

A retreat to tribal society

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TWO recent but paradoxical developments have turned the national focus on jirgas. The proposal of legalizing jirgas has been put forth by the treasury benches in the Sindh Assembly, while a High Court judge, earlier this year, gave a ruling outlawing these tribal councils.

It should be noted however, that there is already a legal space for jirgas to operate within the law of Qisas and Diyat, an ordinance that legalizes private mediation in murder cases through the legal instrument of 'razinama,' a settlement out of court. The jirgas today are not illegal even if they are not legal.

Jirgas are popular in upper Sindh, largely because of the total failure of the criminal justice system, a strong collusive culture within the police, and weak and contradictory criminal laws.

A blood feud between Solangis and Jagiranis in my district killed at least 19 people between July and October, among them two women, and seven people from one family. Several houses were ransacked, burned. Agricultural products were left to rot. Water courses were diverted, transformers blasted and rockets fired. Public property worth millions was left in a shambles.

The whole area between Khairpur and Kingri remained a no-go area for more than three

which could only be resolved through a jirga. One killing after another was perceived as a part of the feuding game, and not in terms of human loss. The most heinous activity during the feud, in which at least 20 rockets were fired and several houses burned, was carried out at a time when there were more than 300 police and paramilitary officials posted in the district.

The communities also knew that eventually the matter would be settled through the private justice system, so they went about killing each other, in their quest to maintain a balance in this war for honour. As district nazim, I tried to convince the police to take action, but nothing happened. The only option was that of mediation. The settlement was a mathematical game, a cold calculation like the kind presented in a balance sheet which was something to this effect.

The problem with legalizing jirgas is that it would further strengthen a private justice system. Graver still is the apprehension that it would legitimize a tribal society that makes jirgas possible. If jirgas resolve conflicts they also give us a system based on the tribal values of revenge, blood feuds, killing and dying in the name of honour. If jirgas are legitimized, the ideology of

I now realised that I am operating in a tribal zone, under the tribal value system, created and pampered with a collusion among the state, bureaucracy, judges, and that the entire substance of this ugly ordeal has been provided by the laws.

The moral of this sad state of affairs is that the legal mess, compounded by bad governance, has to be sorted out if we are to put an end to the tribal system that has grown out of laws like the Qisas and Diyat and Hudood ordinances. A verdict of the High Court outlawing jirgas is not enough. The criminal justice system has to be strengthened, and made more effective. In fact, it may be noted that jirgas have been increasing ever since. The killings in the wake of Shaista and Balakh Sher saga was also settled by a jirga, and not a court of law. The recent move to legalize jirgas, therefore will further

strengthen the tribal character of law, justice and state in Pakistan. Right now, when a bill to legalize jirgas, has been proposed, conflicts between tribes, clans, communities and people, over land, water and women, are erupting everywhere.

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deployed. Because of the conflict, hardened criminals had been brought in from the riverine belt to assist each side. Rockets, automatic weapons, kalashnikovs and other weapons had been stockpiled to the extent that the police and the law enforcement agencies found themselves completely helpless.

The Solangis and the Jagiranis have their property and houses, villages in close proximity interspersed with each other. They serve as clients and patrons — the Jagiranis as clients, contractors and lessees to the property of the Solangis, who are often absentee farmers. The Solangis have jobs in the government, and are economically more prosperous than the Jagiranis. The Solangis have also, over the years, by making strategic alliances, been able to gain access to government services like schools, water, and electricity more effectively than the Jagiranis, who are in large measure deprived of many basic services.

The present conflict emerged over an unsettled issue of eight years ago. The Jagiranis had suspected the Solangis of sponsoring the murder of a fellow member. When recently, they asked the Solangis on oath the latter confirmed their suspension. However, they agreed to settle the matter with the mediation of the chief Jagirani Sardar. Before that could be settled, a grenade mysteriously exploded in a Jagirani house killing one man, and injuring two women. The latter, attributing the act to the Solangis, killed seven members of a poor, unrelated family, and hence the feud broke out.

Relief came only after a traditional jirga. Opposed to the jirga system, I nevertheless participated as an observer. Minister Manzoor Panwar was the amin from one side. Others, the DPO and DIG Sukkur, did not appear on the day for fear of the courts, although they had deputed the lower police who organized the whole affair.

For nearly three months as district nazim, I had argued with the police to take action against the culprits. The police concluded that this was a "qaumi jehro",

"Solangis: nine killings - male - adds up to 27 lakh, one killing - female adds up to six lakh, Injured, total fine 35 lakh..." "Jagiranis, eight killings male, 24 lakh, one killing female six lakh ... Total cost 45 lakhs..." The Solangis, it was calculated, owed the Jagiranis Rs 10 lakh, since they had inflicted more losses. The Solangis would have to pay Jagiranis for the two groups to be equal again.

Until then the Solangis would be in debt. The settlement system is a system of account of human life and losses as opposed to a system of crime, punishment and atonement. In fact, the Solangis pleaded innocent saying that the matter that catapulted the conflict was the grenade incident, that they denied on oath. The onus of initiating the conflict would then be with the Jagiranis. The Jagiranis cleverly offset the blame by saying that they would only believe the oath of innocence if the best among them took it in a shrine in the desert of Nara! So no one was eventually responsible for the feud.

With this settlement, the Solangis and Jagiranis forgave each other their sins, their feuds, their violence, and within minutes, life was back to normal although in a corner somewhere the lone survivor of a family that lost seven members asked "what about me".

A progressive like me, to save the area from havoc, had to succumb to the farce of settlement of feud through fines, condoning all killings, etc., knowing very well, that it would resolve nothing. It would only give a momentary peace. But somewhere else, sometime later another violent spasm of feuding will bring turmoil and destruction in its wake, reinforcing the culture of private retribution.

A jirga is collective justice, and collective retribution instead of individual justice and individual retribution. Collections of fine ensures collectivity and unity of the group. In the aforementioned case, it was not relevant who the accused and killers were. Seven FIRs were lodged against a total of more than 600 people.

women. Unfortunately, in Upper Sindh since the law enforcement agencies have historically patronized jirgas for the settlement of feuds, the tribal retributive self-help system is much stronger here than elsewhere in the province. The same goes for lower Punjab, in the districts of Rajanpur and Der Ghazi Khan. Honour killings are most often an internal matter for families and tribes. The state has over the years given families the authority to settle this issue as they please. The police would often say: "We do not interfere in such cases. It is an issue of ghairat — honour. It is their own private issue." In such cases complaints are not lodged when such murders are condoned. The police, in fact, act as agents of the particular system in which they operate. On a more personal front, there have been several cases where I have battled with the police to register case against families implicated in karo-kari cases but the intense collusive networks have always defeated me in my efforts.

Some murderers have come up to me to tell me how despite my best efforts, I have not been able to catch them. There have been countless cases when family victims of murder come to me asking for assistance to arrest the accused. I fight tooth and nail to get the culprits in police custody, and then, I find out that I have been left alone in the battle as the victims and the perpetrators are already distributing sweetmeat for they have signed the razinama, and the murderer has been forgiven.

Our lawmakers have to fight to amend the existing laws. The legal space for jirgas has to be done away with by sealing the compoundability provisions of the Qisas and Diyat Ordinance, and by completely abolishing the private space created for mediation in the case of homicide and other heinous offences. And this has to be matched with efforts to make the existing criminal justice system effective, and law enforcement more forceful.

The writer is zila nazim of Khairpur district.