

The situation of Panchyat system Legal pluralism means the existence of multiple legal systems in any country. In colonial countries the phenomenon of different legal systems

prevails because the indigenous legal system has been practiced by the common persons besides the formal legal system. On the contrary it is the wisdom of ages that a uniform system of justice should prevail for all citizens of a country. This need of uniformity increases in the criminal cases.

Provision of justice through the Jirga or Panchayat is a kind of political and feudal control over the poor people of backward areas. The Panchs belong to the most influential stratum of society and the members of the parliament also take part in the decisions.

Pakistan has Jirgas in Sindh, Balochistan, Khyber Pakhtunkhwa. The same kind of institution works in Punjab with the name of Panchayat. There are two types of Jirgas; the one is legal jirga of tribal areas with decisions challengeable in the High Court and the other is illegal in the form of panchayat held by feudal lords having absolute powers to make the decisions. The British rulers strengthened the system of feudal lords for their own interests. The feudal system supports panchayat and jirga the legislation and awareness is necessary to eliminate this evil. (Manto, 2004).

The feudal lords are influential and control the process of decision making. The jirga is accepted by the people as a legal norm. Women and poor have no access to justice and only the influential people are benefited from this kind of justice. Some landlords and parliamentarians support this system because they want authority in their areas. (Manto, 2004).

Devolution of Power at the grass root level is necessary for justice. The parallel justice system like panchayat is claimed to be providing justice at the gross root level. Its present situation is not promoting justice leaving women in disadvantaged condition and the lower class is suffering. Panchayat forum should serve the poor people but the formation of the panchayat as in the colonial days presided over by the feudal lord keeps the poor in distress. This court forum is used for the harassment and punishing cruelly the ordinary people. (Singh, 2009, p. 31).

Universal Declaration of Human Rights declares that every person has rights and remedy against the violations of these rights would be given by law or constitution through an effective and competent authority/tribunal. (www.un.org/en/documents/udhr) Jirga is a customary practice of arbitration for the people to consult on some minor issues but in practice the verdicts and punishments inflicted by Jirgas exhibits the parallel system of justice running besides the formal legal system.

The Sardari System was abolished in 1972 that stopped the powers of the Sardars. There was imprisonment of three years for the violators of this act. In Sindh, the tribal justice has such a strong hold that while in 2004 the High Court banned the Jirgas but even then the Sindh Government tried to pass the Sindh Amicable Settlement of Dispute Ordinance. The rural Sindh is in the cruel clutches of Waderas and they do not want such legislation which would weaken their grip in their areas. Here we would see the legal and constitutional status of Panchayat and Jirgas in our Country that how the people abide by the decisions of the Panchayat and Jirgas considering these institutions as legal.

TRIBAL JUSTICE

In honour cases, if the tribal Jirga or Panchayat gave verdict about any girl announcing her Kari then the girl must be killed. Aurat Foundation gave statistics about the murder of men and women on the decisions of Karo Kari by the tribal justice; there were 550 victims recently. Even in the developed cities like Karachi the people are killed because of tribal

verdicts upon Karo Kari or blame of the illicit relations. (Daily Times, 2009) Clan Members or family members carry out the sentences given by the Tribal forums, and at the name of honour these women are killed. There is no specific code of conduct regarding the law of the tribal justice. Different traditions are followed in different areas of Pakistan.

The honour killings murders and other types of homicide are not registered in Khyber Pukhtoonkhwa areas, the people are used to take their revenge by their own. So the case is not registered in the police station. Honour killings are not settled out in the courts. Honour is considered a thing, the loss of which cannot be meted out by the verdicts of the formal courts. So the parties take the law in their own hands and try to kill the people on the name of honour. The tribal persons think that only the customary laws provide the real justice for the honour related crimes. (Lindholt, 2003, p. 119)

The law enforcement institutions should satisfy the demand of justice extended by the plaintiff, it will satisfy them and they will not take law in their hands and if the culprit is released because of non conviction, the aggrieved party tries to kill the culprit to settle their scores which disturb the peace of the society. (Lindholt, 2003, p. 122)

JIRGAS AS A CONTINUATION OF FEUDALISTIC MINDSET

Feudal culture is supporting the panchayat and jirga justice in the country for their own interests. Feudal lords and Waderas want to control their people and clan members and if any member of the clan contacts with the formal system of country such persons are inflicted with punishment. The jirga and panchyat justice is only to suppress the poor by the Chaudhrys, Khans, Maliks, Waderas and land lords. These rich and influential people take decisions and impose them by force. No poor person or women are allowed to take part in decisions.

In this form of tribal justice the weaker portion of the society remains in loss while the interest of the powerful is safeguarded by these institutions. Panchayats and jirgas are presided by the feudal lords who themselves sit in the parliament that is why they are against the legislation to control these tribal institutions. If they try to make legislation against these institutions, they will certainly lose their own grip in the locality where they rule and that is against their interest.

Jirgas and panchayat are continuation of the feudalistic mindset. After the judgment of Sindh High Court against jirga, Arbab Ghulam Raheem presided over a jirga in the Circuit House. According to reports, in District Sukker, 22 jirgas were held in year 2007 and 14 innocent girls were given Sang Chatti and other four girls of Jatoi tribe faced same kind of fate. In the case of Karo Kari the sardar keeps the girl in his haveli before the judgment, and during this time one may only think about the situation the girl have to face. After keeping the girl in the custody of sardar, the girl is sentenced to death. (Babar, 2008)

The strong feudal system is responsible for continuation of this type of justice in Pakistan. A large number of politicians belong to the feudal class and they don't want to abandon this system of justice. Administration is also playing its role in the continuation of panchayat, jirga systems. In recent past, a feudal lord is taken out of the prison to preside over a jirga, so the feudal class is the supporter of this kind of system. (SDPI, 2008)

The situation of South Punjab is really pathetic, panchayat and jirgas in that particular area have strong hold over the lives of the common people. Verdicts here are passed in clear violation of human rights. South Punjab is closer to the customs adopted by the tribes of Sindh and Balochistan and has a trend of detachment from the formal system of justice. The famous case of Mukhtara Mai emerged from this area and attracted world's attention. The

Tribal council of this area named panchayat raped that girl to satisfy the influential people of the area while the police tried to harass the victim by keeping her in lockup. Mukhtara Mai became famous and she highlighted the plight of the poor people who are living under the cruel system of tribal justice. (Daily Times, 2007)

THE PANCHAYAT AND JIRGAS IN THE CITIES

No doubt there are still some deficiencies in the judicial system of Pakistan instead of present reforms which made it comparatively more efficient. Quick access to justice is still not available for the people living in distant areas. To contact with the police has own hazards. The courts are over burdened with cases. Then the people have no choice but to contact with these forums. Jirga model has also been adopted by the mafias in the big cities. The people having money disputes or who want to take possession of their lands contact with these mafia leaders for quick justice. These gang leaders have contacts with the police and solve the problems of the people by taking their own share. (Rehman, 2002)

METHODS USED TO SETTLE THE DISPUTES

Tribal jirgas use different strange methods to determine the innocence of the accused. The accused may be asked to walk bare footed on the burning coals; if his feet burnt then he is considered guilty and punished. If the fire not burns him then he is considered innocent. This custom is called (Bha pani) bha mean fire and pani is the water. Another foolish act is used to prove the guilt when the convicted person is asked to sit in the water for the specified time. If he can manage to remain in the water for the specified time only then he is considered innocent otherwise punished. (Afzal, Interview)

HRCF reported many incidents of justice done by the tribal councils. The incident of Larkana in 2001 was also cited where a matter of taking eleven lives was dealt with by jirga ordering the accused party to pay fine.

GRIP OF JIRGAS AND PANCHYATS ON OUR SOCIETY

In 2000 the Commissioner of Larkana banned the jirgas but the jirgas continued to be held without giving notice to the government. The conflict between Buzdars and Jaffars of Balochistans of D.G Khan District was resolved by the administration in the large jirga. In Sindh, most of the cases of kidnappings were solved by these jirgas. Even the grip of the tribal council is so strong there that it has given verdicts against the police in the past. In Nawabshah jirga, an SHO was ordered to pay fine and in Khairpur, the SHO, guilty of killing a landlord, was ordered to pay fine of Rs. four lacs to the family of victim. (Rehman, 2002)

PANCHAYET SYSTEM AS PARALLEL JUSTICE

Practically jirga is hardly based on system of justice. Power relations plays important role in the decisions of jirga. Recent researches have shown that the authority of the Malik and Sardars plays an important role in the decisions of jirga and favouritism is a common element there. Although many city dwellers tend to think that this system of justice provides speedy justice but actually the poor person suffers in this kind of justice. (Daily Times, 2007)

Almost all tribes have different customs and if we allow every tribe to implement its own kind of justice then there will be multi parallel systems with in a community which is against the principle of uniformity of every system for a particular community or nation. This system is based on patriarchal system of justice and the women are not allowed to participate in this

system; so the fifty percent of the population is deprived of its rights. There is lack of logic behind the decisions of jirgas, the irrational methods are used to dig out the truth and there burning on coal is a common practice. The women and poor are most affected people in this kind of jirga and pachayat justice. (SDPI, 2008)

Tribal justice is not merely the advisory body, it can trial the case, punishments are also given in its decisions and there is no chance to appeal. Vanni and swara are the main tools used against the women for the violation of their human rights. First the male members murder the person of other clan and then present the women for compromise in the shape of vanni or swara.

UNCONSTITUTIONAL STATUS & ILLEGAL VERDICTS GIVEN BY PANCHYAT & JIRGAS

The official system of justice is time taking as well as expensive so the country with nuclear power is using these kinds of old systems like panchayats and jirgas. (Singh, 2009, p. 31) Jirgas execute and impose punishments on the poor people and try to use the powers of court, so these jirgas do illegal and unconstitutional acts. In the verdicts of murder cases the women are not allowed to take part in the proceedings.

Another thing is that women have share in inheritance; in jirgas the women are deprived from this right also. The women are given cruel punishments of Karo Kari, Vanni etc. which are against the violation of laws. In the decisions of jirgas the death penalty can also be given which is violation of Penal code and Sec.302 applies to a person who gives the verdict of murder in a Jirga. All the assemblies or group of people who sat for illegal acts can be culpable by law. (Jaffri, 2008)

The murder of human beings is considered heinous crime and in Islamic teachings the person who commits murder is like a person who kills the whole mankind. So the murders which are done on the name of Ghairat or karo kari by the judgments of panchayat and jirgas are not allowed by Islamic teachings or by the law of Pakistan.

In the cases like Muhammad Akaram Khan vs. the State, the Supreme Court held that no one has a right to kill other person in the name of honour. The honourable Supreme Court dismissed the appeal. (Muhammad Akram vs the State PLD, 2001) In this case it is also said by the court that “ghairat” is not a reason to take the plea of decrease in the punishment.

In another case the plea of self-defense on the name of honour was rejected by the seven member bench of the Court and the sentence of 14 years was increased to life imprisonment in the case. (SCMR, 2000, 406) It is further said in this case that a person cannot kill other person on sudden provocation of Ghairat and kill his wife on mere doubt of Kari. If any person has complaint against his wife then he should bring four persons who fulfill the requirement of Tazkia tu Shahood otherwise the procedure of Lian is adopted and after Lian separation between husband and wife takes place.

Violation of Article 9

Jirgas and panchayat judgments are against Article 9 of the constitution which gives right of liberty. (Article 9, Constitution of Pakistan) The liberty which is lost when a girl is given in Vanni without her will. It violates the Article 4 of the constitution which gives protection of the law to every citizen and the panchayat and jirgas are snatching the right of protection of law from the citizens. (Article 4, Constitution of Pakistan) Panchayat and Jirgas are also violating the section 5 of the Child Marriage Restraint Act which clearly states that no girl

can be given in marriage by his guardian or father before she gains the age of 16 years. (Minallah)

In another case Muhammad Khan vs. the State, the Appellate court increased the life imprisonment to death sentence; the murderer has taken the plea of ghairat which was not accepted by the Court. (PCRL, 2001, 1766) Another important case was a criminal appeal in 1999 i.e State vs. Abdul Hameed, wherein a person killed a young man of 18 allegedly declaring that he has relations with his niece, the court rejected the plea of ghairat.

PROTECTION GIVEN BY THE HONOURABLE COURTS TO THE COMMON PERSON

In the honourable courts the question has been raised about the injustices done by the jirga and panchayat in the society. Supreme Court heard the voice of the poor and weak. In April 2004, Sindh High Court banned the jirga proceedings in the province. A few days after the judgment; the Chief Minister of that time came to Sukker and presided a jirga in the Circuit House which was a clear violation of the High court decision.

In 2007 Supreme Court took notice of a jirga in Sindh after the High court outlawed the jirga. A Parliamentarian was involved and it is said that he presided over the jirga where five minor girls were given to compensate the victim's family. The jirga members were arrested. (Daily Times, 2007)

The stance of the Supreme Court opens the door for helpless people who are suffering on the name of culture. During the months of December 2005 to June 2006 60 cases of Swara were recorded in two districts of Khyber Pukhtoonkhwa province. After the hearing of the appeal of Zarina Bibi who was victim of Vanni, twelve more cases were appeared in Bhakkar. (Minallah)

The Supreme Court of Pakistan uses Article 184 clause 3 to protect the Human rights of the common person. Although there is a remedy of Article 199 of the constitution, Article 184 clause 3 defines if there is matter of public importance and fundamental rights, the Supreme Court has power to order to save the fundamental rights of the citizens. (Article 184(3), Constitution of Pakistan)

The custom of Swara and Vanni which was often implemented by the panchayat and jirga decisions is a violation of the fundamental rights. The girls were given as Badle Sulh. In 2004, the Pakistan Penal Code was amended. It was added in the Section 310 that the wali of the murdered person can compound the right of Qisas in Qatle amd but the girls cannot be given as Badle Sulh for marriage. The person who will violate this law be imprisoned for at least three years and a maximum of seven years and the Court of Session will be the forum of trial. (Section 310, Penal Code of Pakistan)

In the case of Vanni the women are given to the other clan without their consent which is also against the Hadood laws; to marry a girl without her consent comes in the category of Zina bil jabr.

METHODS USED TO IMPOSE JUDGMENTS OF PANCHAYAT AND JIRGA

The jirga decisions have to be obeyed. Disobedience is not allowed, in the case of disobedience there is imposition of fine, burning of the house of the offender or it may be exclusion from the tribe. (Yunas) The Feudal lords, Maliks and Sardars preside over these jirgas and panchayat who have large pieces of lands in the area and also control the socio

economic activities of that area. (Manto, 2004) In the areas of Baluchistan a fine is imposed on a person who contacts with the police in his dispute. The amount of fine is given to the tribal chief, these kinds of practices are hurdles in the way of common people who want to contact with the police.

INCREASING NUMBER OF HUMAN RIGHTS VIOLATIONS BY PANCHAYAT AND JIRGA

Violence against women is common in the world today. But in Pakistan it is not just violence and women are raped, tortured and even murdered through the cruel judgments of panchayat and jirga which are delivered on the name of Tribal justice.

Women, the neglected portion of the society, are affected most of the time. In order to settle disputes women are used under different names like Vanni in Punjab, Swara in Khyber Pukhtoonkhwa and Sangchatti in Sindh. Even the minor girls are presented to settle the disputes. On the name of Honour which is called Karo Kari the women are killed and sympathies go to the murderer. (Singh, 2009, p. 31)

Killings on the name of honour and Karo Kari cannot be removed from the society unless the waderas and the persons who have responsibility to eliminate are not interested to remove these norms from the society. The situation has become severe as it is shown on the media about the violations of human rights in Southern Punjab and Sindh. The NGO sector should come forward and the representatives of the people must create awareness among the people, the jirga and panchayat system should be abolished to give the people relief from the tribal and feudal system. (Manto, 2004)

CONCLUSION

The tribal people live in a community and they know each other very well. They know even about the ancestors of the other clan members, so they can easily dig out facts about the property and other similar disputes. The people want to stick to their tribal traditions of their forefathers and not to adopt the new things. Traditions and norms take them to the way of tribal justice. The people of these areas are mostly illiterate and they say that they find formal judicial system difficult to comprehend, so they act upon their norms which are easy to understand.

One may argue that agriculture and industrial communities adopt different norms. (Rehman, 2002) If everyone adopts the system which suits to him, it would start an ideological debate of justice. As it happened in Swat and tribal areas where some people used name of Islam to introduce new types of system of justice and challenged the writ of government.

Could this be an attempt to make a state within a state? We have to see both the jirgas and panchayats giving verdicts against laws of the country and doing human rights violations. Human nature loves uniformity and distrusts and fears the things that are different. (Newman, 2000, p. 232) In the same way a uniform system of justice is necessary for the uniformity of a nation. In Pakistan there are several types of system of justice in different areas which are used for the dispensation of justice. A uniform and integrated legal system is necessary and parallel or quasi-legal systems should be abolished from the country. (Manifesto of ANP, 2010)

Now the situation is entirely changed, Pakistan is a republic which should safeguard the interests and prosperity of the people. It is the duty of our politicians to amend the laws and reform and restructure the whole system keeping in view the recommendations of the learned jurists and reports by Law Reform Commission presented at different times. All the

institutions involved in the process of dispensation of justice in Pakistan whether through Courts procedures or the police and the prosecution departments should be overhauled. Delay in reforms is the main reason to make the people tired from official/formal judicial system. No doubt at this time this is the best system available so far, but reforms and restructuring is necessary for the smooth working of this system.

The Society should come forward to eliminate these human rights violations through the systems of Panchyat and jirgas. Tribal leaders are supporting Panchyat and jirga system. People are in favour of Formal system of justice but the wadera culture has kept them away from the formal system. The waderas in shape of politicians sit in the Parliament and they are not in favour of legislation against Panchyat and jirgas. The Wadera system should be eliminated from the society. As jirga and Panchyat are used for arbitration purposes also, the proceedings of the jirga and panchyat must be recorded in writing so as the monitoring departments keep their eye on the proceedings of jirga and panchyat. The role of Musalihat Anjuman should be increased at the union council level.

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