

# Jirgas: defying the court

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THE Human Rights Commission of Pakistan has been rendering useful service to society by acting as a watchdog body to monitor human rights violations in Pakistan. Apart from the annual report it publishes every year to document the state of human rights in the country, the HRCP also studies various issues of special concern to the people at a given time and prepares reports on them to create public awareness and thus generate pressure on the government to take requisite measures.

The latest report from the HRCP comes from its Karachi chapter. Titled *Jirgas: A Parallel Justice System in Sindh*, this 107-page report is not one of those fancy publications with an expensive look that many NGOs are producing to project a favourable public image of themselves. But the HRCP report contains a wealth of information that has been collated with great care and after a lot of research. What it reveals is quite shocking.

Since April 2004 when Justice Rehmat Hussain Jafri of the Sindh High Court (Sukkur Bench) imposed a ban on the holding of jirgas in the province, the Sindhi press has reported 25 jirgas that have been held. What is worse, in many of these, members of political parties and local administration have taken part.

What does one make out of all this? The jirga which was not an indigenous institution in Sindh — having been imported from Balochistan — will not be easy to root out for many reasons. Many observers and even intellectuals have defended the institution saying that the formal judicial system is so overloaded and slow that the jirga offers an alternative and a quick way of dispensing justice and redressing people's grievances. If it had actually been so, one could have accepted it as an auxiliary judicial mechanism to relieve the load of the courts, especially in the resolution of petty disputes.

One would have accepted this point of view if the tribal elders had confined their mediatory skills to issues such as "a petty skirmish during snooker play" or "dispute between two groups". One also presumes that the punishment meted out was not of a serious nature and was designed more to conciliate than penalize.

the cases of karo-kari, rape, forced marriage, and the marriage of a nine-year old girl — which are listed in the HRCP report — would receive fair treatment? Many of the punishments meted out exceed the punishment prescribed by the law, while in other cases no crime has been committed and yet a penalty as serious as death is known to have been awarded.

Given the evils of the jirga system one can ask why is it allowed to operate? The fact is that the jirga is a handy instrument for the tribal elders to consolidate their power and have a firm control over the people. The members of the local administration and political parties, who not only uphold it explicitly but are also active participants — since January, 38 jirgas have been held under the chairmanship of MPAs, nazims, political party leaders and even ministers — obviously hope to enhance their influence.

The British first introduced the jirga in Balochistan during the time of Sir Robert Sandeman in 1876 for political reasons. It allowed them to control populations spread over vast areas through a handful of tribal elders who were held responsible for the good behaviour of their tribe. It also allowed the British to keep out of local feuds and thus not antagonize one or the other group.

The jirga is now working as a parallel system of justice and is also undermining the laws of the land by blatantly violating them. Hence Justice Jafri's judgment to ban them was most timely and should have been made effective. Why is the administration not ensuring its implementation? The tragedy of this land is that the feudal and tribal culture continues to influence our national psyche and political approach.

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The issue acquires grave dimensions if one looks at the nature of quite a few of the crimes that were considered by jirgas. The HRCP report gives a table listing the data for the jirgas held in Sindh month by month in 2004. Unfortunately it does not give the punishment that was handed down. Since some of the crimes mentioned are of an extremely serious nature, such as murder, double murder, triple murder and so on up to 13 murders — in January-July period at least 85 murder cases came before jirgas in Sindh — one cannot look away saying justice was done.

Given their arbitrary and summary character, the absence of modern methods of investigation (the guilt or innocence of the accused is determined by making him walk on embers), and a patriarchal mindset (38 cases were of karo-kari and sex-related crimes) it is unlikely that the jirgas work as institutions dispensing justice and not as mechanisms for perpetuating the power and privileges of the powerful. Since they operate in a feudal milieu, they are inherently partial and biased in favour of their own tribe and class.

Moreover, seeped as they are in the patriarchal traditions, the jirgas do not acknowledge the woman's identity, let alone her rights. If she is involved in a case, her father or brother will speak on her behalf. Women are not allowed to defend themselves especially if she is accused of being a kari and is presumed to be guilty.

It is generally known how jirgas operate. Can one really believe that

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tration — do not wish to relinquish an advantage which they enjoy. As for those who are the victims of this feudal culture, that is the peasants, the women and the commoners, they lack the legal protection, the resources, the awareness and the guts to challenge the institution of jirga. When the government also connives in a wrong act, it becomes all the more difficult for the victims to resist it.

One hopes the authorities will heed the recommendations of the HRCP given in this report. The commission calls for the effective implementation of the High Court decision. The judgment should be translated into the local language and disseminated through the media for public awareness.

In fact a media campaign should be launched to generate public interest in the issue in which the legal community should also be involved. The commission also suggests that any government official found involved in a jirga should be heavily penalized. Finally, reforms should be introduced in the judicial system to expedite the dispensation of justice.

These suggestions merit serious consideration if the bane of the jirga is to be rooted out from our society.