REFORMING THE JIRGA SYSTEM:
Sensitisation on Fundamental Human Rights
REFORMING THE JIRGA SYSTEM:
Sensitisation on Fundamental Human Rights

Community Appraisal & Motivation Programme (CAMP)
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Our warm thanks go to the Project Team at Community Appraisal and Motivation Programme (CAMP), Mr. Aezaz-ur-Rehman, Lead Trainer and Advocacy Coordinator and Ms. Neha Gauhar, Lead Researcher and Advocacy Coordinator, for authoring this manual. Special thanks to Ms. Fareeha Sultan, Project Manager, for her support throughout the process.

Special thanks also go to Prof. Dr. Anis Ahmed, Vice Chancellor, Riphah University for authoring the chapter on Islam and Human Rights.

We would also like to express our gratitude to Mr. Naveed Ahmad Shinwari, Founding Chief Executive / President, CAMP, who provided valuable comments on successive drafts and those who contributed to the editing and development of this manual, in particular, Ms. Mariam Khan, Director Programmes, Ms. Meher Khan, Project Manager and Ms. Irum Ali Khan, Advocacy Coordinator, CAMP.
Reforming the Jirga System: Sensitisation on Fundamental Human Rights

Foreword

Although the practice of Alternative Dispute Resolution (ADR) has increased dramatically in the past forty years, various forms of conflict resolution have been used successfully for centuries by people around the globe. ADR mechanisms all over the world are dealing more effectively and efficiently with growing caseloads and to improve citizens’ access to justice. Many states have introduced systems for ADR with considerable success.

A brief look at the international scenario of ADR mechanisms reveals its popularity in many cultures of the world including India, Africa and Israel. The Hong Kong International Arbitration Centre, most probably the largest arbitration service centre in Asia, has held the view that “arbitration as compared to litigation has become very popular for resolving the disputes.” In India, ADR is by no means a recent phenomenon; similarly, Bangladesh has an age-old history of alternate dispute resolution.

In United Kingdom, ADR is not only an important tool for conflict resolution but has become mandatory before the parties commence litigation. In other parts of Europe too, mediation is seen as a potentially promising mechanism for the resolution of both simple and complex disputes. In 1995, France expanded the legislative basis for judicial conciliation and mediation.

In Japan, Judges intervene extensively during the in-court settlement; every Japanese Judge is expected, both by law and by litigants, to move a case towards settlement. At least 40 per cent of the cases are settled.

In Pakistan’s Federally Administered Tribal Areas or FATA, Jirga is the only dispute resolution mechanism. Jirga is an old custom with unmatched potentials for conflict resolution in the Pakhtun belt of Pakistan and Afghanistan. It is a name given to a model, in which Pakhtun society operates to undertake issues between individuals, and among communities, to address concerns and look for solutions acceptable to all stakeholders.

Two types of Jirgas are practiced in FATA; the Sarkari or FCR Jirga and the Olasi or informal Jirga. The Sarkari Jirga refers to a Jirga system sponsored by the government, more specifically by the political administration led by political agents or his subordinates. While Olasi, or the informal local representatives Jirga is an assembly of elders from a certain village or community. Olasi Jirga convenes to discuss various criminal and civil disputes, and also to resolve them consensually so that all parties receive compensation accordingly.

Despite its merits, the system of Jirga, both at the community as well as the government level did not develop as it needed to, in order to compete with the requirements of the modern justice system and international Human Rights standards. In order to enable Jirga to find space to grow and keep pace with time, and most importantly ensuring that Human Rights are not violated, especially women’s, children’s and minorities’ rights; there is a need to recommend reforms in the Jirga system. It is also pertinent to educate those involved in Jirga decisions about Pakistani Constitution and international Human Rights instruments that protect those rights.
It is in light of the above that the Community Appraisal and Motivation Programme (CAMP), with financial support from the German Foreign Office, and technical assistance from the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany, initiated a research project titled ‘Rule of Law Programming in Pakistan’, in August 2010.

The outcome of the Project was two detailed research assessments on ‘Understanding Jirga: Legality and Legitimacy in Pakistan’s Federally Administered Tribal Areas’ under Jirga Component, and ‘Assessing the Legal Environment of Afghans in Pakistan’ under the Refugee Law Component.

Following these preliminary research studies, CAMP implemented a project that was based on the recommendations of the assessments conducted in 2010. For the Jirga Component, one of the key activities was to develop capacity of different stakeholders, including those involved in Jirga decisions and young leaders who may become future decision makers. In this connection, a training manual titled ‘Reforming the Tribal Jirga System’ was developed by CAMP. The main topics of the manual included, Jirga and Its Types, Relationship between Jirga and Pakhtunwali, Fundamental Rights and Constitution of Pakistan, Alternative Dispute Resolution Mechanisms, International instruments of Fundamental Rights, Rights of the Indigenous People, Women Rights in Jirga and Islam, and Human Rights. The manual was also translated into Urdu.

In parallel, the project continued to advocate reforms in Jirga through a series of roundtable meetings and awareness sessions.

In 2011-2012, CAMP trained 495 Maliks (leaders), traditional Qazis, young people and women on the manual. The initiative was appreciated greatly by the trainees as well as speakers and trainers who were part of the Jirga campaign. Feedback from the training also reflected on the need for reviewing certain chapters of the manual.

CAMP began to revise the manual in the third phase of the Project, which started in March 2012. In order to make the manual more authentic, eminent scholars including Vice Chancellor of the Riphah University, Dr. Anis Ahmed, was requested to develop a chapter on Islam and Human Rights. We are very thankful to Dr. Anis Ahmed for his valuable contribution.

In the same phase CAMP also compiled a research report “Understanding Justice Systems of Khyber Pakhtunkhwa, FATA & Balochistan: The Pakhtun Perspective”. The report presents an analysis of findings on Pakhtuns’ experience living in the provinces of Khyber Pakhtunkhwa (KP), Balochistan, and FATA of Pakistan in relation to their dealings with both the formal and informal justice systems including the Jirga, Nizam-e-Adl regulations (only applicable in Malakand), the police, district administration and others. The survey for this research report was conducted in the aforementioned areas with a total sample size of 3,900 adult male and female respondents.

Based on the findings of the research study and lessons learned from the previous phases, in Phase IV, which started in March 2013, the Project area has been expanded to KP and Balochistan provinces and 12 capacity building trainings on ‘Sensitisation of Fundamental Human Rights’ will be delivered in both these provinces.

In the same connection, the training manual developed in the earlier phases has been revised as per the needs of the audiences in KP and Balochistan, and a chapter on Formal Court System mechanism (Code of Civil Procedure 1860) has also been introduced. The aim is to equip people with a better understanding of the formal and informal justice system. As was done with the previous versions of the manual, this was also translated into Urdu.

In an effort to improve the state of Human Rights in Pakistan, the manual is also offered as a tool to foster Human Rights promotion and protection in other Alternative Dispute Resolution mechanisms e.g. Panchayat and Faisalo, in Punjab and Sindh provinces respectively.
Overview of the Training

Introduction and advocacy of Jirga reforms at local and national levels, and creating a platform for debate among stakeholders.

- Introduction to the concepts
- Comparative perspectives
- Application and relevance to Jirga context
- Design and review reforms

Training Duration and Methodology

Three day workshop with nine sessions will be made participatory through case studies, role plays, presentations and facilitated discussions. Reading and reference materials will also be provided.
# Training Schedule

Reforming the Jirga System: Sensitisation on Fundamental Human Rights

## DAY 1

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
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<tbody>
<tr>
<td>0930 hrs</td>
<td>Welcome &amp; Briefing</td>
</tr>
<tr>
<td>0945 hrs</td>
<td>Introductions</td>
</tr>
<tr>
<td>1015 hrs</td>
<td><strong>Session 1:</strong> Expectations --- Hopes &amp; Fears</td>
</tr>
<tr>
<td>1045 hrs</td>
<td>Tea Break</td>
</tr>
<tr>
<td>1100 hrs</td>
<td><strong>Session 2:</strong> Alternate Dispute Resolution Mechanisms</td>
</tr>
<tr>
<td>1130 hrs</td>
<td>Questions and Answers</td>
</tr>
<tr>
<td>1200 hrs</td>
<td><strong>Session 3:</strong> The Relationship between <em>Jirga</em> and <em>Pakhtunwali</em></td>
</tr>
<tr>
<td>1230 hrs</td>
<td>Questions and Answers / Discussion</td>
</tr>
<tr>
<td>1300 hrs</td>
<td>Lunch Break</td>
</tr>
<tr>
<td>1400 hrs</td>
<td><strong>Session 4:</strong> Fundamental Rights and Constitution of Pakistan—An Introduction</td>
</tr>
<tr>
<td>1430 hrs</td>
<td>Questions and Answers</td>
</tr>
<tr>
<td>1500 hrs</td>
<td><strong>Session 5(a):</strong> Court System Mechanism (Code of Civil Procedure 1860).</td>
</tr>
<tr>
<td>1530 hrs</td>
<td>Questions and Answers</td>
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## DAY 2

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<td>0930 hrs</td>
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</tr>
<tr>
<td>0935 hrs</td>
<td>Recap --- Day 1</td>
</tr>
<tr>
<td>0945 hrs</td>
<td>Ice-Breaker</td>
</tr>
<tr>
<td>1000 hrs</td>
<td><strong>Session 5(b):</strong> Cabbage Activity</td>
</tr>
<tr>
<td>1030 hrs</td>
<td>Questions and Answers / Open Discussion</td>
</tr>
<tr>
<td>1100 hrs</td>
<td>Tea Break</td>
</tr>
<tr>
<td>1115 hrs</td>
<td><strong>Session 6(a):</strong> International Instruments of Fundamental Rights</td>
</tr>
<tr>
<td>1145 hrs</td>
<td>Question and Answers / Open Discussion</td>
</tr>
<tr>
<td>1230 hrs</td>
<td><strong>Session 6(b):</strong> Group Activity / Discussion</td>
</tr>
<tr>
<td>1300 hrs</td>
<td>Lunch Break</td>
</tr>
<tr>
<td>1400 hrs</td>
<td>Ice Breaker</td>
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<tr>
<td>1415 hrs</td>
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<tr>
<td>1445 hrs</td>
<td><strong>Session 7(b):</strong> Group Activity and Presentation</td>
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<tr>
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<td>Wrap up</td>
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<tr>
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<td>Zakah</td>
<td>Obligatory payment made annually under Islamic law on certain kinds of property</td>
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Introduction
Introduction

This chapter introduces the objectives of the manual, target audience, training needs and expectations, duration of the training and reasons for preparing this training manual.

This Training Manual is for:

This training manual is aimed at creating awareness and developing better understanding of The (1973) Constitution of the Islamic Republic of Pakistan, International Human Rights Laws i.e. UDHR, CEDAW, CRC, ICCPR, ICESCR and CESC.

For CAMP’s project, the manual will target three categories including the people who are directly involved in dispute resolution through this system i.e. elders, Jirgamaars religious leaders and youth to nurture them for improved dispute resolution in future, and Human Rights activists and local civil society organisations working on Human Rights at the grassroots including women activists.

The manual also aims to train the elders of communities to make decisions in light of the Constitution, and International Human Rights standards. It allows other groups i.e. youth, civil society organisations, Human Rights activists and women of KP & Balochistan to better understand the ADR mechanism and also to understand their rights. The manual is also useful for organisations and particularly NGOs working on conflict resolution and peace building, including team leaders, trainers and government and international donor agencies.

Intended Objectives/Outcome of the Manual:

This training manual aims to enable participants to:

- Recognise the constitutional perspectives while dealing with the judicial structure, and the fundamentals of Human Rights enshrined in the Constitution
- Enhance their knowledge and capacities about the major procedural law
- To understand the principles of international justice and acquaintance with the international conventions, charters and declarations - and linking it with the principles in practice for dispensing the justice through informal justice systems
- Improve their knowledge about the fundamental principles of justice under the Constitution and interpretations of those principles by the superior courts
- Understand the rights of women, children and minorities under national and international laws
- Understand the institution of Jirga as informal mode of justice, its historical and legal background (specifically for youth)

How to use this Manual:

The manual has been kept short and simple. Definitions can be found in the glossary given on page six.

Facilitator Specification

The facilitator skill-sets are listed below:

- Strong commitment and ability to facilitate participatory learning
- Knowledge of local culture of different areas of Pakistan
- Expertise on Constitution of Pakistan 1973 and Universal Declaration on Human Rights (UDHR)
- Strong problem analysis skills
- Technical and Human Resource Management

Background to this Training Manual:

The ‘Rule of Law Programming in Pakistan’ (RLPP) is one of CAMP’s major research projects out of over 20 research projects completed thus far. In July 2010, with financial support from the German Foreign Office, and legal as well as technical assistance from the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany, CAMP conducted two detailed research assessments;

- ‘Understanding Jirga: Legality and Legitimacy in Pakistan’s Federally Administered Tribal Areas’ and
- ‘Assessing the Legal Environment of Afghans in Pakistan’

The research study ‘Understanding Jirga: Legality and Legitimacy in Pakistan’s Federally Administered Tribal Areas’ focused on conducting an in depth research on the Jirga mechanism and its potential capacity to bridge modernity with tradition. The comprehensive study used various tools to collect data on the subject, which included desk review, perception survey, consultative dialogues, focus group discussions and case studies.

Among several other recommendations, the study recommended that to prevent violation of Human Rights, especially women and minorities’ rights, there is a need to reform the Jirga-system so that it is more sensitive to the universally accepted principles of Human Rights and international standards.

The way forward in 2011 was to inform and educate stakeholders around Jirga as an institution in FATA, and also to sensitize those involved in the decision making process of the Jirga. For this, CAMP planned to improve the knowledge and understanding of tribal Malik’s, elders, religious leaders and traditional Qazis, as well as youth and women of FATA, through 11 training workshops on ‘Reforming the tribal Jirga-system in FATA’ using the training manual as a guide.

Besides that, five one-day awareness sessions with Human Rights activists/NGOs/INGOs, women groups and electronic and print media in Pakistan were successfully conducted. The stakeholders from FATA were involved through five one-day Round Table discussions on various issues related to Jirga-system and dispute resolution in FATA. The issue was also highlighted in the electronic media through 10 Radio Talk Shows/Phone in Programmes on Radio Pakistan Islamabad, to create mass level awareness about the Jirga-system in FATA. The radio shows invited tribal Maliks, youth, religious minorities from FATA and experts on law, women and child
rights to participate and answer questions from callers on the live talk shows. These programmes covered all of Pakistan as they were aired through National broadcasting service. Information, Education and Communication (IEC) Material was published throughout the project which also included a documentary on Reforming the Jirga-system in FATA [http://www.camp.org.pk/node/386]. A bi-monthly publication ‘Jirga Monitor’ was also published in which Jirga decisions and case studies of dispute resolution from different Agencies of FATA were documented. Project activities of RLPP were also included in this publication from time to time to inform people about CAMP’s initiatives on Jirga reforms.

The project’s third phase was started in March 2012. Under this phase, CAMP intends to continue strengthening the capacity of relevant stakeholders delivering traditional justice and managing conflict by emphasising the compliance of international Human Rights standards. The Project will also increase its advocacy efforts for reforming the Jirga at local and national levels, and build consensus for open debate among stakeholders. Moreover, CAMP will undertake an in depth analysis of Pakhtun Jirga systems in Khyber Pakhtunkhwa and Balochistan provinces to identify the potential role Jirga can play in conflict management and justice provision, if institutionalised within the wider judicial system.

On basis of lessons learnt during the capacity building initiatives of CAMP in its RLPP project, the training manual has been revised and the focus of this training manual will be on training the people of KP & Balochistan who are or would be involved in dispute resolution about Universal Human Rights instruments and legal and Islamic perspective of Justice in a larger framework which they can use in their traditional dispute resolution mechanism.

CAMP’s Strategies to Reform the Jirga-System:

Any one working for reforming a component of society knows that getting people to change the habits of a lifetime is not easy.

In KP & Balochistan too, customs and traditions have evolved over a period of time through the institution of Jirga. The set of these customs and traditions are organised as ‘Pakhtunwali’ that is a rigid code of life for the Pakhtuns of FATA, KP & Balochistan. Although this set of codes is ingrained in Pakhtun society, there must be a way to address Human Rights abuses that occur in the region.

In this regard, CAMP took a significant step forward in reforming the tribal justice system by holding a Grand Jirga on 29th May 2012 at Jinnah Convention Centre, Islamabad, to announce the ban on discriminatory traditional practices such as Swara, Bride Price and Xhag, which have deprived countless Pakhtun women of their fundamental Human Rights. More than 800 Jirgamaars, tribal elders and traditional Qazis from all agencies and Frontier Regions of FATA participated, while honourable Governor Khyber Pakhtunkhwa Barrister Syed, Masood Kausar was the chief guest at the occasion.

Before embarking on this arduous journey, CAMP gained the approval of the tribal Maliks by holding local agency-wide Jirgas, which included all the influential and dominant Jirgamaars, Maliks and traditional Qazis from every tribe of the region.

Of course, we do not claim to have provided the perfect solution; behaviour change will never be quick or straight forward in the tribal societies. Neither do we claim exclusive use of the term ‘Reforming the Tribal Jirga-System’, which is now becoming widespread. CAMP aims to encourage and protect the Fundamental Rights and legitimate freedoms of all the communities of FATA, KP & Balochistan through capacity building and sensitisation.

Refinement of the approach that we describe in this training manual will continue with the help of readers, practitioners and fellow researchers. As mentioned earlier, this manual is revised on the need assessments and with the help of observations and views of our learned readers, so please do send us your comments and suggestions.

Duration of the Training Course:

The training sessions are spread over three days and will be distributed in sessions as per the module classification.

Each module begins with an overview and general information about purposes and length of time needed. Time throughout the modules is estimated and can be shortened or lengthened depending on the situation and needs of the session.

In each module, there are a number of individual sessions. Each session begins with information about purpose, objectives, preparation, and timing. The procedure for each session is laid out step by step, with discussion points indicated by a special bullet.
Training Modules
Training Modules

Chapter 1 is focused on why there is a need to reform the Jirga-system. The second chapter will look at the process of designing the approach to bring reforms to Jirga-system by planning and carrying out capacity building initiatives.

Methodology:
The methodology adopted for this training course will be participatory. Keeping in view the needs of the participants, the current manual will not only be shared and discussed with the participants through a lecture and/or presentation style, but other possible means of interactive approaches will also be used to communicate the information of the manual.

For instance, to make the training more participatory, most of the sessions will be based upon the involvement and participation of the target audience, in the shape of working groups, discussion on certain case studies, different exercises involving the perceptions of the participants, followed by discussion among the participants.

Majority of the participants at the training courses will be practitioners, with rich experiences and background, as well as in-depth information about Jirga. The participatory methodology will link their real life experiences with international and national judicial mechanisms as well as Human Rights standards.

Hand-outs are included with each module and will be provided to the participants. These hand-outs will include information covered in each session, while the detailed information will be available in the annexure, in order to enable the participants to use it as reference material.

The language of the workshop will be decided at the beginning of the workshop, depending on what the participants prefer. It is anticipated that since participants belong to the tribal areas of Pakistan, the delivery of the training will be a mixture of national and local languages (Urdu and Pashtu respectively).

Target Audience:
During the capacity building programme, the local Jirgamaars (people involved in dispute resolution), will be trained on national and international Human Rights standards and instruments and the legal status of Jirga in context of Pakistan.

The second target group for the current capacity development programme is the youth, women, community social organisations and local activists. Capacity building of these groups on this specific topic will sensitise and enable them for the protection of their Fundamental Rights and dispute resolution.

Training Modules:
There are three training modules in this manual. The detailed description of each module is given below.

The first module of the training manual includes two topics. The first one introduces the participants to the training programme and to the subject of reforming the Jirga-system through sensitising on Fundamental Rights. Module 1 will help the participants to understand the complexity of Jirga-system and its reforms. The second topic covers Fundamental Rights granted by the Constitution of Pakistan 1973. Towards the end of the introduction, participants will be encouraged to define the ideal Jirga-system and then review their own roles in Jirga, drawing on their experiences.

Module 1 takes 4 hours and 45 minutes.

1.1 Welcome and Briefing
Objective:
Induction of participants to the training process
Material:
- One copy of agenda per participant
- One copy of training evaluation form per participant
Time: 10 Minutes
Methodology:
Facilitator;
- Warmly welcomes the participants
- Presents suggested timetable and asks people to identify changes if required
- Summaries of course contents
- Introduces fellow course facilitators
- Selects two volunteers for each day of the course (writes names on flipchart)
- The training evaluation form will be filled by the trainees and submitted at the end of training

1.2 Introductions
Objective: Get to know each participant’s name and something about them.
Time: 25 Minutes
Methodology:
Facilitator asks each person to introduce themselves with their name, area, occupation and interests

1.3 Expectations – Hopes and Fears
Objective: Find out what participants expect from the workshop and to try and make it a good experience for all.
Time: 30 Minutes
Material:
- Large blank wall and masking tape
- One A3 size sheet of paper
- One green card per participant
- One orange card per participant

Methodology:
- Prepare a wall
- Write the following question in large writing on a paper:
  “What are your hopes and fears for this Training Workshop?”
- One green card with ‘HOPES’ written on it and stuck to the left of the question
- One orange card with ‘FEARS’ written on it and stuck to the right of the question
- Hand out one green and one orange card to each participant along with a marker pen ask participants to write their expectations for the training on cards – with one idea on each card in big clear handwriting
- Hopes or positive expectations on (green) cards and fears or negative expectations on (orange) cards
- Ask participants to stick these cards on a wall or board, clustered with other similar hopes or fears.
- Help participants to cluster the cards
- Discuss the cards with the participants. Point out similar cards and identify trends
- Using a flipchart, try to reach consensus about the basic ground rules required to make sure that the hopes are achieved and the fears not realized
- Mention that there will be time on day three to discuss course objectives and outputs

1.4 Introductory Talk
Objective: To set the tone of the training “Reforms to the Jirga-system through sensitisation” in a broad development framework.

Material:
- Overheads and flipcharts as required

Time: 30 minutes

Methodology:
Facilitator presents a 15 minutes talk on the following:
- Why Jirga is important?
- Why is this training necessary?
- Write down the ideas of the participants on a flipchart on these topics
- Try to correlate similar ideas to create consensus among the trainees
- Encourage the trainees to ask questions about the topic

1.5 Brain Storming
Objective: To reach consensus on the terms “Jirga and dispute resolution” among the participants

Material:
- Blank wall and masking tape and flipchart
- One flipchart and marker pen per group
- Whiteboard and whiteboard markers

Time: 60 Minutes

Methodology:
- Prepare a blank wall with one flipchart and write the following question on it “what is Jirga-system?”
- Hand out one flipchart and marker pen to each group
- Ask the groups to write the customary code of Jirga system in their specific area
- Ask groups to stick their flipchart on a wall, or board, and present what they think about this question
- Discuss the flipcharts with the participants. Point out similar thoughts and ideas.
- Identify linkages

1.6 Constitution of Pakistan 1973 and Fundamental Rights
Objective: To help the Jirgamaars understand the process of conflict resolution through Jirga-system in-accordance with the Constitutional guarantees to the people of Pakistan.

Material:
- Speaker’s notes, overheads and flipcharts as required

Time: 30 Minutes

Methodology:
Facilitator presents a 10 minutes overhead presentation around the following topics:
- Fundamental Rights and its guarantees
- Characteristics of Fundamental Rights
- Constitution of Pakistan and Fundamental Rights
- Participants will be encouraged to ask questions on these subjects

1.7 Group Activity
Objective:
This activity will help the participants to know the provisions of Fundamental Rights in the Constitution of Pakistan 1973
and its assessment with their existing local Jirga-system will enable them to recognise the practical implications of these rights in Jirga-system.

**Material:**
- Hand-outs of Annex II

**Time:** 60 Minutes

- Hand-outs on a comparative view about Constitution of Pakistan 1973 and Jirga-system will be distributed among the participants divided in different groups
- The participants will be asked to compare the provisions of existing Jirga-system with the Fundamental Rights granted in The Constitution of Pakistan 1973
- Each group will be asked to present their group work

**Module 2 – Judicial Court System and Jirga-System**

This module enables the participants to develop their own thoughts on judicial court system and Jirga-system and why it is used for justice dispensation in Pakistan? What is the perception of people about the Judicial Court system?

**Module two will be for a duration of 2 hours 30 minutes**

**2.1 Introduction to Judicial Court Mechanism in Pakistan**

**Objective:** To give participants the opportunity to work with issues arising from process of Jirga-system which does not comply with Fundamental Rights guaranteed in the Constitution of Pakistan 1973.

**Material:**
- Overhead presentation

**Time:** 15 Minutes

**Methodology:**
Facilitator will discuss the following topics with the help of overhead presentation.

1. Grading structure of Courts in Pakistan
2. Constitutional powers of Judicial Courts
3. Case management process in Courts of Pakistan

**2.2 Civil Court Mechanism in Pakistan**

**Objective:**
To help create awareness in the people about the case management and Court procedure in Pakistan for dispute resolution.

**Time:** 60 Minutes

The trainees will be given lecture on the following topics:

1. Courts Grading structure and powers under specific Articles of Constitution.
2. Basic information of Court mechanism under Civil Procedure Code 1908

30 minutes lecture will be followed by a 30 minutes question and answers sitting. This session will help the participants to understand the basic court system and procedures.

**2.3 Exceptional Proceedings (Arbitration) under Section 89-A of CPC and Other Laws**

**Objective:**
To create awareness among Jirgamaars about arbitration and mediation through Courts, under special provisions of CPC 1908

**Material:** Overhead presentation.

**Time:** 30 Minutes

An overhead presentation on topics of arbitration and mediation will be presented. Section 89-A of CPC 1908 will be elaborated and linked with other laws and situations. At the end of the presentation, a question and answers session will be conducted.

**2.4 Cabbage Activity**

**Objective:**
The activity is designed to involve the participants and to know their perceptions about the Fundamental Rights presently granted to them, and what kind of change they want in the existing system of Courts in Pakistan.

**Material:** One A4 size paper for each trainee

**Time:** 45 Minutes

- The facilitator will ask the trainees to write their suggestion about Courts system, that what changes they want in it (Give them 5 minutes)
- After they write down their suggestions, collect all the papers and make a cabbage ball
- Ask the trainees one by one to take one paper from the cabbage ball and read what is suggested
- Write down similar ideas and try to make a consensus over these suggestions

**Module 3 – State of Fundamental Rights**

This module will enable the participants to understand various national and international instruments to protect rights of indigenous people and the missing links between them and Jirga. It will also help them understand the Human Rights given in Islam.

**Module 3 takes 4 hours**
3.1 Rights of Indigenous People and Jirga

Objective: To impart the information about significant national and international conventions and treaties regarding rights of indigenous people through an easy and simplified presentation.

Material: Over head presentation

Time: 45 minutes

Methodology:
Facilitator will discuss the following topics with the help of overhead presentation;

- Chronological background of Human Rights
- Important national and international conventions and treaties regarding Human Rights
- Their relationship with Jirga

3.2 Group Work: Role Playing

Objective: To practically implement/apply the various international and domestic laws that protect the rights of indigenous people (women, minorities, children and disabled persons) in Jirga decisions.

Material: Flip Chart and Markers

Time: 60 minutes

Methodology:
- Revise the Fundamental Rights of indigenous people
- Divide the participants into groups of five
- Provide each group with a different case study regarding disputes which involve the rights of indigenous people
- Ask the participants to resolve the given disputes through a Jirga, keeping in mind the fundamental rights of indigenous people
- Each group will have five minutes to present their findings

3.3 Rights of Women and Jirga

Objective: To sensitise the participants, about the Fundamental Rights of women. So that they take them into account when involved in or effected by Jirga decisions.

Material: Over head presentation

Time: 15 minutes

Methodology:
- Chronological background of women rights
- Important national and international conventions and treaties regarding women rights
- Try to identify missing links in Jirga System
- Take questions from participants and answer them

3.4 Group Work: Case Study

Objective: To analyse the level of understanding among the participants regarding women rights.

Material: Flip Chart and Markers

Time: 60 minutes

Methodology:
- Revise the Fundamental Rights of women in KP and Balochistan
- Divide the participants into groups of five
- Provide each group with a case study regarding dispute which involve the rights of women
- Ask the participants to resolve the given dispute through consultation, keeping in mind the Fundamental Rights of women
- Each group will have five minutes to present their findings

3.5 Lecture on Islam and Human Rights

Objective: To raise the level of understanding of human rights given in Islam and to sensitise participants on the rights given to indigenous people in Islam so that they can keep them in mind while making Jirga decisions.

Time: 60 minutes

The trainees will be given special lecture by experts on the following topic:

- Islam and Human Rights with special emphasis on women rights

45 minutes lecture will be followed by a 15 minutes question and answers sitting. This session will help the participants to understand the Human Rights guaranteed in Islam.
Jirga and its Dynamics
**Jirga and its Dynamics**

**Objective:**

The basic objective of this session is to understand the foundation of *Jirga*, as a mechanism to resolve dispute in the informal regions. The participants will learn and understand the executive, judicial and legislative functions of *Jirga* and recognize it as a mechanism for arbitration or conciliation of conflict in the Pakhtun society.

**The Session:**

The session will aim to educate the participants regarding the framework of *Jirga* and the well-defined principles of informal justice system. It will also include a presentation of the different types of *Jirga* and their roles in addressing the flaws of the state’s official legal system. The facilitator would be responsible to stress the Human Rights violations that are inherent in the decisions made by the *Jirga*.

**Defining Jirga:**

Historically, individuals, social groups and societies have disputed and competed against one another over scarce commodities and resources – land, money, political power, and ideology. In many parts of the world, traditional way of justice or locally integrated conflict transformation or resolution institutions are being approached to resolve conflicts, and to ensure peace and stability within local societies or tribes. Such institutions are often suitable in circumstances in which they operate, as they satisfy the local cultural and religious sentiments. Such circumstances often make them more successful than the contemporary or modern justice system. The existing body of literature confirms that the nature and causes of conflicts and the mechanisms for resolving them are deeply rooted in the culture and history of every society; they are in many important ways unique to them.

According to the Pashtu Descriptive Dictionary (1978: 1272), *Jirga* is an original Pashtu word which in its common usage refers to the gathering of a few or a large number of people; it also means consultation according to this source.2

However, in its operation, *Jirga* refers to local institution of decision-making and dispute settlement that incorporates the prevalent local customary law, institutional rituals, and a body of village elders whose collective decision about the resolution of a dispute (or local problem) is binding (socially and morally) on the parties involved.3

According to James W. Spain: “A *Jirga* in its simplest form is merely an assembly... Practically all community business, both public and private, is subject to its jurisdiction. In its operation, it is probably the closest thing to Athenian democracy that has existed since the original. It exercises executive, judicial and legislative functions, and yet frequently acts as an instrument for arbitration and conciliation”4.

**Jirga, Peace Building and Mediation:**

*Jirga* or community-based traditional victim-offender mediation usually leads to a deep sense of satisfaction, fairness and justice. Pakhtun as well as non-Pakhtuns in Afghanistan have preferred *Jirga* to formal justice according to recent research because it is conducted by respected elders with established social status and the reputation for piety and fairness; and also because it emphasises on the compensation of victims and the reintegration of offenders back into the community.5

Also, *Jirga* dispenses speedy justice and is more transparent, trusted and accessible compared to the state justice system.6 Furthermore, in the process of *Jirga* proceedings, elders reach decisions in accordance with accepted local traditions and values (customary practices) that are deeply ingrained in the collective conscience of the village/tribe. They have a profound existence in the collective mind of the village and in the minds of its individual members.7 Often obscured by the quasi-judicial role of the *Jirga*, its main function is to peacefully settle disputes (Teega) rather than to adjudicate or pass a sentence.

The state’s legal system does not effectively address the flaws identified in the *Jirga* system. Commonly, the Pakistani public lacks confidence in the justice system, which has undermined the rule of law and contributed to rising violence – including crime, terrorism and human rights abuses. The formal justice system is criticised for being expensive, non-transparent, un-just, time consuming and widely perceived as corrupt, biased and dominated by rich/powerful in the community. This has consequently contributed to the informal justice system being recognised as a deeply respected and accepted form of justice and dispute resolution mechanism in the Pakhtun community.

**Jirga and Human Rights:**

There is no female representation in the *Jirga* system and the members are at all times men. Even in cases where a woman is the victim, or accused of a crime, she is seldom given the right to express her opinion regarding the matter and her fate solely lies in the hands of the informal elders of the *Jirga*. However, very rarely, a woman may be represented by her male relative in the *Jirga*; even then the decision is taken without her consultation. The *Jirga* system has been consistently criticized for making decisions under social pressure, without taking into consideration the principles of fairness and justice.

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The exclusion of women and religious minorities from the informal justice system has been criticised by human rights activists globally. In addition to this, a grave concern has been the human rights violations inherent in the decisions made by the Jirga. Principally, Jirga decisions are meant to be objective (as the decision maker is nominated by both sides) and unbiased (based on tradition, customs and religion), however, practically the verdicts are based on what is acceptable to the society, which frequently ends up infringing fundamental rights of women and ethnic/religious minorities of the community.

Types of Jirga:

Olasi or Informal Local Representative Jirga:
Olasi means ‘people’. Thus, Olasi Jirga is an assembly of the elders comprising each household of a certain village or community. Olasi Jirga convenes to discuss various criminal and civil disputes and also to resolve them consensually so that all parties receive compensation accordingly. Usually, Olasi Jirga are convened to resolve disputes involving collective property rights, rights and distribution of irrigation water or common concerns, such as the selection of a site for a mosque.

When a dispute arises, elders approach both parties and set up a teega to prevent a further aggravation of the situation. The monitory value of teega could be either money or weapon. Teega is usually maintained for a certain time period and then followed by a proper constitution of a Jirga. The Jirga then takes time to collect evidence, analyse the evidence, and talks to both parties and villagers, takes waak from parties involved.

The Jirga members may take time or hold as many sessions with parties as they deem necessary to take a decision. Again, Hassan M. Yousafzai and Ali Gohar elaborated the components of Olasi Jirga in their book “Towards Understanding Pakhtun Jirga”; Olasi Jirga can.

- Hold as many sessions as needed
- Undertake any issue of interest or concern to the community
- Announce any interim decisions
- Make new rules for the tribe, like grazing rights, water rights, etc
- Call for other ideas
- Invite volunteers as a work force
- Raise taxes for community work
- Go as a delegation, send delegation to parties

Decisions made by Olasi Jirga are rarely challenged, as it is perceived to be more credible and has legitimacy within the communities. According to research conducted by CAMP, 53 percent of the Pakhtuns believe that Olasi Jirga provides justice as compared to other types of Jirgas.

Loya or Grand Jirga:
Loya Jirga has been practiced for centuries in our neighbouring country, Afghanistan. Loya Jirga, or the grand assembly, is a dispute resolution process through which representatives of various areas, which mainly comprise of informal and political leaders, religious scholar, elders and others gather to discuss and vote on issues at the national level. Loya Jirga primarily focuses on issues of national interest which includes, selection of a new ruler, a declaration of war, the adoption of peace treaties or a new constitution, and decisions of vital regional and international issues affecting Afghanistan. However, the nomination of representative participants of this Jirga is quiet susceptible and sensitive; as slight mismanagement and impression destroys the credibility and efficacy of this imperative process.

Sarkari or FCR Jirga:
Sarkari or FCR Jirga is practiced in FATA, which refers to a Jirga system sponsored by the government, more specifically by the political administration led by political agents or his subordinates. Primarily, the FCR Jirga deals with all criminal and civil cases in the administered areas of any particular agency or Frontier Region (FR). The laws are administered by the Political Agent acting as a District Magistrate. He establishes the Jirga with the consent of the disputant parties to regulate the formation of Jirga(s). The Jirga examines all the evidence within the framework of the issues framed and submits its recommendations to the political administration.

The concerned government authority nominates two or more Jirga members depending on the complexity and importance of a case. It institutes Jirga with the consent of the parties. The Jirga examines all the evidence within the framework of the issues framed; it calls the parties, listens to both points of view, gathers evidence, analyses the evidence and announces its verdict. The verdict then is passed on to the political administration for its approval.

The political administration has the authority to enforce such decisions though it’s Khasadar or levies force. Hassan M. Yousafzai and Ali Gohar elaborated the components of Sarkari or FCR Jirga in their book “Towards Understanding Pakhtun Jirga.”

- A government representative
- A case registered by one of the parties or cognizance of a situation by the government
Reforming the Jirga System: Sensitisation on Fundamental Human Rights

Formalist definitions of the rule of law tend to focus on purely formal attributes that a legal system must possess, and tend to shy away from imposing requirements about the content of specific laws. For instance, the laws must be prospectively rather than retrospectively applied, by an independent and impartial judiciary; they must be publicly declared; and have characteristics of generality and equality i.e. the absence of laws that apply only to particular individuals or classes; and they must possess a degree of certainty, among other characteristics.

Substantive conceptions, on the other hand, look to the outcome of laws against criteria such as justness or fairness, and thereby take a normative approach to the idea i.e. defining what a good legal system should look like. Another way of conceiving rule of law is through the functional approach, wherein it is contrasted with the rule of man i.e. countries in which state officials possess wide discretion in the exercise of their public powers would be considered to have a low level of Rule of Law, whereas societies in which the discretion of government actors is considerably circumscribed would be deemed to possess a high level of Rule of Law.

However, to counter-balance the Rule of Law’s state-centered paradigm, there is the framework of legal empowerment, i.e. the use of legal services to increase disadvantaged populations’ control over their lives. This alternative paradigm privileges supporting civil society since it is usually the actor best placed to enhance the legal capacities and power of the marginalised. It also addresses the reality that laws protecting the disadvantaged may already exist on paper – e.g. the Constitutional prohibition of torture – but in practice they are not enforced, or adhered to, unless the marginalized or their allies push for this to happen.

Other concrete benefits deriving from grassroots, bottom-up, legal empowerment – as against the rule of law approach – include the following: (i) legal professionals work alongside the disadvantaged as partners, instead of standing above them as privileged experts; (ii) the marginalized play a role in setting their priorities, rather than state officials and donors dictating the agenda; (iii) addressing these priorities often involves non-legal strategies – e.g. community-based solutions or political action – in order to achieve just outcomes; and (iv) the law can be deployed as a part of integrated strategy that includes other development-oriented activities.

The Legality and Legitimacy of Jirga:
The principle of legality is easier to define and comprises the ideal that all laws should be clear, knowable, non-arbitrary and non-retrospective. Thus, its focus is on the written rules that comprise a state’s system of statutory law, and

14. Ibid.
18. For instance, Afghans expressed a desire for training on community-based dispute resolution, i.e. the Jirga, during our consultations with them, as discussed in Recommendation No. 12, in Section 11.5 of this Chapter.
19. See Recommendation No. 1 in Section 11.5 of this Chapter: political advocacy related to the passage of the Foreigners Act (Amendment) Bill.
20. Ibid.
the application by decision makers of those rules which have been established beforehand – in a manner that does not entail discretionary departures from established law. In other words, the principle of legality is closely related to the formalist approach to rule of law, which tends to focus on purely formal characteristics that a legal system must possess, and shies away from assessments of the fairness of specific laws or legal decisions.

On the other hand, the principle of legitimacy is linked to the ability of a legal system to deliver justice in a form that is acceptable to the people it governs. Indeed, it is the notion of justice that makes laws meaningful to ordinary people in their day-to-day lives. But the idea of justice is different for each society, informed by its particular assessment of right versus wrong; in other words, its values and norms, and also its expectations of the legal system. As one would expect, in each society the notion of justice is not static, but rather subject to change in response to evolving social, political and economic conditions. In the end, for a particular legal system to be considered just, the present normative values, sensibilities and expectations of a society must be reflected in the legal system. In other words, social definitions of justice should coincide with the institutions, laws, and procedures of a state’s justice system. In this respect, legitimacy conforms with substantive conceptions of the Rule of Law, which looks to the outcome of laws against criteria such as justness or fairness.

Selection of the Jirga:

Jirga selection is the most delicate and sensitive element of the informal conflict resolution instrument. The selection of the Jirga members depends entirely on the type of Jirga being held. When concerned with the FCR or Sarkari Jirga, the participants of the Jirga are usually chosen from the distinguished elders or Maliks of the informal region, who are registered as the people loyal to the government. Furthermore, in a Sarkari Jirga, the disputed parties have the liberty to select or approve the selection of the members of the Jirga. Typically, these members are unbiased and neutral; however the parties may also nominate respective members to represent their interests in the proceedings. In order to reach a fair decision in the light of the code of Pakhtunwali it is essential for there to be an odd number of neutral members participating in the Jirga.21

The members of Olasi Jirga, are usually comprised of elders of distinguished families whose social standing and experience with the Pakhtunwali ensures the efficacy of the Jirga. This process of selection is more accepted by the Pakhtun, as they believe that the Jirga members are representative of the people they speak for.22

The selection of Jirga members can be summarised as follows:

Selection by the Parties:

If one or both parties feel that there is a desperate need for an intervention to resolve the dispute or help to prevent the situation from getting worse. They can then approach a person of their choice, to analyse the issue and present their case before an appropriate group of people. Traditionally, this group would include Khans, immediate relatives, friends, neighbors, religious leaders or professional Jirgamaars (peace-builders).

Selection by the Community:

Frequently, the community allows certain notable elders and Jirgamaars, who are fully conversant with the laws of the Pakhtunwali, to form a Jirga when there is need for conflict resolution. Thus, the participants of the Jirga represent the interests of the parties and are accountable to them as well as the community.

Criteria for Selection:

According to Hassan M. Yousafzai and Ali, in their book “Towards Understanding Pakhtun Jirga” the people selected by the informal community to participate in a Jirga generally have the following characteristics:

- Visible attendance in social events
- Regular presence in Hujra
- Regular attendance in the company of elders in Hujra
- A good knowledge of history
- A good knowledge of Pakhtunwali
- Little “loose” talk used ever in life
- Proactive intervention in situations demanding attention
- Good sense of humility, sympathy, respect, and understanding
- Particular attendance to offer condolences
- Reaching out to farther villages at marriage and birth ceremonies
- Maintaining contact with the community
- Maintaining an upright character
- Belonging to reasonably better off and better known families
- Making the correct choices when taking sides with victims at different times in their lives
- Sacrificing their time, energy, and money for the sake of peace building
- A spotless history of honesty, integrity and uprightness

The Legislative and Judicial Role of the Jirga:

The rules and customs based on which elders and/or the Pakhtun community makes Jirga decisions are passed down

from generation to generation without any written protocols or codified laws of the Pakhtunwali. These local traditions of every community differ according to the differences in geography, climate, and patterns or structures of living. Even though the Pakhtunwali is considered to have a uniform meaning in every community, however the decisions of the Jirga vary according to the local customs and traditions. Therefore the legislative role of this informal justice system is very limited.

**Jirga’s Instruments of Dispute Resolution:**

**Facilitation:**
Facilitation is a collaborative process, through which a third party assists disputants to identify issues, discuss them and to find ways to peacefully resolve the conflict. Therefore, frequently, Jirga members identify themselves as the facilitators, as they use their prerogative to remove confusions and find a common ground between the parties in conflict.

**Mediation:**
Mediation is one of the vital instruments used by the Jirga to prevent conflict from escalating and enable parties to negotiate effectively. Typically, mediators or an impartial third party approaches the parties in conflict and provides them with a platform to communicate their issues and empowers them to resolve their conflict in a peaceful manner.

**Arbitration:**
Arbitration is commonly used in the informal regions as a significant tool to resolve disputes. The informal Jirga takes the liberty with the consensus of both parties to identify the issues, collect necessary evidence and give a fair verdict. Furthermore, FCR 1901 also provides for rules and regulations that govern the arbitration process in the informal regions.

**Advocacy:**
Traditionally, Jirga as a dispute resolution mechanism advocates for the code of Pakhtunwali. Therefore, members of the Jirga employ this code to resolve conflicts and make decisions in peaceful and just manner.
Fundamental Rights in the Constitution of the Islamic Republic of Pakistan 1973

Right of liberty  Equality of the citizen
Right to safeguards as to arrest and detention

Protection right against retrospective punishment

Freedom of Movement  Freedom of Association

Dignity of a person  Freedom to Profess Religion and to Manage Religion Institutions

Freedom of Speech and Information  Freedom of Business or Profession

Constitution 1973
Fundamental Rights in the Constitution of the Islamic Republic of Pakistan 1973

Objective:
The participants will learn about and understand the fundamental rights granted under the Constitution of the Islamic Republic of Pakistan 1973 (hereinafter referred to as the Constitution). The participants will also be provided with information relating to the constitutional structure dealing with the tribal areas of Pakistan.

By the end of the session, the participants will be able to understand the concept of Fundamental Rights and their constitutional status.

The Session:
The session is comprised of a presentation on the fundamental rights and freedoms under the Constitution. The participants’ current knowledge and understanding of the Constitution will be assessed and the facilitator will assist them in developing an insight into the legal and constitutional framework of Pakistan. The current sessions will focus only on two aspects of the Constitution i.e., Fundamental Rights and Constitutional provisions.

Constitution of Pakistan, Fundamental Rights and Jirga:
Fundamental Rights are generally regarded as a set of entitlements in the context of a legal system; such system is based upon the basic, fundamental or absolute rights. Such rights are granted without any presumption to all human beings. The concept of human rights has been promoted as a legal concept in large part due to the idea that human beings have such “fundamental” rights, which not only exceed all jurisdictions, but are typically reinforced in different ways and with different emphasis within different legal systems.

Different fundamental rights are protected by the Constitution, guaranteed to all and implemented through different laws within the Pakistani State. Constitutional provisions starting from Article 8 till Article 28 prescribe the different categories of fundamental rights for the citizen. Under the Constitution, it is the responsibility of “The State” to protect the rights of the citizen.

State is defined in the Constitution of Pakistan and means the Federal Government, Parliament, provincial assembly and government and such other local or authorities in Pakistan as are by law empowered to impose any tax or access.

Fundamental Rights and Guarantees:
The impression of the conception of Fundamental Rights is that the protection of assured basic Human Rights against State interference is an essential prerequisite of free society. Such an idealist theory, presupposes a declaration of Fundamental Rights which are guaranteed basic rights of an individual such as a person’s right to life, liberty, freedom of speech, freedom of faith etc., should be considered as permanent under all environments which cannot be altered by the State. However, the reality is that unrestricted and limitless individual rights do not exist in any modern-day State and there is no such thing as unrestricted freedom.

Fundamental Rights have no real meaning if the State itself is at risk and disorganised; in such a situation, the subjects of the State themselves will also be left unprotected. Therefore, it is for these reasons that stability has to be maintained between the two contending securities at stake; one, the individual liberties and the positive rights of the citizen which are declared by the Constitution to be fundamental, and secondly, the need to impose social control and reasonable limitations on the enjoyment of those rights in the interest of the collective good of society.

Thus, Fundamental Rights cannot be interpreted informally through an unstructured approach; instead, they must be understood in terms of being enforced through a basic code that must be followed to ensure these guarantees to people emphasise the essential duties of the public at large. A balance must be maintained amongst these constitutional rights of persons and the interests of public. If in serving the interests of public, the fundamental rights and freedoms of an individual or number of individuals must be constrained these limitations can never be deemed irrational. Nevertheless, no violation of any Fundamental Right can be made except when it is in the larger interest of public and is within the limits set by the law. No doubt that a ‘reasonable restriction’ can be imposed but it does not authorise the arbitrary exercise of power or unfettered limitations which surely would be outside the scope of reasonable restriction and it must be in public interest. A reasonable restriction is defined as one which is imposed with due regard to the public requirement which it is designed to meet.

Fundamental Rights assured by the Constitution are not only intended to be spiritual in terms of ethics, but theoretically serve the purpose of serving as the basis of the rule of law. The uniqueness of a Fundamental Right is its supremacy to the other State-made laws; it is protected by judicial enactments as well as executive actions. It also establishes constitutional requirements limiting legislative power and regulating the provisional ‘will’ of the people. The inviolability of the Fundamental Rights is secured by Article 8(2) of the Constitution which prohibits the State, including the legislature, from making any laws which may curtail or take away a person’s Fundamental Rights; if such a law were to be enacted, it would stand as void.

However, certain circumstances may warrant such a deprivation of fundamental rights; one such situation is outlined in Article 233 of the Constitution which deals with the “Power to suspend Fundamental Rights, etc. during emergency period” it states:-

28. (PLD 2007 S.C. 642)
“(1) Nothing contained in Articles 15, 16, 17, 18, 19, and 24 shall, while a proclamation of Emergency is in force, restrict the power of the State as defined in Article 7 to make any law or to take any executive action which it would, but for the provisions in the said Articles, be competent to make or to take, but any law so made shall to the extent of the incompetency, cease to have effect, and shall be deemed to have been repealed, at the time when the Proclamation is revoked or has ceased to be in force.”

(2) While a Proclamation of Emergency is in force, the President may, by Order, declare that the right to move any Court for the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II as may be specified in the Order, and any proceeding in any Court which is for the enforcement, or involves the determination of any question as to the infringement, of any of the Rights so specified, shall remain suspended for the period during which the Proclamation is in force, and any such Order may be made in respect of the whole or any part of Pakistan.

(3) Every Order made under this Article shall, as soon as may be, be laid before [254] [both Houses of Majlis-e-Shoora (Parliament) separately] for approval and the provisions of clauses (7) and (8) of Article 232 shall apply to such an Order as they apply to a Proclamation of Emergency. Fundamental Rights cannot be waived. No right which is based on public policy can be waived. Citizens of Pakistan cannot themselves waive out of various Fundamental Rights which Constitution grants them. The Fundamental Rights are not to be read as if they included the words ‘subject to a contract to the contrary’.

The famous expert on Jurisprudence Sir John William Salmond wrote, ‘A Right is an interest recognised and protected by law’; it can be created and enforced either by a constitutional provision or by an ordinary enactment. When a right is safeguarded by a Constitutional guarantee, it is termed a ‘Fundamental Right’, because by doing so it is placed beyond the power of any organ of the State, whether Executive or Legislative to act in violation of it. Such a right cannot be taken away, suspended or abridged save as expressly provided by the Constitution. The Constitutional Rights are not to be read as if they included the words ‘subject to a contract to the contrary’.

Characteristics of Fundamental Rights:

“Fundamental Rights are those natural rights which are particular to the individual as a citizen of a free and civilized community and belong alike to every man, woman and child. The essential characteristic of Fundamental Rights is that they impose limitations, express or implied, on public authorities, interfering with their exercise.”

The superior courts by means of Articles 199(2) and 184(4) of the Constitution have been given the responsibility of providing remedy to those citizens whose rights have been encroached by the State or its functionaries.

The Fundamental Rights enshrined in the Constitution in fact reflect what has been provided in some of the Articles of Universal Declaration of Human Rights (UDHR). The Supreme Court of Pakistan, while construing the Fundamental Rights may refer to Articles of the UDHR, and if there is no inconsistency between the two keeping in mind a liberal interpretation, it should extend maximum benefits to the people to maintain uniformity with the comity of nations.

Following are the Fundamental Rights guaranteed by the Constitution of Pakistan. Constitution reflects that any law which is inconsistent or in derogation of Fundamental Rights is considered to be void.

Article 8: Law Inconsistent with or in Derogation of Fundamental Rights to be Void:

- Laws, customs and usage having the force of law, if it is inconsistent with the fundamental rights of the constitution, shall to that inconsistency, be void.
- The state shall not make any law which takes away or abridges the rights. There is some exception to this principle, in case, law relates to Armed Forces, Police or such other forces as are charged with the maintenance of public order.

The purpose of this Article is to invalidate all prevalent laws which are inconsistent with Fundamental Rights guaranteed by the Constitution. The Article states that any law or procedure having the authority of law shall be invalid if it violates the rights guaranteed in this Chapter. The principle embodied in this Article is that any invasion upon the rights of a citizen, regardless of whether it is perpetrated by a private individual or a public official/body, must be justified with reference to some law of the country.

However, it is pertinent to clarify here that unconditional individual rights do not exist in any contemporary State since there is no concept of outright and unrestricted liberty. The mutual benefits of the society, peace and security of the State and the preservation of communal order are significant concepts in curtailting individual rights within any structured civilisation or society.

The primary intention of formulating a declaration of Fundamental Rights is to regard certain elementary rights of the individual such as his or her right to life, liberty, freedom of speech, freedom of faith and so on, as inviolable under all circumstances and to ensure that the shifting majorities in the legislature of the State should not tamper with them.
Article 9: Right of Liberty:

- No person shall be deprived of life or liberty, save in accordance with law.

In this Article, the Constitution guarantees the life and/or liberty of a person, providing for a only such a deprivation which is subject to law. In Pakistan, the individual liberty of a person is subject to this Fundamental Right which essentially includes free will as well as personal independence to move freely. However, this is by no means an absolute and unqualified right; it is exercisable subject to certain limitations and the restrictions under the Constitution.

The Constitution guarantees dignity of man and subject to law, the privacy of home, which is inviolable, which may be restricted only by lawful interference. Home in literal sense denotes a place of abode, or a place where a person enjoys personal freedom and security. However, the emphasis in this Article is not on the boundaries of a home, but on the person who enjoys the right wherever he or she may be.

Hence, the inviolability of privacy is directly linked with the dignity of man. If a man is to preserve his dignity, and if he is to live with honour and reputation, his privacy, whether within home or outside, must be safe from invasion and protected from illegal intrusion.

The term "life" used in Article 9 of the Constitution is to be interpreted widely and thus includes all those rights which are necessary for living a quality life befitting human dignity, and as such the term life cannot be limited to mere vegetative or animal life.

It carries with it the right to live in a clean atmosphere, the right to an existence in which all Fundamental Rights are protected from illegal intrusion.

With this comprehensive meaning of word ‘life’, the understanding of privacy of man can also be interpreted broadly so as to become basis of precision to society. Practically, the freedom of an individual is also limited. So a right to unlimited fundamental rights is to be examined from all the constitutional, legal or ethical understandings and no excuse can be admitted for wrong actions at public or private levels in the country.

Moreover Article 9 needs to be read with Article 38(d) of the Constitution. Therefore, the term ‘life’ in this Article of the Constitution has not been used in a limited manner; a wider meaning should be given to it in order to enable a man to live it well.

Article 10: Right to Safeguards as to Arrest and Detention:

- No one has to be detained in custody, without being informed about the grounds for such arrest.
- Every arrested and detained person needs to be produced before a magistrate in 24 hours.
- No one will be denied the right to consult and be defended by a legal practitioner of his/her choice.
- No one can be detained beyond this period of time, without authority of the magistrate.
- Principle of producing the detained person before magistrate will not be applicable to arrest under preventive detention.
- For the determination of his civil rights and obligations or in any criminal charge against him, a person shall be entitled to a fair trial and due process.

This Article protects all individuals against indiscriminate custody or arrest. An individual can be detained either under conventional law or under the law linking to preventive detention. A person under arrest under ordinary law has been provided with safeguards.

A person under arrest has a constitutional right to the services of counsel. Thus, any provisions denying a person the right to be defended by a legal practitioner are undoubtedly void.

Under the Constitution, an accused person has a right to be defended by counsel of his own choice but not essentially at State expense. He can involve any counsel of his choice; but if he is not able to engage one, then the choice is no longer available to him. He has to be satisfied with the counsel so engaged by the Government, and is not required to file a VAKALTNAMA (legal authority letter). If the sentenced prisoner is not satisfied with the counsel, he can, of course, put forward his concerns in court.

It is an established practice that a person under arrest should be produced before the nearest Magistrate within the prescribed time limit, usually within 24 hours from the start of this detention. Failure to comply with this requirement would make further detention illegal.

In addition, the grounds of detention should be communicated within 15 days from such detention. Such time is the maximum limit for communicating the grounds of detention and it can be done even earlier than the end of this period. Therefore, such a requirement of the Constitution has to be kept in view at the time of detaining a person or dealing with the cases of detention.

40. [PLD 1969 Lah. 908]
42. [PLD 1998 S.C. 388]
43. [PLD 2007 Kar, 116]
45. [PLD 1975 SCMR 1] and [1975 P.Cr.L.J. 1413]
46. [PLD 1965 Lah. 293; PLD 1957 Lah. 388]
47. [1975 SCMR 1]
48. [PLD 1957 Lah. 813]
49. [2007 P.Cr.L.J. 268]
Article 10-A: Right to Fair Trial:

This Article has been inserted in the Constitution through the 18th Amendment which states “For the determination of his civil rights and obligations or in any criminal charges against him a person shall be entitled to a fair trial and due process”.50

Article 11: Prohibition of Slavery, Forced Labour:

- Slavery is non-existent and forbidden within Pakistan.
- All forms of forced labour and trafficking of human beings are prohibited.
- No child can work in factory, mine or hazardous employment, if he or she is below the age of fourteen years.

This Article forbids all forms of forced employment and trafficking of human beings. The only exception to this Article exists in relation to sentences imposed on prisoners or when it is required by law, for a public purpose, for example; the government may require compulsory military service from all able-bodied citizens, or those over twenty-one and under forty-five years of age to work on the public roads for six days each year in the ‘public interest’.51

The provisions of Article 11 are analogous to the provisions of Article 4 of the UDHR, as well as other constitutions, which include: 13th Amendment of USA, Article 23 of the Indian Constitution, Article 16 of the Pakistani Constitution and Fundamental Rule No. 3 of the 1962 Constitution.52

Slavery results from a total denial of an individual’s status as a free subject making him or her indistinguishable from a chattel since he or she is virtually delivered to a master “having unlimited control over his life, liberty and everything that constitutes him a free subject.”53

The expression ‘forced labour’ denotes any kind of manual work and/or labour which a person is forced to do against his or her will, under some threat or compulsion. In such a situation, it does not matter if he or she is paid or compensated. Under Section 374 of the Pakistan Penal Code (PPC) 1860 it is a punishable offence to force any person to do labour against his will.

Article 12: Protection Right Against Retrospective Punishment

- No law can punish an act or omission that was lawful at the time it was perpetrated.
- No penalty greater than or of a kind different from the penalty prescribed by law at that time can be meted out against a person.

Article 12 provides protection against retrospective punishment; in other words any act committed at a certain time when it was legal cannot be punished if it becomes an offence later on. An amendment imposing an additional penalty will also fall within this Article.54 The purpose of the Article is to prohibit any conviction and/or sentences under ex post facto laws.55 However, where a law merely authorises retrospective effect, but neither creates an offence nor imposes a punishment, there will be no violation of this fundamental right and Cause 1(a) of this Article has no applicability.56

Similar provisions can be seen in Article 11 (2) of UDHR, Section 9 (3) of U.S.A. Constitution, Article 20 of Indian Constitution, Article 6 of 1956 Constitution and Fundamental Right No. 4 of 1962 Constitution.57 The founding principle upon which our political institutions rest is that all men have certain inalienable rights, among which are life, liberty and pursuit of happiness; and that in the pursuit of happiness all avocations, all honour, all positions, are alike open to everyone, and that in the protection of these rights all are equal before the law. Any deprivation or suspension of any of these rights for past conduct equals punishment, which cannot be meted out under any circumstances in general.58

Article 13: Protection Against Double Punishment

- No double prosecution or punishment for the same offence.
- No one can be compelled to give evidence as a witness against himself/herself.

This Article provides that no person shall be prosecuted or punished for the same offence more than once; Section 403(1) of the Code of Criminal Procedure 1898 (CrPC) prohibits a second trial for the same offence after a person has already been convicted or acquitted by a Court of competent jurisdiction where he or she has been previously tried.

However, before this principle can be invoked, the following conditions must be satisfied:

(a) That the accused has been already tried for the same offence he or she is charged with at present;
(b) That the trial was held by a Court of competent jurisdiction; and
(c) That there was judgment or order of acquittal or conviction.59

Article 14: Dignity of a Person:

- Dignity of a person is inviolable, subject to law and privacy of home.
- No person shall be tortured for extracting evidence.

53. (Fundamental Laws of Pakistan. 390)
54. [PLD 1964 Dacca 788 (DB)]
55. [1953 Cr.Jour. 1480]
56. [PLD 1965 Lah. 147]
58. [PLD Dacca 788(106)]
59. [PLD 1970 Kar. 386; PLD Lah. 461; PLD Kar. 541]
This Article promises to safeguard the guaranteed dignity of man and privacy of home, subject to lawful limitations. Dignity of man is not only provided by the Constitution of Pakistan, but also an important right under Islamic injunctions which comprise of pronounced ethics relating to the dignity of man and privacy of home.

If a person violates the privacy of any man, it also violates the privacy of home, and disturbs the peace and tranquility of the family. Such acts are not permissible under law and if the only exception exists in cases of defence and national security.60

Clause 2 of the Article in clear terms, states that no person shall be subjected to torture for the purpose of extracting evidence. This also forms part of the fundamental rights of a citizen, which, if violated, will be protected by a court of law. In such a case, the court must step in and investigate the matter under its constitutional jurisdiction and pass such order as may be found just, legal and equitable.61 This guarantee is not subject to law but is an unqualified guarantee.62

The principle must be inclusive in the case of any other insult, since human dignity, honour and respect are more important than physical securities and requirements of the State.

**Article 15: Freedom of Movement:**

- Every citizen has the right to move freely, reside and settle in any part of Pakistan.
- Any reasonable restriction imposed by law in the public interest is capable of interfering with this right.

This Article prohibits all kinds of obstructions on freedom of movement within the country for the citizens of Pakistan. It is intended to be free from concepts such as provincialism, regional perceptions and all such narrow-minded considerations. The key purpose is to prevent exclusion and to make the country a whole for all citizens. Though this Article offers the right to freedom of movement, it is nonetheless subject to any reasonable restrictions which may be imposed by law in the public interest.

While interpreting this Article, it should be read with Articles 2A, 4, 9 and 25 of the Constitution of Pakistan 1973.63

**Article 16: Freedom of Assembly:**

- Every citizen has the right for the peaceful assembly, without fear of violence and arms.
- Any reasonable restriction imposed by law in the public interest can affect this right.

The constitutional right to freedom of assembly, although fundamental, is not in its nature absolute, and it is subject to reasonable restrictions with necessary conditions to safeguard the public interest.64 These restrictions are imposed merely to avoid the severe and instant indication to securities which the State may legitimately defend. An effort to limit the freedom of assembly must be vindicated and should be implied merely in the severest mistreatments, threatening dominant securities, provided circumstances exist for acceptable restrictions on this right.

The right of freedom of assembly, nevertheless, must fulfill two conditions:

(i) The assembly should be for a peaceful purpose, and
(ii) No participant should have on his or person any arm or weapon.65

In general, a citizen is not allowed to possess arms at an assembly even if he or she holds the license for their possession or to willingly participate in an assembly the object of which is not peaceful. Therefore, laws which punish members of an unlawful assembly, or authorize the use of force to disperse such an assembly are not infractions on the rights of freedom of assembly. Nor is a Magistrate’s power under Section 144 CrPC unconstitutional, if they are exercised in good faith for the purpose of protecting the public interest.66

**Article 17: Freedom of Association:**

- Right to form associations or unions, subject to restrictions imposed by law in the interest of the sovereignty and integrity of Pakistan, public order or morality.
- Everyone has the right to form a political party, except persons in the services of Pakistan.
- Every political party shall account for the source of its funds in accordance with law.

Individuals have the right to become members of special groups to advocate for any cause and to circulate their views at public assemblies. The only exception arises when people come together for an illegal purpose; in this situation, the law prohibits their association and creates ‘vicarious liability’ for acts done by all those present at such a gathering.

Clause (2) of this Article confers upon every citizen, who is not in the service of Pakistan, the right to form or be a member of a political party, subject to reasonable restrictions imposed by law in the interest of sovereignty or dignity of Pakistan. It also empowers the Federal Government to declare that a political party has been formed, or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, subject to a reference to be made within 15 days from such declaration to the Supreme Court whose decision on such reference is to be final.67
Democracy is a political process which offers different approaches for accomplishing political, economic and social rights in which a human being is allowed to participate, and all the individuals have been assured by the Constitution in the form of fundamental rights and other guarantees. This political right does not end with the election to the Assemblies, it is an on-going process which starts with the formation of political parties, participation in the elections and thereafter operating and participating in governance of the country by majority rule.

Article 18: Freedom of Trade, Business or Profession:

- Everyone has the right to enter any lawful profession or occupation to conduct any lawful trade or business, subject to such qualifications required under law.
- The government will make regulations for certain trade, business or professions.

In this Article, the Constitution gives citizens the Fundamental Right of freedom of trade, business or profession and predicts the right to conduct lawful business trade or join a lawful profession; and, to manage the same in a way considered acceptable by an individual, company, corporation, statutory body or government controlled corporations and legislative bodies. The only restriction that can be placed on such trades or businesses, is for them to conform to the law of the land.

It may be seen from above that this right is not an absolute right but is liable to certain restrictions, moreover, the provisions contained in this Article apply only to citizens, that is, individuals and not companies or corporations.

The validity of such a prescribed qualification or prohibition can still be examined by the superior Courts in exercise of the power of judicial review, in relation to other fundamental rights as well, including Article 18 and other provisions of the Constitution and the law.

The provisions of this Article are similar to those found in Article 19(1)(g) of the Indian Constitution, Article 12 of 1956 Constitution, and Fundamental Right No. 8 of the 1962 Constitution. Article 18 pronounces that every citizen of Pakistan is free to enter any lawful profession or occupation, and to conduct any lawful trade or business. However, the State may:

(a) Regulate any trade, or profession by a licensing system, or
(b) Regulate any trade, commerce or industry in the interest of free competition, or
(c) Carry on, itself or grant to Provincial Government, or a corporation controlled by any such Government, any trade business, industry or service, exclusively or partially.

Article 19: Freedom of Speech and Information:

- Every citizen has the right to freedom of speech and expression.
- There will be freedom of press, subject to any reasonable restrictions imposed by law.
- Everyone has the right to access information
- Every citizen shall have the right to access information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.

19A: Right to information:

Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.

This Article explicitly identifies the fundamental right of every citizen with respect to freedom of speech, expression, and freedom of press, subject to specified restrictions. A citizen claiming such freedom under Article 19 is consequently obliged to "ensure and protect the glory of Islam; integrity and security or defence of Pakistan, or any part thereof." It is mandated that a citizen shall neither violate principles of decency, established norms of morality, nor shall he cause any act calculated towards contempt of Court.

As mentioned above, the right of freedom of speech and expression guaranteed under Article 19 of the Constitution is not unrestricted. It is subject to reasonable restrictions which may be imposed under law. For example, in order to maintain proper discipline amongst public servants and efficiency in administration, it is necessary to place certain restrictions on the freedom of speech of government servants.

It is also pertinent to mention here that 'no citizen can be allowed to use his freedom of speech or expression as to injure another's reputation, or indulge in what is commonly known as 'character assassination'. Thus, Article 19 and 19 A exempts from its operation the laws as to defamation, both civil and criminal, and punishable under Sections 499 and 500 PPC. In addition, the Press Publications Laws give the Executive the power to restrain newspapers from publishing inter alia, defamatory matter.

Honest and fair reporting of a public statement or bona fide expression of opinion on a matter of public interest is not actionable even if it is not true. No prima facie case under Ss. 499/500, PPC can be made out and continuance of the proceedings before the Trial Court would be abuse of the process of the Court.

References:

68. [PLD 1958 Lah. 887]
69. [PLD 2004 Lah. 1376]
70. [PLD 2001 Lah. 129]
72. Ibid
73. (2004 PLC (CS) 130]
74. [2004 SCMR 164]
76. [PLD 2001 Kar. 115]
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Article 21: No Tax for Other Religion’s Activities:

- Subject to law, public order and morality, every citizen shall have the right to profess, practice and propagate his/her religion.
- Every religious denomination and sect will have the right to establish its own religious institutes.

This Article provides safeguards to the fundamental right of a man to profess, practice and propagate any religion and to establish, maintain and manage religious institutions in accordance with the religious belief of the denomination or sect concerned. “The Church is a religious institution, construction of which according to Article 20 of the Constitution is a right of Christian citizens of Pakistan?”77 But this right is subject to certain conditions, that is, law, public order and morality.

So long as religious beliefs are held, professed and practiced in private, no question of public disorder can arise, but when they are practiced and propagated in public, by speeches, processions and placards, and are accompanied by denunciation of other religions, they are bound to clash with the rights of others78 and thus lead to breach of the peace. It is for considerations like these that the practice and propagation of religion is made subject to law. Further, if during the performance of religious rituals, such steps are taken, for instance, procuring foreign exchange for a pilgrimage, the law may make provision in regard to such matter.79

Powers under S. 144, Cr.P.C. can legitimately be exercised for public good in the interest of the people of the country. The provisions of this Article are analogous to the provisions contained in Article 16 of the Covenant of Human Rights, Article 25 of the Indian Constitution, Article 18 of the 1956 Constitution and Fundamental Right No. 10 of the 1962 Constitution.

The very conception of a Fundamental Right is that it being a right guaranteed by the Constitution cannot be taken away by the law, and it is unfair for the citizen to say that a particular right is a fundamental one, and that it can be taken away by the law.80

Article 22: Safeguarding Religious Institutions:

- No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.
- No citizen shall be denied admission to any educational institution receiving aid from public revenue on the ground of colour, race, caste or place of birth.

This Article prohibits discrimination on grounds of race, religion, caste or place of birth in educational institutions receiving aid from public revenue but enables a public authority to make provisions for the advancement of any socially or educationally backward class of citizens.

This Article of the Constitution, which is complementary to the preceding Article, contains various safeguards for educational institutions in respect of religion. It proclaims that,

(a) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship relating to a religion other than his own (Cl. 1).
(b) There shall be no discrimination against any community in the granting of exemption or concession in relation to taxation in respect of any religious institution (Cl. 2).
(c) No religious community or denomination shall be prevented from providing religious institutions for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination (Cl. 3(a)).
(d) No citizen shall be denied admission to any educational institution receiving aid from public revenue on the ground only of race, caste or place of birth (Cl. 3(b)). [PLD 1965 Lah. 275; PLD 1990 S.C. 295].
(e) It is clarified in clause 4 that the provisions contained in the preceding clauses shall not be construed as preventing any public authority from making provision for the advancement of any socially or educationally backward class of citizens.81

“Where the Government issued a directive to a professional college to reserve some seats for students from particular region or belonging to a particular class, it was held that the circular did not make any discrimination on the basis of religion, race, caste or place of birth and was therefore not opposed to the Constitution”.82

Adding further, Article 25 of the Constitution unambiguously guarantees that all the citizens are equal before law and

77. [2005 CLC 678]
78. [PLD 1958 Lah. 584]
79. [PLD 1993 S.C. 1718]
80. [PLD 1957 S.C. 9]
82. [PLD 1957 Kar. 740]
entitled to equal protection of law and that they shall not be discriminated on the basis of sex alone. In addition to this provision, Articles 2-A, 18 and 25 are designed, intended and directed to bring about an egalitarian society based on Islamic concept of ‘social justice’.

**Article 23: Right of Property:**

- Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

In this Article, the term ‘property’ has been made a legal concept, which is the sum of the bundles of rights over an object of ownership. But the word ‘property’ is word of a very wide import, including both intangible and tangible property; these terms encompass not only real and personal property but also incorporeal right such as patents, copyright, leases etc., and everything of exchangeable value which a person may own.

’Property’ as used in this Article means property in respect of which a right of proprietorship may be asserted.83

Thus, citizens of Pakistan are vested with the fundamental right to hold, to own and to acquire property and their property is not to be taken away other than in accordance with law.84

This Right is also subject to reasonable restrictions under law. A reasonable restriction is one which is imposed with due regard to the public requirement which it is designed to meet85 anything which is arbitrary or excessive will of course be outside the bounds of reasons in the relevant regard.86

The right to acquire, hold and dispose of property can be regulated only through reasonable restrictions imposed by law in the public interest. Both validity of law and action taken become justifiable from stand point of reasonableness as well as public interest.87

**Article 24: Right Regarding Property:**

- No one will be deprived of his or her property, save in accordance with law.
- The State has the authority or power under certain laws to acquire the property or properties of individuals.
- Compensation will be made to any individual being deprived of his or her property, but the amount as determined by the government, will not be challenged in the courts.

This Article of the Constitution states that no person can be deprived of his property, save in accordance with law. An action of the Executive depriving a person of his property must carry the sanction of law behind it and until substantial compliance with the law itself is made while taking the action, the result flowing therefrom would render such action null in the eye of law.88

A law depriving a person of the right to gain a livelihood by legal practice is within the scope of this Article and therefore valid.89

This Article applies to every person; natural or artificial who owns property within the territorial limits of Pakistan. In as much as this Article is not confined in its application to ‘citizens’, it will also apply to corporations.90

Some of the instances of public purpose where an individual’s right to property may be interfered with are as follows:

1. Acquisition of land for housing schemes. [PLD 1963 Dacca 736]
2. Acquisition of land for diversion of railway line. [PLD 1963 S.C. 296]
3. Acquisition of land for a private textile mill. [PLD 1959 Dacca 154]
4. Rehabilitation and settlement of refugees. [AIR 1951 Cal. 97]
5. Building a manufactory. [AIR 1958 All. 872]
6. Providing accommodation for pilgrims. [(1922) 27 CWN 125]
7. Housing for the homeless. [AIR 1952 Mad. 203]

The necessary implication would be that when a person is deprived of his property under the authority of law and according to the provisions of law, he will have no grievance or ground to complain about the said action.91

**Article 25: Equality of the Citizen:**

- Every citizen is equal before the law and enjoys equal protection of law.
- There will be no discrimination on the basis of sex.
- Special /additional measures taken for the protection of children and women will not be considered as special treatment or discrimination.
- Education is compulsory for all children from the ages of 5 to 16 years.

Under this Article, all the citizens are equal before law and are entitled to equal protection of legal remedies. There can be no discrimination on the basis of sex, and the State shall enact laws for the protection of women and children making special provisions.

83. [PLD 1958 Lah. 706]
84. [2001 CLC 710]
85. [PLD 1958 S.C. 14]
86. [PLD 1966 Dacca 472]
87. [2003 CLD 1797]
88. [PLD 2004 Pesh. 251]
89. [PLD 1965 S.C. 327]
90. [AIR 1951 S.C. 41]
91. [PLD 2002 Lah. 28]
The Supreme Court of Pakistan, while dealing with the implementation of Article 25 of the Constitution has laid down the following principles:

i) The concept of 'equal protection of law' does not envisage every citizen is to be treated alike in all circumstances, and it contemplates that all persons similarly situated or similarly placed are to be treated alike;

ii) Reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;

iii) Different laws can validly be enacted for different financial standings, and persons accused of heinous crimes;

iv) No standard of universal application to test the reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in another situation;

v) A law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reasons for it, but such a classification which is arbitrary and not founded on any rational basis cannot warrant exclusion from the ambit of Article 25; 

vi) That equal protection of law means that all persons be equally placed and treated alike both in terms of privileges conferred and liabilities imposed;

vii) That in order to make a classification reasonable, it should be based:-

(a) Upon an intelligible differentia which distinguished persons or things grouped together from those who have been left out;

(b) The differentia must have a rational nexus to the object sought to be achieved by such a classification.

Article 26: Equal Access to Public Places:

- Everyone has equal access to places of public entertainment and resort.
- Nothing in this section will prevent the State from making special provisions for children and women.

This Article relates to fundamental rights which are granted only to the citizens of Pakistan. This Article is applied where discrimination is made against a citizen solely on the basis of religion, caste, sex or place of birth from accessing a public place. If a law is based on several considerations and the

religion, or race of a person is only one amongst many, the law would not then be discriminatory.

The provisions of this Article are reflected in Article 2 of UDHR, Article 15(1) of the Indian Constitution and Article 14 of 1956 Constitution and F.R. No. 17 of 1962 Constitution.

Article 27: Right of Appointment to Services:

- No citizen, otherwise qualified for appointment in the services of the Pakistan shall be discriminated against in respect of any such appointment on the grounds only of race, religion, caste, sex, residence or place of birth.

- The under-representation of any class or area in the services of Pakistan may be redressed in such a manner as may be determined by an Act of Parliament.

This Article envisages that if a citizen is otherwise qualified for appointment in the service of Pakistan, he cannot be refused appointment merely on the ground of his race, religion, caste, sex, residence, or place of birth. But it is open to the appointing authority to specify qualifications for recruitment to Government service and formulate conditions of appointment, which may exclude certain individuals or groups of individuals.

The provisions of this Article are not violated if the selection is made on merit from amongst the candidates who have been subject to the same procedures.

Article 28: Right to preserve and promote language, script, culture:

- Any section of society having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose.

This Article perceives that if there is a group of citizens who have a distinct language and culture of their own and wish to preserve the same they have the constitutional right to do so without any exceptions. However, under the provisions of this Article, a University, for example, cannot be compelled to make permanent provision for a regional language as a medium of instruction for answering examination paper to cater to this requirement.

92. [PLD 1993 S.C. 341 as referred to in 2009 MLD 71]
94. [1952 Cr.L Jour. 23]
95. [PLD 1957 Kar. 611(DB)]
Judicial Courts Mechanism of Pakistan
Judicial Courts Mechanism of Pakistan

Introduction:
The current Judicial Court system is based on the Code of Civil Procedure 1908,96 and the West Pakistan Civil Courts Ordinance, 1962,97 (Ordinance II of 1962). The Ordinance provided three civil courts, namely, (i) Courts of District and Session Judge, (ii) Additional District and Session Judge and (iii) Civil Judge cum Judicial Magistrates. Under the Ordinance, High Court has the power to determine the class and jurisdiction of the Civil Judges.98

The structure of court system in Pakistan is as follows:

- Supreme Court of Pakistan (the Premier court of Pakistan)
- Federal Shariat Court of Pakistan
- High Courts of Pakistan (one in each province and also in federal capital)
- District and Session Courts of Pakistan (one in each district)
- Civil Judge Cum Judicial Magistrate Courts (with power of Section 30 of Code of Criminal Procedure 1898 (Cr.PC) only in criminal trials)

Supreme Court (SCP) of Pakistan:
The Supreme Court (SCP) is the premier court in Pakistan’s judicial order; it is the final authority of legal and constitutional disputes in the country.99 There is one Chief Justice and 16 permanent judges, of SCP.100 It has a permanent seat in Islamabad, with Branch Registries in the capital of each province at Lahore, Peshawar, Quetta and Karachi.101 The SCP Judges are supervised by the Supreme Judicial Council, Article 176 to Article 191 of the Constitution of Pakistan 1973, explains the functions and powers of SCP. SCP has original jurisdiction in disputes involving federal or provincial governments under Article 184, SCP exercises its original jurisdiction while enforcing the fundamental rights, when a question of ‘public importance’ is involved.102 The appellate jurisdiction in civil and criminal matters is exercised by SCP under Article 185 and has advisory jurisdiction under Article 186 while extending advice to government in legal matters.103

Federal Shariat Court (FSC) of Pakistan:
The Federal Shariat Court (FSC) of Pakistan was established through a Presidential order in 1980.104 The basic aim of FSC is to examine all the laws in the country that are against Islamic values as laid down in the Holy Quran and the Sunnah.105 The FSC of Pakistan consists of 8 Muslim judges including the Chief Justice.106 Among the 8 judges, 3 are required to be Islamic Scholars/Ulemas who are well-versed in Islamic law.107

The decisions of the court are obligatory for the High Courts and other subordinate Courts.108 The Supreme Court also has a Shariat Appellate Bench empowered to review the decisions of the FSC.109

High Courts of Pakistan:
There is one High Court in each Province, and one in the federal capital, Islamabad,110 including:

1. Lahore High Court, Lahore, Punjab
2. Sindh High Court, Karachi, Sindh
3. Peshawar High Court, Peshawar, Khyber Pakhtunkhwa
4. Balochistan High Court, Quetta, Baluchistan
5. Islamabad High Court, Islamabad, ICT

The High Courts are the appellate courts for all civil and criminal cases in each respective province.111 Article 192 to Article 203 of the Constitution of Pakistan 1973, explains the functions and powers of the High Courts in Pakistan.112 The Court exercises its original and appellate jurisdiction under Article 199 for the enforcement of Fundamental Rights and its review of judgments/orders of the subordinate courts in civil and criminal disputes.113

District and Session Courts of Pakistan:
District and session courts are established in every district of each province, with civil jurisdiction under West Pakistan Civil Court Ordinance 1962 and criminal jurisdiction under Criminal Procedure Code 1898.114 In each District Headquarters, there are numerous Additional District & Session Judges who usually head the courts. District & Sessions Judge has executive and judicial power all over the district under his jurisdiction.115

96. The Judicial System of Pakistan by Dr Faqir Hussain, Registrar, Supreme Court of Pakistan, Revised 15th February 2011
97. www.peshawarhighcourt.gov.pk/history.php
98. Ibid.
101. The Judicial System of Pakistan by Dr Faqir Hussain, Registrar, Supreme Court of Pakistan, Revised 15th February 2011.
102. Ibid.
104. The Judicial System of Pakistan by Dr Faqir Hussain, Registrar, Supreme Court of Pakistan, Revised 15th February 2011.
105. Article 2030, Constitution of Pakistan 1973
106. Article 203C, Constitution of Pakistan 1973
107. Ibid.
108. The Judicial System of Pakistan by Dr Faqir Hussain, Registrar, Supreme Court of Pakistan, Revised 15th February 2011.
109 -111. Ibid.
110. Constitution of Pakistan 1973
111. Ibid.
112. The Judicial System of Pakistan by Dr Faqir Hussain, Registrar, Supreme Court of Pakistan, Revised 15th February 2011.
The Sessions court is also a trial court for severe offences such as murder, rape, armed robbery where specific amount of gold and cash is involved, and is also an appellate court for civil suits of lesser value.116

Each Town and city now has a court of Additional District & Sessions judge, which possess the equal authority under its jurisdiction. When hearing criminal cases, it is called the Sessions Court and when it hears civil cases, the District Court.117 The High Court exercises appellate jurisdiction over the lower courts in each province.118 The SCP has authority and appellate jurisdiction over the decisions of High Court.119

Civil Judge Cum Judicial Magistrate Courts (with power of Section 30 of Code of Criminal Procedure Cr.PC 1898 only in criminal trials)

In every tehsil and district, there are many Civil and Judicial Magistrates’ Courts.120 A Magistrate with the powers of section 30 of Code of Criminal Procedure (Cr.P.C) 1898, has the authority to hear criminal cases, which does not involve death penalty (such as attempted murder, dacoity, robbery, extortion, etc.) as punishment.121 It can only give a punishment of up to seven years’ imprisonment.22 In cases where more punishment is to be accorded than seven years in jail, then it has to be referred to a higher court.123 Every Magistrate’s Court is allotted a jurisdiction, normally covering one or more Police Stations of the locality.124

Besides the above mentioned courts, there are some special Tribunals and Boards which deal with specific cases of relevant nature.125 These courts includes:-

1. Banking Courts
2. Services Tribunals
3. Income Tax Tribunals
4. Family Courts
5. Juvenile Courts
6. Anti-Corruption Courts
7. Anti-Narcotics Courts
8. Anti-terrorist Courts
9. Labour Relations Court
10. Board of Revenue
11. Special Magistrate courts
12. Consumer Courts and

13. Drug courts

Initial Information about Civil Courts Mechanism:
The Code of Civil Procedure (CPC) 1908 explains the procedure of Civil Courts in Pakistan. The basic principle of law is that where there is right there is remedy.126 This rule is also supplemented by Section 9, of CPC which deals with ‘Courts to try all civil suits unless barred’ or ‘Bar of certain applications’.127 The function of the court is interpretation of laws and the procedure followed is just to facilitate the people.128

Jurisdiction of Courts:
According to Section 3 of CPC 1908, in every district there is a District Court which is subordinate to the High Court.129 There are other Civil Courts with different jurisdiction of powers in a district and they are subordinate of District Courts.130 These Courts have the jurisdiction to try all suits of a civil nature where they are empowered.131 Section 15 of CPC 1908 states that, “Every suit shall be instituted in the Court of lowest grade competent to try it.”12 These Courts adjudicate the case to pass a ‘decree’ or ‘order’. A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of133 while an order is the formal expression of and decision of a Civil Court which is not a decree.134

Section 9 to 35 of CPC 1908 explains each and every procedure of filing a suit in a Civil Court.

Execution of Decisions of Courts:
Execution is the enforcement by the process of the Court of its own decrees.135 The main rules of procedure are enacted in this part of the Code and minor rules are relegated to Order XXI.136 Secondly, if the Court had the jurisdiction to make the order or decree, it had certainly the power to enforce the same and the law does not allow its machinery to be blocked in this respect.137 The basic objective of Section 36 of CPC 1908 is to avoid unnecessary expense and speedy justice.138 Section 37 of CPC 1908 defines a Court who passed the decree as Civil Court or the Court of competent monetary jurisdiction.139 This section explains that a Court has territorial as well as monetary (Pecuniary) jurisdiction through which it executes its orders and decrees.

Section 36 to 74 of CPC 1908 deals with the execution of decrees and orders by the Court.

Cases in Certain Circumstances:
Section 79 of CPC 1908 explains the procedure of suit by or
against the Government. It states; “In a suit by or against the Government the authority to be named as plaintiff or defendant, as the case may be.”140 In any civil or criminal case, the person who files the suit is called plaintiff and the person who is asked by the Court to explain his stance is called defendant.141 This is to mention here that, only a person with legal entity can sue or be sued and since the Government officials are not legal entity, so they cannot sue or to be sued.142 A suit can be filed against a Government officer in respect of the act done by him in his official capacity, but it does not mean that one can sue that officer in his official name (title of the position) or just as if he is a “corporate sole.”143 Section 82 of CPC 1908 explains the process of execution of decree passed against the Government or its officials.144

Exceptional Proceedings (Arbitration):
Section 89-A of CPC 1908 deals with alternate dispute resolution, it states; “The Court may, where it considers necessary, having regards to the facts and the circumstances of the case with the object of securing expeditious disposal of the case, in or in relation suit, adopt with the consent of the parties alternate dispute resolution method, including mediation and conciliation”.145 This process will help different parties in a case to resolve certain disputes in a way of settlement through compromising being a recognized mode, would relive parties of expensive and lengthy litigation process and will be time effective for the Courts as well.146

Power of Civil Court:
A civil Court has all powers made available to it under the CPC 1908 and in a suitable case passes an incidental or supplemental order following the procedure prescribed in the Code. Section 94 of CPC 1908 explains the supplemental proceedings of the Court which deals with issuance of warrants to arrest the defendants and bring them before the Court if he fails to appear in the Court. It also deals with furnishing of security by the defendant to satisfy the Court for specific purpose and it allows the Courts to grant temporary sanctions in special circumstances.147

Rights of Appeal in CPC:
The word appeal is not defined in CPC 1908 and is a remedy provided by law for getting the decree of the lower Court cancelled and is a complaint made to higher Court that the decree of the lower Court is wrong.148 It is not a new case or suit but is only a continuation of the original proceedings and a stage in the suit itself.149 There are four kinds of appeals in CPC 1908, i.e. appeals from original decree, appeals from appealable decrees, appeals from order and appeals to Supreme Court.150 The Right to appeal is not a mere matter of procedure, but it is a substantive right, which is carried by both parties i.e. plaintiffs and the defendants, during the life of a case or suit.151

Section 96 to 112 of CPC 1908 deals with various types and procedures of an appeal.152

Special Provisions Related to High Court:
Sections 122 to 124 and 126 to 128 provide for rules to be made by High Courts for regulating their own procedure of the Civil Courts subject to their superintendence.153 These rules may be varying with the provisions of CPC 1908, but they must not be inconsistent with rules and regulation of establishing those courts.154

Section 123 of CPC 1908 is about the Constitution of rule committees in certain provinces.

Parties of Suits:
The first schedule (1) of CPC 1908 explains who can be plaintiffs as it states; “All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such person brought separate suits, any common question of law or fact would arise.”155

This order deals with combined plaintiffs, and to a certain extent, with combined plaintiffs with similar causes of action.156

How to Frame a Suit:
Order II of CPC 1908 explains the procedure of framing a suit and states; “Every suite shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.”157 The suit must include the whole claim from the plaintiff, as he cannot claim other things once he has framed a suit.158 After filing a suit the plaintiff cannot by way of modification reduce the value of his claim by cancelling a part of his claim with a view to get his complaint returned for being presented in another Court of lower monetary jurisdiction.159 The plaintiff is bound to ask for all the reliefs available to him.160

140. Section 79, CPC 1908
141. The Code of Civil Procedure, with commentary, Muhammad Muzhar Hassan Nizami, PLD Publishers, 35-Nabha Road Lahore.
142. Ibid
143. Ibid, 2004 CLC 1427
144. Section 82, CPC 1908
145. Section 89, CPC 1908
146. PLD 2005 Lahore, 742
147. Section 94, CPC 1908
149 - 151. Ibid
150. Code of Civil Procedure 1908 (V of 1908) Bare Act
152. Ibid
153. The First Schedule, Order I, CPC 1908
154. Ibid
155. The First Schedule, Order II, CPC 1908
156. Ibid
157. The First Schedule, Order III, CPC 1908
158. Ibid
Recognised Agents or Pleaders:

Order III of first schedule of CPC 1908 allows the plaintiff and defendants to appear in person or through a recognised agent (persons with special power of attorney) or pleader (Lawyer) on his behalf to explain the issues of the suit for specific persons by filing a memo of appearance (Vakalatnama) in the Court on behalf of specific person or persons. Engaging of counsel to appear on behalf of litigant, does not absolve litigant of his responsibility who would be under duty to see that his matter is being prosecuted properly and diligently. If a Lawyer or recognised agent does not represent his client appropriately the opposite party is not responsible for the consequences of his negligence. If one party wants the appearance of the opposite party for examination as a witness, he should take out a witness summons under Order XVI.

Institution of Suits:

In every suit there is at least one plaintiff and one defendant. They can be more than one plaintiff or defendants. The basis of a suit is the cause of action by which is meant the circumstances leading to a dispute for which the suit is filed. The cause of action must establish the subject matter of the dispute as the objective of a suit is to have judgment upon the rights of the parties. In the end, the basic objective of any suit is to have justice in a particular dispute.

There are ten different stages of a suit, which starts from the following:

1. Institution of a suit by plaintiff
2. Issue and service of summons by the Court to the concerned parties
3. Written statements from both parties
4. Discovery of facts by the defendants
5. Farming of ‘issues’ (Points of dispute) by the Court
6. Evidence (Witness) from both sides is recorded
7. Arguments from both sides in defence of their claims are heard
8. Judgement is made by the Court after looking into all the above mentioned activities
9. A decree is announced by the Court in favour of successful party
10. Execution is the last stage of a case, where the Court implements its decree on the application of decree holder.

159. The Code of Civil Procedure, with commentary, Muhammad Mazhar Hassan Nizami, PLD Publishers, 35-Nabha Road Lahore.
160. 1989 MLD 2252
161. The First Schedule, Order III, CPC 1908
162. Ibid. 1989 MLD 951
163. Ibid. First Schedule, Order IV, CPC 1908
164. First Schedule, Order IV, CPC 1908
166. Ibid. First Schedule, Order IV, CPC 1908
Women and the Jirga System
Women and the Jirga System

Objective:

The objective of this session is to educate participants regarding the rights of women enshrined in international and domestic law. Furthermore, participants will learn about the principles of informal justice system and local customs that affect the fundamental rights of Pakhtun women in KP and Balochistan.

The Session:

The session is based on the presentation of numerous international mechanisms that protect the rights of women globally and its interrelation with Pakhtunwali and the Jirga system. The facilitator will enable the participants to understand the traditions and customs of the informal justice system that impinge on women’s rights in the region.

Jirga and Gender Equality:

Gender equality is a globally widespread notion that means that the different behaviour, aspirations and needs of women and men are considered, valued and favoured equally. It does not mean that women and men have to become the same, but that their rights, responsibilities and opportunities will not depend on whether they are born male or female.170 It has been internationally accepted that for any country or society to prosper and develop, it is essential for the women of that society to be empowered and given equal opportunities.

Frequently, women from the Pakhtun areas of KP and Balochistan regions have their legal and fundamental rights curtailed in favor of their husbands or other male family members. Even though the Pakhtuns understand the significance of education and its necessity in modern times, they are reluctant to send their daughters (or other female members of their families) to colleges and universities. This is a consequence of the common culture and customs of the region which firmly pertains that women should remain behind veils in the sanctity of their homes.171

Rights of Women and the Jirga System:

There is no denial of the fact that there is no direct representation of women in Jirga system, therefore in practice this traditional justice mechanism is discriminating against women by blocking their access to the tribal council. Jirgamaars and elders hold the right to decide the fate of women involved in the dispute, based on customs, without seeking the opinion or consent of the concerned female.172 This is contradictory to the requirements of modern justice and international human rights standards. The cost of these abuses are borne by the Pakhtun society, as by marginalising women, these societies are not only committing a crime of violating various international and domestic legal mechanisms, but are also desecrating half of its potential and thereby encumbering development, security and peace.173

A Pakhtun woman does have an identity – a name, which marks her individuality. She is someone’s daughter, mother and wife. Thus, as a woman can easily be a source of shame to the male-dominated extended family/tribe, she does exercise a significant degree of hidden control over them.

Notions, institutions and customs of Pakhtunwali have been interpreted and practiced to exercise, justify and reinforce patriarchal authority. Pakhtunwali, with an admixture of Islam, has been used throughout the ages to establish superiority of men over women in the Pakhtun-dominated areas.174 Nang/Ghairat (Individual and family honour), the most fundamental notions of Pakhtunwali, revolve around women and land. Man claims to have the right to control a woman’s body, thoughts and emotions. Any real or imagined violation of the boundaries, drawn by man, grants him the right to even kill her with impunity in the name of honour.175

Women are told at the time of wedding to bear everything in silence, as there exists no recourse for anybody, not even the parents, to turn to in case of a dispute with the husband or in-laws. If there is dislike and conflict between wife and husband, the husband would marry another girl if he can financially afford it and would keep his old wife as well.176

In addition to blood feuds, honour related disputes are also settled giving/taking Swara. The tradition of Swara is prevalent in various parts of the Pakhtun belt and is deeply entrenched in Pakistan’s tribal culture. The custom calls for a girl to be given away in marriage to an aggrieved family as compensation for a serious crime committed by her father, brothers or uncles. Generally, girls are given in Swara marriage as compensation for murder, adultery, abduction and/or kidnapping committed by the men of her family. This appalling decision is usually made by the tribal/local institution of decision-making and dispute settlement, the Jirga system.177 The Jirga process involves the Jirgamaars (Jirga decision makers) listening to the arguments of both the parties involved in the dispute and examining evidence, before passing their judgment. Since the Jirga decision making process is completely male dominated, it takes the liberty to decide the fate of women and the pronouncement of Swara without seeking the opinion or consent of the women concerned.

The practice of Xhag or Ghag, is one of the customs that is an inherent part of the tribal code (Pakhtunwali) in some of the Pakhtun dominated areas. This historical custom, Jhag, is a man’s declaration of claim over a woman for marriage. Through this custom, males (particularly paternal cousins) have a birthright to marry their female cousins, even if their match is incompatible. There are many cases of women being forced to marry from their family who are criminals, or suffering from mental or physical disability under

171. Patriarchal Social and Administrative Practices in the Federally Administered Tribal Areas (FATA), Pakistan: A Case for Gender Inclusive Reforms, Dr Sarfraz Khan and Samina, In Central Asia Journal, Area Study Centre (Central Asia), University of Peshawar.
175 - 176. Fakhr-u-Nisa Advocate, F.R Lokki, Former Vice President Peshawar High Court Bar Association, Peshawar, 22 January 2011.
Reforming the Jirga System: Sensitisation on Fundamental Human Rights

The hallowed tribal custom, Walwar, bride price, has been a cultural practice for centuries in the tribal areas of Pakistan. Bride price usually consists of tangible items (cattle, gold etc.) or money that is paid by the groom to the bride’s family in exchange for the bride. Traditionally, this custom was a gift which aimed to bring families together, by easing the financial burdens of the bride’s family associated to the wedding ceremony as a token of appreciation. Today, however, unfortunately this practice appears to have become commercialised and has lost much of its traditional value in many instances. The significance of this centuries old custom has now changed to a list of demands made by the bride’s family. It now appears as if the man is ‘buying’ his wife as a commodity, with the price wholly depending on her beauty, monetary status and age. The impact of this iniquitous custom on young women is catastrophic as it reduces them to chattels – a clear violation of their fundamental human rights and dignity.179

International Law:

The Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)

The CEDAW came into force in 1981 and Pakistan has been a party to it since 1996. The CEDAW imposes binding obligations on State parties with respect to eliminating discrimination against women.180

Substantial Provisions:

- **Article 1** of the CEDAW defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”181

- **Article 2** of the CEDAW requires State parties to condemn discrimination against women and pursue by all appropriate means, including law reform, a policy of eliminating gender discrimination. **Article 2(e)** of the CEDAW places an obligation on State parties to eliminate discrimination against women by state actors as well as “any person, organization or enterprise”. As noted by the CEDAW Committee, “[u]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”182 Thus, the Government of Pakistan (GoP) is legally bound to provide a mechanism of checks and balances to the decisions made by the traditional justice system and is responsible if it fails to prevent the Jirga from infringing the fundamental rights of women effectively or to provide justice to the victims of this system.

- **Article 3** of CEDAW requires states parties to take appropriate measures in the political, social, economic, and cultural fields to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and freedoms on a basis of equality with men.183

- **Article 5** of the Covenant requires the State to take significant steps to modify the social and cultural patterns of conduct of men and women in order to eliminate customary practices which are based on the idea of the inferiority and superiority of either of the sexes. Through this Provision the government needs reform tribal customs which are discriminatory towards women, minorities or persons with disabilities.184

- **Article 16** obliges the State to take measures to eliminate discrimination against women in matters relating to family relations and marriage.185 Under this law, the government should work towards eliminating social ills such as Swara, bride price, Xhag, and forced marriages in the Pakhtun society.

The Influence of Pakistan’s Reservations:

While Pakistan has ratified a number of international conventions, it has not promulgated implementing acts in its domestic legislation; therefore the provisions of the conventions are not legally binding on the citizens of Pakistan. However, the Government of Pakistan’s report to the CEDAW Committee in May 2007 stated that there was no need to promulgate an implementing act for CEDAW, as its principles already exist in the Constitution. Nevertheless, the implementation of these international laws in our national legal system could support the creation mechanisms of granting fundamental rights to the women of Pakistan (including Pakhtun women) and also help to build development policies and programmes that are just and inclusive of all.186

Article 28(2) of the CEDAW provides that reservations which are incompatible with the ‘object and purpose’ of a treaty are impermissible. For its part Pakistan ‘declared’ in 1996 that its accession to the CEDAW “is subject to the provisions of the Constitution of the Islamic Republic of Pakistan”. Therefore, in case of conflict the law of Pakistan’s Constitution

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178 - 179. Roundtables/Awareness sessions held by CAMP, Phase II of Jirga Project Islamabad 2011.
181. Emphasis added.
Reforming the Jirga System: Sensitisation on Fundamental Human Rights

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT):

The prohibition of torture is fully articulated in the UNCAT, which came into operation in 1987. Pakistan has not ratified the Protocol, this procedure does not apply to it and shall thus be disregarded. Also, Pakistan has by means of a reservation that is explicitly allowed by Article 29(2) of the CEDAW excluded the possibility that a dispute between two States parties on the interpretation or application of the CEDAW may be submitted to arbitration in the manner that Article 29(1) generally foresees.

Consequently, State Reports are again the major mechanism of keeping implementation under surveillance. According to Article 18(1) of the CEDAW states parties are obliged to submit reports on their implementation of the Convention within one year after their accession to the treaty and thereafter every four years or if the CEDAW Committee requests otherwise. The CEDAW Committee has, of course, established specific reporting guidelines which are in line with the general reporting guidelines. The Committee commonly meets three times a year in Geneva.

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT):

The prohibition of torture is fully articulated in the UNCAT, which came into operation in 1987. Pakistan has been a party to it since 2010 and still has three reservations, respectively declarations, to the UNCAT. Discussed below are the provisions of the Covenant that are relevant to the rights of indigenous people, especially women.

Substantial Provisions:

**Article 1(1)** of the UNCAT defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” The list of purposes for torture contained in Article 1(1) should be seen as merely illustrative and not exhaustive, nonetheless, it is instructive that torture on the basis of social discrimination of any kind, including against women, children, minorities and persons with disabilities, is expressly prohibited.

**Article 2(2)** establishes that no derogation to the absolute prohibition on torture is permitted: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” Also, Article 2(3) specifies that “[a]n order from a superior officer or a public authority may not be invoked as a justification of torture.” In other words, freedom from torture is an absolute, unqualified right. Article 2 also requires a State party to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

**Article 10** legally obliges the State to educate and provide information regarding the prohibition against torture in training of law enforcement personnel, civil or military, medical or personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

**Article 13 & 16** require the State to ensure that any individual who alleges he has been subjected to torture or ill-treatment in its territory has the right to complain to, and to have his case promptly and impartially examined by, the State’s competent authorities, and that steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given. Therefore, in cases where Jirga decisions result in ill or degrading treatment, especially in cases involving the vulnerable segments of the Pakistani society, the State is legally bound to provide redress and justice to the aggrieved.

**Article 14** obliges the State to ensure that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation within the State’s legal system, including the means for as full rehabilitation as possible, and an obligation to ensure that in the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

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Reforming the Jirga System: Sensitisation on Fundamental Human Rights

Monitoring:
According to Article 17 of the UNCAT, the CAT – the treaty-body – consists of only ten independent experts, who meet twice a year for four-week sessions in Geneva. The CAT’s functions are provided for in Part two of the UNCAT. Regarding the monitoring of implementation the Convention allows for: State reporting (Article 19), the initiation of an inquiry (Article 20), an inter-State complaints procedure (Article 21), an individual complaints procedure (Article 22) and the submission to arbitration (Article 30). With the exception of State reporting, all other mechanisms are optional; meaning that States have to either opt in or out of them. Pakistan has chosen to let none of these optional mechanisms apply to it. The State reporting procedure follows the basic pattern elaborated above. Also, the CAT has a long history of inviting NGOs to participate in the analysis of State reports; it especially encourages the participation of local and national NGO to provide country-specific information. The State reports are initially due within the first year after the State’s accession to the treaty, and the periodic reports thereafter every four years or if the Committee so requests otherwise. Pakistan’s initial State report under the UNCAT has not been submitted though it was due in mid 2011.

The Constitution of Pakistan and Domestic Laws:
Gender equality and women rights are specifically guaranteed by the Constitution of Pakistan in several provisions in the Preamble, the chapters on Fundamental Rights and Principles of Policy, which incorporate the principles of equal rights and equal treatment of all persons, without any distinction including on the basis of sex. The Articles of the Constitution that pledge to protect the fundamental rights of individuals which includes men and women consist of:

- Article 3 requires the State to eliminate all forms of exploitation.
- Article 4 provides for the right of individuals to enjoy the protection of law and to be treated in accordance with the law.
- Article 25 ensures that all citizens are equal before the law and are entitled to equal protection of the law.
- Article 26-27 provide for equal access to public places and equality of employment in the public and private sectors.

- Article 11 & 37(g) prohibit trafficking in human beings as well as prostitution.
- Article 34 requires the State to take appropriate measures to enable women to participate in all spheres of national life and community activities. Furthermore, Articles 25(3) & 26(2) empowers the State to make special provision for the protection of women and children.

Furthermore, there are numerous domestic legislations enacted by the Parliament to implement the international conventions ratified by Pakistan to protect the rights of women in Pakistan and in order to give effect to the various provisions of the constitution. A few examples are given below:

- The Muslim Family Law Ordinance, 1961 protects the rights of women in marriage and divorce.
- The Family Court Act, 1964 established special family courts to adjudicate family cases.
- Pakistan Penal Code, 1860 (PPC) lays down severe penalties for crimes committed against women, which includes the offences of kidnapping or abduction of girls/women under Section 361,363,364 A and 369 or procurement of a girl under Section 366B.
- Criminal Law (Amendment) Act 2004 banned the evil custom of Swara (Section 310 PPC) and enhances punishment for the offence of murderers carried out in the name of honour (honour killing).
- Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011, includes the punishment for giving a female in marriage or otherwise in Badla-e-sulh, Wanni or Swara - Whoever gives a female in marriage or otherwise compels her to enter into marriage, as badal-esulh, wanni, or swara or any other custom to settle a dispute shall be punished with imprisonment and liable to fine of five hundred thousand rupees. This act also prohibits further offences against women which include depriving a woman from inheriting property, prohibition of forced marriage and prohibition of marriage with the Holy Quran.

196. For a detailed description see http://www2.ohchr.org/english/bodies/cat/follow_up_ngp.htm (accessed on 17 December 2011).
Human Rights and Indigenous People
Reforming the Jirga System: Sensitisation on Fundamental Human Rights

Objective:
The objective of this session is to learn the basics about international Human Rights laws and fundamental justice principles. The participants will also be able to learn and understand the rights of indigenous people that are safeguarded by international convention, the Constitution of Pakistan and domestic legislation.

The Session:
In this session, the principles of universal Fundamental Rights and their reflection on the Pakistan’s Constitution will be co-related. It is also imperative to highlight the decisions of the Jirga that affect Fundamental Human Rights, particularly the rights to life and security of various marginalised groups inherent within the Pakhtun society.
The session will also focus on the State’s role in addressing these Human Rights abuses. Linking Fundamental Rights inherent in international and domestic law with Pakhtunwali and Jirga-system will equip participants to make just and inclusive decisions in the Jirga system and create awareness regarding their rights.

A. International Human Rights Law:
What are Human Rights?

Human Rights are the basic rights and freedoms that all people are entitled to regardless of nationality, gender, national or ethnic origin, race, religion or language. They are legal guarantees dealing mainly with how people should be treated by others, especially their governments and public institutions. Human Rights are protected and upheld by both international and national law. Unlike the archaic concept of a state’s omnipotent sovereignty, international Human Rights put restrictions on the State’s power to treat individuals in whichever way they please. Today, most countries’ laws or national constitution’s guarantee rights to all citizens as well as all people living temporarily or permanently in the country. In doing that, most countries acknowledge rights listed in the Universal Declaration of Human Rights (UDHR), which is seen as the primary international articulation of the fundamental and inalienable rights of all members of the human family. Human Rights include civil and political rights, such as the right to life, liberty and freedom of expression; and social, cultural and economic rights including the right to participate in culture, the right to food, shelter and the right to work and receive an education.

What is International Human Rights Law?

Traditionally public international law – commonly referred to as international law – was a legal order which applied only to the interaction between states: states were considered the only actors of international law and international law dealt with the relation amongst them. Therefore, merely issues such as diplomatic relations were regulated by international law. In contrast, the relation between a State and an individual was not within the scope of international law. Instead, that was a matter addressed by each State itself, into which no other State was allowed to interfere. However, at least since the 19th century, rules of international law have surfaced which aimed at benefiting individuals and protecting them. While these rules obliged states to respect certain standards when dealing with individuals, they did not confer any rights to individuals. However, this significantly changed in the course of the 20th century with the emergence of international human rights. The development of international human rights can be attributed to the large scale of human rights violations before and during World War II, which, after the war, led to the hope that such disasters may in the future be avoided by internationally protecting “human rights as both an end and a means of helping to ensure international peace and security.”

In contrast to national legal systems, the international legal order is not structured into legislature, executive and judiciary. On the international level, states are the fundamental subjects of the legal system and the existence of international law is dependent on the consent of the sovereign states. The three main sources of international law out of which international human rights may arise, are defined in a key provision in the Statute of the International Court of Justice (ICJ), which include international treaties, international customary law, general principles of law and decisions of courts and tribunals.

B. International Human Rights Law in Pakistan:
I. The Legal Status of International Law in Pakistan:

Traditionally national law governed the domestic aspects of government, whereas international law primarily dealt with the relation between States. However, this is not true anymore. Human Rights, for example, is a cross-cutting issue: If a State is bound to respect and protect human rights through international law, then this automatically creates a relationship between the State and individuals who are under its jurisdiction. Therefore, the legal relationship between international law and national law is interdependent. This relationship becomes practically relevant where there is a conflict of obligations, i.e. when the content of national law and a rule of international law contradict one another, or, if in national law a certain right is not conferred to an individual, which the State must provide under international obligations. How this conflict is solved in practice may differ from country to country.

The legal status of international law in Pakistan is such that international law is only legally binding and enforceable if it is incorporated into domestic law through Pakistani legislation. Therefore, the State fulfils its international human rights obligations through passing national laws on certain.

207. Ibid.
topics. For example, Pakistan adopted the Juvenile Justice System Ordinance, 2000, to better protect the rights of children as is demanded by the Child Rights Convention (CRC). However, even where Pakistan has not provided for national legislation to transform international law into domestic law, it may be noted that Pakistani courts do try to give effect to international law, provided this does not conflict with the Pakistani Constitution or statutory law. Nevertheless, generally speaking, only where international law has been incorporated into national law will a claim derived from international law be justifiable before a Pakistani court.

On the other hand, when looking at the international level, it must be borne in mind that a State violating international law that is binding upon it can never justify this neglect of international law. If that were to be the case, every State could easily undermine international law. Such non-adherence of treaty obligations would amount to a breach of international law which could result in counter actions by other States parties to the treaty under consideration.

II. The Relevant Human Rights Documents:

The Universal Declaration of Human Rights (UDHR) was the first expression of Fundamental Rights to be universally protected. It was adopted by the General Assembly of the United Nations on 10 December 1948 and states that all “human beings are born free and equal in dignity and rights.” The Declaration includes 30 articles which have been the driving force behind subsequent Human Rights based international treaties, regional Human Rights instruments, national constitutions and laws. The UDHR declares that Human Rights are universal – to be enjoyed by all people, no matter who they are or where they live. This declaration primarily includes civil and political rights, such as the right to life, liberty, free speech and privacy. It also includes economic, social and cultural rights, such as the right to social security, health and education.

However, this document is not legally binding, so it does not directly bind the countries in any legal framework and was explicitly adopted for the purpose of defining the meaning of the words “Fundamental Freedoms” and “Human Rights” appearing in the United Nations Charter, which is binding on all member states. It is an expression of the fundamental values which are shared by all members of the international community and therefore serves as one of the chief constitutive document of the United Nations. The 1968 United Nations International Conference on Human Rights stressing on the importance of the declaration advised that it “constitutes an obligation for the members of the international community” to all persons. The declaration has had profound influence on the development of international Human Rights law globally and has become binding as a part of customary international law due to its extensive use over the years.

As Pakistan has by now acceded to quite a few of the major human rights treaties, the legal relevance of the UDHR therefore becomes less significant. However, the declaration has served as the foundation for two binding UN Human Rights Covenants, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the principles of this historical Declaration are elaborated in international treaties. This imperative source of international law and its linkages with the Jirga system will be examined further in this manual.

The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR and the ICESCR were adopted by the UN General Assembly on the same day at the end of the year 1966. They both came into force in 1976. They were the first human rights instruments that aimed at being both universal, i.e. hoping of having all states worldwide as member states, and being legally binding. The ICCPR imposes binding obligations on States parties to respect and ensure a broad range of civil and political rights. The following articles are relevant to the obligations of the government of Pakistan in relation to the Jirga system.

**Substantial Provisions:**

- **Article 2(1)** of the ICCPR, state parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognised in the Covenant, without distinction of any kind. As a result of this non-discrimination provision, Pakistan is obligated to extend all civil rights and freedoms enumerated in the ICCPR to citizens.

- **Article 2(2)** specifies that state parties must take steps to incorporate laws that recognise the rights included in ICCPR into their domestic legislation. Moreover, the Human Rights Commission (HRC) has laid down that States parties are required to give unqualified and immediate effect to the rights and freedoms guaranteed under the Covenant, and cannot justify a failure to do so through reference to political, social, cultural or economic considerations within the country.

- **Article 2(3)** of the Covenant, requires the state parties to ensure that anyone whose Covenant rights or freedoms under the ICCPR are violated shall have an effective remedy, access to a competent judicial, administrative or legislative authority, and that the competent authorities shall enforce such remedies when they are granted. Therefore, the State is under the duty to provide redress to its citizens, in cases where their Fundamental Rights recognised in the ICCPR are violated.

**Article 14** places an obligation on the State to ensure that everyone in its jurisdiction is entitled to

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213. While this rule is explicitly stipulated with regard to international treaty law in Article 27 of the Vienna Convention on the Law of Treaties, this rule is also valid for states that are not parties to this Vienna Convention as this norm is also part of international customary law (see Mark E Villiger, Commentary on the 1969 Vienna Convention on the Law of Treaties (Martinus Nijhoff Publishers, Leiden 2009) 374 et seq), which is why it is also binding on Pakistan.


Reforming the Jirga System: Sensitisation on Fundamental Human Rights

Pakistan’s Reservations:
Upon ratification in 2010, Pakistan entered multiple reservations to the ICCPR. However, under pressure from the European Union (EU), Pakistan withdrew or modified some of these in the summer of 2011. Today, two reservations regarding the equal right of men and women to enjoyment of Covenant rights (Article 3), and the right of citizens to participate in public affairs, to vote and to be elected, and to have access to public service (Article 25) remain. They read as follows: “The Government of the Islamic Republic of Pakistan declares that the provisions of Article 3 of the International Covenant on Civil and Political Rights shall be so applied as to be in conformity with Personal Law of the citizens and Qanoon-e-Shahadat” and “The Government of the Islamic Republic of Pakistan states that the application of Article 25 of the International Covenant on Civil and Political Rights shall be subject to the principle laid down in Article 41(2) and Article 91(3) of the Constitution of Pakistan.”

Monitoring:
As many human rights treaties do, the ICCPR provides for two ways of ensuring that State parties do indeed comply with the substantive provisions of the treaty. Firstly, every State is periodically requested to prepare a report on its implementation of the treaty. Secondly, the treaty provides for complaint procedures. In order to review the State parties’ reports and to receive complaints, the Human Rights Committee (HRC) has been established by the Convention.

A. The International Covenant on Economic, Social and Cultural Rights (ICESCR)
   - The ICESCR imposes binding obligations on states parties to respect, protect and fulfill a range of economic, social and cultural rights. The Provisions of this Covenant relevant to the Jirga system are explained below:

Substantial Provisions:
Article 2 the ICESCR provides the State is obligated to provide the economic, social and cultural rights to all citizen in relation to Pakistan, including Pakhtuns and non Pakhtuns in FATA, without discrimination of any kind as to race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3 of the Covenant provides that the State is legally bound to ensure equal right of men and women for the enjoyment of all economic, social and cultural rights given in ICESCR.

Article 5 of ICESCR provides that no individual, organisa-

Rights of Children and the Jirga System:

It is essential for the Jirgamaars and elders to understand children’s rights protected by domestic and international law, because the violations of the rights of children are prevalent in Pakistan. According to Society for the Protection of the Rights of the Child (SPARC) report, 1,216 cases of child sexual abuse were documented in the country in first six months of last year. Out of those cases, 125 boys and girls were sexually abused after abduction while 55 were murdered after sexual assault.222 Female children are forced into early marriages, as under the tribal custom of wolwar (demand of money from the bridegroom’s family equal to that of the bride’s ‘head’) young girls (below the age of 18) are given preference over sons (boys in the family) and are worth more money to the girl’s family.

Monitoring:

The CRC is the only Convention of the ones described in this Manual that provides neither for a State-to-State nor for an individual complaint procedure. Only State reports may be considered by the CRC Committee — another Committee of 18 independent members. Article 44(1) of the CRC obliges States Parties to report to the Committee within two years after acceding to the treaty and thereafter every five years. The reporting guidelines established by the Committee227 follow the well-known format and demand both a common core and a treaty-specific document. The Committee convenes three times a year in Geneva.

The Constitution of Pakistan and Domestic Laws:

Lawmaking bodies have stressed for the importance of safeguarding the rights of child by enacting legal provisions over time. This is apparent by Articles 25(3) & 26 (2) of the Constitution of Pakistan, which empowers the State to make special provision for the protection of women and children. Several Acts have also been passed by the Parliament to achieve this, which include:

1. Child Marriage Restraint Act 1929 extends to the whole of Pakistan and applies to all citizens of Pakistan. According to the law, any man above 18 and below the age of 21 marrying a child will be punished with a fine. Whereas, any man above the age of 21 contracting a marriage with a child will be imprisoned by the court of law.228

2. Child Offenders Act 1995 was a significant step taken by the GoP, to introduce uniform legislation addressing the protection of the rights of children involved in criminal legislation that was applicable to the whole country. After the ratification of the United Nations Convention on the Rights of Child in November 1990, the State was legally bound to comply with the requirements of the Convention and introduce changes to Pakistan’s domestic legislation to make it compatible with international law.

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This act is applicable to the whole of Pakistan and the first instance where special laws dealing with child offenders are extended to Balochistan and NWFP (Khyber Pakhtunkhwa). The Child Offenders Act protects the rights of children involved in criminal litigation, their rehabilitation in society and re-organizes the Juvenile Court structure.229

3. Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011, banned the evil custom of Swara (Section 310 PPC) and enhances punishment for the offence of murders carried out in the name of honour (honour killing).230

Rights of Minorities:
Susceptible to social and psychological poverty, minorities all over Pakistan have always been a victim of our society’s indifference and unjust treatment. These vulnerable, marginalised and disempowered segments of our society suffer from discrimination, displacement and poverty solely based on their gender, ethnicity, beliefs, language or social class. It is not rare for the decisions of the tribal council to affect the fundamental human rights, particularly the rights to life and security of these marginalised groups.

International Convention on the Elimination of Racial Discrimination (CERD):
According to the provisions of CERD tribal elders of the Jirga should ensure to make unbiased decisions when dealing with conflicts that involve minorities of the Pakhtun society.

B. The International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)
The ICERD entered into force in 1969 and Pakistan has been a party to it ever since. Significantly, Pakistan has not entered any reservations to the ICERD. This convention was adopted by the United Nations General Assembly to define and condemn racial discrimination and to oblige states to amend national laws that create or perpetuate racial discrimination.231

Substantial Provisions:
Article 1 of the Convention defines “racial discrimination” to mean “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”232 Pakistan ratified this imperative convention to demonstrate the commitment of the democratic government to promote human rights in the country, including the rights of women, children, minorities and the underprivileged.233

Article 2 requires state parties to condemn racial discrimi-
nation and pursue by all appropriate means, including law reform, a policy of eliminating racial discrimination and promoting understanding among all races. It is worth noting that, pursuant to Article 2(1)(d), State parties are under a duty to prohibit and eliminate racial discrimination not just by public institutions and actors, but also by private individuals and organisations.234 Therefore, the State is under the obligation to ensure that the Jirgamaars, refrain from making discriminatory decisions when resolving conflicts which involve women, minorities or persons with disabilities.

Article 5 obliges the state to ensure that tribunals and all other organs administering justice treat everyone equally.235 Therefore, the government is under the duty to ensure that religious and ethical minorities and females are given representation in the Jirga decision making process.

Article 6 requires State parties to assure “effective protection and remedies, through the competent national tribunals and other State institutions, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”236 Therefore, in cases where the Jirga verdicts are not just and inclusive of the minorities and females, the State is legally bound to provide redress to the victims.

Article 16 stipulates that “State parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) the same right to enter into marriage; (b) the same right to freely choose a spouse and to enter into marriage only with their free and full consent; (c) the same rights and responsibilities during marriage and its dissolution.”237 Therefore, the State should ensure that the Jirgamaars and tribal elders take into account laws enshrined in this convention when resolving conflict and making Jirga decisions.

Monitoring:
Having already looked at the mechanisms aimed at implementing the ICCPR and the ICESCR, nothing structurally new can be mentioned with regard to CERD, the treaty-body of the ICERD. CERD also consists of 18 independent members elected for four years each and as its formation does not differ from the two Covenants discussed above, more does not need to be mentioned with regard to this Committee (for details see Article 8 of the Convention).

The ICERD Permits for Different Monitoring Mechanisms:
Article 11 CERD allows for a State-to-State complaint procedure similar to the ICCPR system. However, as mentioned above, no State has ever made use of this possibility.238

Article 14(1) CERD, on the other hand, allows states to recognise the Committee’s competence to receive individual complaints alleging the Convention’s violation by the State. To date, however, Pakistan has not issued

235. Article 14(1) CERD, on the other hand, allows states to recognise the Committee’s competence to receive individual complaints alleging the Convention’s violation by the State. To date, however, Pakistan has not issued
a declaration of recognition, which means that individual complaints based upon the CERD are not admissible against Pakistan. Thus, again, State reports are in effect the main monitoring mechanism. Article 9(1) CERD obligates state parties to submit a report on the legislative, judicial, and administrative measures they have undertaken in order to give effect to the Convention’s provisions. The first report is due one year after acceding to the treaty, while further reports must be submitted every two years and whenever the CERD so requests. The CERD convenes twice a year for a three-week session at the United Nations Office in Geneva, where State reports are scrutinized.

The Constitution of Pakistan and Domestic Laws:
The Constitution of Pakistan includes several Articles that safeguard religious and ethnic minorities against any form of discrimination:

- **Article 4** provides that it is the inalienable right of every citizen to enjoy the protection of law.
- **Article 9** guarantees security of life and liberty of every citizen.
- **Articles 15 - 20** guarantee freedom of movement, assembly, association, speech, profess religion and manage religious institutions to every citizen.
- **Article 21** provides safeguards against any special tax, the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own as well.
- **Article 22** provides safeguards against receiving religious instructions or taking part in any religious ceremony other than her/his own.
- **Article 25** guarantees equal protection of law to all citizens, irrespective of their cast, gender or creed etc.
- **Article 26** guarantees non-discrimination in respect of access to public places.
- **Articles 27** provides safeguard against discrimination in appointments in the civil services of Pakistan.
- **Article 28** guarantees promotion of distinct language, script or culture to any section of citizens and establishing institutions for promoting their language, script or culture.

**Rights of the Disabled:**

In Pakistan, people with disabilities are invisible citizens because of the segregation and social exclusion by society. They are discriminated against and do not have equal opportunities and are subject to unjustified differential treatment compared with other citizens, which continually causes violations of their Human Rights. This mind-set is observed in the information justice system as well, as there is no representation or advocate of the rights of the disabled in the **Jirga** system. Their mental or physical impairments, frequently hinders their full and effective participation in resolving conflicts on an equal basis with others. Consequently, disabled and underprivileged Pakhtun minorities are not only constantly deprived of their

241. [153-A. Promoting enmity between different groups, etc.: Whoever, (a) by words, either spoken or written, or by signs, or by visible representations or other wise, promotes or incites, or attempts to promote or incite, an enmity or ill-will between different religious, racial, language or regional groups or castes or communities; or (b) commits, or incites any other person to commit, any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, or is likely to disturb public tranquility or affects any other person to committing any such act that the participants in any such activity shall be or trained to use criminal force or violence.
Fundamental Human Rights and recourse to justice; but they are also wrongly charged and held responsible for crimes they did not commit. Therefore, in order to rise up to international standards, it is essential that the human rights of the people with disabilities is protected, by committing tribal elders and Jirgamaars to ratify these international laws in their decision making and the GoP should enact legislation to enforce international treaties within the country.

International Law:
The Convention of the Rights on Persons with Disabilities (CRPD) is an international Human Rights instrument of the United Nations intended to protect the rights and dignity of persons with disabilities (PWD). Parties to the Convention are required to promote, protect, and ensure the full enjoyment of Human Rights by persons with disabilities and ensure that they enjoy full equality under the law. The CRPD only entered into force in 2008. Pakistan became a contracting State in May 2011 and did not enter any reservations. The relevant Provisions are described below:

Substantial Provision:

Article 1 specifies that PWD include “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

Article 2 of the CRPD defines “discrimination on the basis of disability” as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all Human Rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.”

Article 3 of the CRPD also stipulates a number of general principles which should serve to guide State parties in interpretation and application of the Convention, namely: respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons; non-discrimination, full and effective participation and inclusion in society, respect for difference and acceptance of PWD as part of human diversity and humanity, equality of opportunity, accessibility, equality between men and women; and respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 4(1) of the CRPD expressly states that the purpose of measures undertaken by State parties to eliminate discrimination based on disability – such as law reform, mainstreaming of disability rights into government policies and programmes, refraining from discriminatory acts or practices, research and development into universally designed goods and services, etc. – is to “ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.”

Article 4(1)(e) of the CRPD requires State parties to take measures to eliminate discrimination against PWD not just by public authorities and institutions but also “by any person, organization or private enterprise.” Thus, Pakistan is obliged to act with due diligence to eliminate any violation of disabled non-citizens’ rights by private actors.

Article 8 the CRPD also requires States parties to “adopt immediate, effective and appropriate measures” with respect to awareness-raising around disability issues. This provision compels the government of Pakistan to raise awareness regarding the fundamental human rights of persons with disabilities on a national scale. Furthermore, it is imperative for all the stakeholders, especially Jirgamaars, involved in the traditional justice system to be educated regarding the laws that safeguard the rights of disabled persons.

Article 13 of the Convention legally binds the State to ensure effective access to justice for persons with disabilities on an equal basis with others. Therefore, the State is legally bound to ensure that the persons with disabilities are not discriminated against by the Jirga and are provided recourse to justice when their fundamental rights have been violated.

Monitoring:
The Committee on the Rights of Persons with Disabilities (CRPD Committee) is made up of 18 independent members that meet twice a year for a one-week session. States are required to actively consider the involvement of PWD in the nomination of members to the Committee (Article 34(3)). However, the CRPD has been criticised in that no stricter standard for involvement of experts with disabilities is prescribed.

Article 1 of the Optional Protocol to the CRPD allows States to recognise the Committee’s competence to receive individual communications. However, Pakistan has not ratified this Protocol, so that the complaint procedure does not apply to it. Thus, again, only the State reporting mechanism is of relevance. The CRPD’s State report provision can be found in Article 35. While the initial report is due within the first two years of the Convention’s entry into force for the concerned State, subsequent periodic reports are due every four years or if the Committee on the Rights of Persons with Disabilities so requests otherwise. Finally, it should be noted that Pakistan’s initial State report under the CRPD has yet to be submitted. Given that Pakistan ratified the Convention in 2011, the initial report is only due in 2013.

The Constitution of Pakistan and Domestic Laws:
The Constitution of Pakistan in its chapter on Principles of Policy incorporates a provision on protect the rights of persons with disabilities:

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245. Emphasis added.
249. Emphasis added.
Article 38 of the Constitution requires the state to provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of gender, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment."

Domestic legislation further safeguards the rights of persons with disabilities in Pakistan. The Mental Health Ordinance (Pakistan 2001) provides for assessment and treatment of persons with mental disorders. Furthermore, this Act makes provision for protection of human rights of persons with mental disorders.254

Special Citizens Act, 2008 seeks to provide the accessibility to disabled citizens at every public place, with regard to allocation of seats in public transports, provision of facilities on footpaths for wheelchairs and blind persons.255

Human Rights in Islam
Human Rights in Islam
Prof. Dr. Anis Ahmad

Introduction:

The history of Human Rights in the West is generally traced back to the Bill of Rights of 1689, adopted by the British parliament. It also happens to be the same year when John Locke (1632-1704) wrote Treatises on Civil Government. Soon in 1762 J.J. Rousseau (1712-1778) came with his Social Contract and four years later, on July 12, 1776, “Declaration of Liberty” was proclaimed in the U.S. This was followed by approval of declaration of Rights of Men by the French National Assembly in 1789. Thomas Paine (1737-1809) wrote Rights of Men in 1792. It was also in Nineteenth century when the U.S. Congress approved right of the individuals to life, liberty and ownership in states of its Federation through 14th amendment in 1868.

Later on the awareness of Human Rights at an international level was reflected in the Universal Declaration of Human Rights by resolution No. 217-A (III) of December 10, 1948. This was followed by another General Assembly resolution no. 220 A (XXI) on December 16, 1946. These two resolutions of the U.N. General Assembly are considered landmark in the history of struggle for Human Rights in the modern history of the world.

No doubt U.N. General Assembly’s resolutions indicate a global concern of member nations about Human Rights. But there and many other U.N. resolutions while carry a moral force lack authority to enforce and implement these resolutions.

The fact remains that fifteen centuries prior to the contemporary discourse on Human Rights, Islam came with a holistic and realistic view of Human Rights and translated them in the newly established society and state. These Human Rights were not a moral sermon. These were given by the Qur’an and the Sunnah (the Prophetic example).

The Islamic view of Human Rights is not a product of finite human mind therefore not subject to subject to review and revision. These Human Rights are given by the creator of humankind therefore objective, unbiased and take into consideration basic needs of all human beings. The Qur’an emphasises that Allah loves all His creations therefore these Human Rights are not based on gender, race or ethnic discrimination.

The Islamic world view considers all human beings, by their very constitution, equal. It rejects superiority of whites over blacks nor does it allow male or female chauvinism which often leads to a gender, race and in some cases ethnic cleansing. The Qur’an in several places, repeatedly reminds: “Among His signs is that he created you from dust (earth), and you are now human beings dispersed everywhere” Al-Rum 30-20. “O mankind be careful of your duty to your Rabb (Lord) who created you from a single soul and from it created its mate, and from them twain spread abroad a multitude of males and women” Al-Nisa 4:1. Islamic view of Human Rights transcends the conventional approach of “declaration” and “resolution” made by the U.N. such as CEDAW,256 CRC,257 CERD,258 CRPD.259 Islam looks on issues such as home violence, sex abuse and racial discrimination or the fate of disadvantaged in society from the perspective of human dignity (Iktamar). The Qur’an declares: “Indeed We honored the progeny of Adam, and bore them across land and sea and provided them with good things from their sustenance and exalted them above many of Our creatures.” (Bani Isra’il 17:70).

It is human dignity and honour which demands a respectful approach to be supported by the legal authority. Islamic approach to Human Rights is neither understood by Muslims nor the non-Muslims. People think Islam is like other faiths, a religion, therefore a tool of oppression or an opiate to people. The fact of the matter is Islam’s universal dimension and its concern for common men and women, children and the oppressed in society has yet to be properly expressed.

It is a combination of ethical and legal measures gelled together in an inseparable manner. The terminology used by Islam itself shows seriousness of the law given toward these issues. The whole issue of Human Rights is summed up in two terms; Huquq Allah and Huquq Al-‘Ibad, the rights of Allah and the rights of His servants or mankind. One must understand the difference of these rights not “convention” or “resolution”. Rights carry a strict legal and moral force and must not be violated. At the top in the Islamic view of society and state is the right of Allah, the Creator, Sustainer and the Ultimate Authority to be accepted final authority in all human ethical judgments. This simply means acting in accordance with Allah’s revealed guidance in all personal, social, economic, political and cultural matters.

1. Right to Life:

The second important aspect is observance of rights of Allah’s creations. Among these at the top is the right to life. The Qur’an mentions: “And stay not the life (An-Nafs) which Allah has forbidden (Harramallahu) save with right (Illa-Bi-Al-Haqq)” Bani Isra’il 17:33. “That whosoever kills a human being (Nafsani) for other than man-slaughter or corruption (Fasadin) in the earth, it shall be as if he had killed all

256. The Convention on the Elimination of All Forms of Discrimination Against Women, was ratified by the Government of Pakistan in 1996 with reservation that state shall implement it subject to premises of the Constitution of the Islamic Republic of Pakistan.

257. The ratification of the convention on the Rights of Child (CRC) on December 12, 1990 is a welcome step. But we should not forget it was Islam which provided full protection to every child born when second Khalifa Umar bin Khattab fixed stipend for both child and mother as a responsibility of state. The issues relating to forced child marriage, ensuring right to inheritance, wealth and national healthcare. The Islamic state established in Madina in 622 C.E. pioneered enforcement of Islamic laws and the rights of His servants or mankind. One must understand these are rights not “convention” or “resolution”.

258. The above quoted Qur’anic aya evidences the fact that no racial discrimination can be allowed if Islamic Shari’ah is properly understood and implemented. The Prophet (peace be upon him) in his last sermon reaffirmed the Qur’anic principle of no discrimination based on race. The command contained in the Qur’an and Prophetic sunnah, carries legal strength while the International Convention on Elimination of Racial Discrimination needs ratification by respective states. The Qur’An and Sunnah commands carry universal authority and are not subject to any ratification. The problem essentially is Muslims are generally unaware of the Qur’anic legislation. Education of the Qur’An and the Sunnah alone can change their mind set.

259. The Qur’an and Sunnah mention specifically that the blind and disabled have been given a right by Allah to share in food of their parents, brothers, sisters, uncles, aunts etc. without any hesitation. The principle underscored is those who are disadvantaged should have full social security in terms of food, shelter and other needs. This right to life was granted to all believers by Allah s.w.t. in the advent of Islam in seventh century.
mankind, and whosoever saves the life of one, it shall be as if he has saved the life of all mankind” Al-Ma‘idah 5:32. The Prophet (Peace be on him) in his last sermon declared: “O people verily your blood, your property and your honour are sacred and inviolable until you appear before your Robb.”

2) Right to Justice:

The principle elucidated is life of all human beings irrespective of their gender, race, color, religion and status is invaluable, inestimable and precious, therefore it should be protected and promoted without a failure. The right to life is not confined to its legal understanding. It has much wider implications. It includes not only protection from loss of life due to physical insecurity but also harm caused to life due to state policies and social practices such as taking no notice of air pollution, water contamination, lack of safety in work places, acid throwing on the marginalised, congested work places, food quality, use of high technology with laser and other tools which cause cancer or harm human brain etc.

Right to justice (Adl) enjoys high priority in the Islamic scheme of a sustainable social and political order. Adl is often translated as justice while it has a wider connotation. The Qur’an uses this term to refer to balance and beauty Allah has created in the proportionate human body. “O man! What has made you careless concerning your Lord, the Bountiful who created you, then fashioned, then proportioned (fasawaka fa’adlakatu) you.” (Al-Infitar 82:7) It also stands for equity which is more than equality: “O you who believe! Be steadfast witnesses for Allah in equity and justice and be witnesses for the sake of your own selves. Let not hatred of any people seduce you that you deal not justly with believers. (Allah is informed of what you do)” (Al-Ma‘idah 5:8).

Adl is an applied ethical category. It calls for fair, balanced and responsible attitude toward one’s own self, toward family, toward society and ultimately toward humanity. At familial level it requires that believing men and women observe their rights and obligations equitably. Both men and women have equal rights on one another “women have the same rights against their men as men have against them: but men have degree above them, Allah is All Powerful, All wise” (Al-Baqarah 2:228). It is important to note that this Qur’anic command declares legal equality between men and women. However, in terms of obligations men are a degree more responsible than women.

3) Freedom of reason and conscience: Right to live rationally:

Both men and women are supposed to live in a rational way “...don’t you use your reason (Afala ta’qilun) Al-Mu‘minun 23:80. Ethical judgment and use of will is only possible when people use reason and do not act emotionally. State has an obligation to ensure that people do not get hooked to drugs and intoxicants in order to exercise rational judgment without any influence.

4) Right to Practice Din and Cultural Freedom:

Muslims as well as non-Muslim citizens of an Islamic state enjoys full liberty in their religious and cultural practices. “This is no compulsion in din (religious matters) “Al-Baqarah 2:256. This means that within the Muslim community believers have the right to interpret and practice the Qur’an and the sunnah. At interfaith lever non-Muslim citizens in an Islamic state have right to worship in their places of worship and observe their cultural events. This makes Islamic society pluralistic without making any compromise on Islam being the final and most comprehensive solution to the problems faced by mankind in the twenty first century.

5) Right to Property:

The Qur’an specifically refers to fair and ethical practice in generation, utilisation, investment and distribution of wealth, property and commodities are own. The Qur’an and the Prophetic commands are specific and clear: “O you who believe! Squander not your wealth among yourselves in vanity, except it be a trade by mutual consent, and kill not one another. Lo! Allah is ever merciful unto you” Al-Nisa 4:29. “All debts must be repaid, all borrowed property must be returned, gifts should be reciprocated and a surety must make good the loss to the assured. Nothing of his brother is lawful for a Muslim except what he himself gives willingly. So do not wrong yourselves” (The Last Sermon of the Prophet (peace be on him)).

One common problem humankind has been facing for centuries is while concept of Human Rights, in one form or another, has been known to people, absence of authority to enforce and implement them, lack of will to establish them and inefficient or no legal mechanism to ensure their realization practically reduces all such conventions and declaration no more than a price of paper. Therefore, granting of Human Rights devoid of a fair legal system, political will and effective administration of justice can never improve the conditions of the marginalised. Islam has taken care of it in a transparent manner through its Divine Code of Hudud, Ta’zirat and punishments. Unfortunately, those who claim upholding of Human Rights in the West and the East also happen to be the top violators of the so-called rights at national and international levels. The recent violation of Human Rights, loss of life, property, sovereignty, economy, governance and cultural freedom by unlawful occupation of Iraq and Afghanistan in the name of exporting secular western democracy is one glaring breach of Human Rights of the Iraqis and Afghans by the so-called champions of Human Rights.

6) Right to Social and Legal Equality:

Islam rejects racial and ethnic discrimination which on the contrary is the basis of western concept of nationhood. All western nations trace their nationhood in language, ethnic-contrary is the basis of western concept of nationhood. All western nations trace their nationhood in language, ethnicity and geographic or territorial identity. Islam rejects those as idols of the age of ignorance. Transcending these man-made demigods, Islam liberates man from these finitudes and offers a universal ethical basis for mankind. The Prophet (peace be on him) in his last sermon on the occasion of Hajj in 632 common era declared: “O you People! Allah says: ‘O people, We created you from one male and female and made you into tribes and nations, so that you are known to one another. Verily in the sight of Allah, the most honoured amongst you is the one who is the most Allah-fearing.” There is no superiority for a non-Arab over an Arab, neither for the white over the black nor for the black over the white except in piety. All mankind is the progeny of Adam and Adam was fashioned out of clay.

Behold! Every claim of privilege whether that of blood or property, is under my feet” (The Last Sermon of the Prophet (peace be on him)).

7) Right to Sustenance:

Poverty, lack of reserves and situations when one may need help from other members of society is a universal phenom-
en. Most of the world religions carry concept of charity as a means of redemption for a believer. Islam, perhaps is the only world faith which transcends the concept of charity and introduces systematic alleviation of poverty by questioning the very concept of ownership of resources. The Qur’an in explicit terms says that whatever resources and weather is generated by an entrepreneur, as a result of hard work, taking risk and following efficient management system, in this wealth there is a legal share of the poor and the deprived. Therefore, if a significant amount is distributed among the needy and the poor, it is not charity. It was already their rightful share, which belongs to them and not to the entrepreneur. This revolutionary concept puts a legal obligation on the entrepreneur to give the share of and the needy not as charity but as their legal due. Therefore, the Qur’an mentions: “And in their wealth the poor and the deprived have due share” (Al-Dhariyat 51:19). “Give the kinsman his due, and the needy, and the wayfarer, and squander not (thy wealth) in wantonness” (Bani Isra’il 17:26).

Added to it is the teaching of the Qur’an regarding Zakah, Sadaqat and Infaq. The first two on an obligation repeatedly mentioned in the Qur’an (Al-Baqarah 2:180; Al-Hajj 24:41; for Sadaqat see Al-Tawbah 9:60, 9:140, Al-Baqarah 2:276). While Infaq is voluntary contribution with no minimum or maximum limits (Al-Baqarah 2:254, 262, 267; Al-Nisa 4:34, Al-Tawbah 9:53, Al-Furqan 25:67, Al-Hadid 57:10). If only those commands of the Qur’an are implemented, Muslim societies, at global level can eliminate poverty and develop sustainable economic and social order. Again the issue is political will, effective and an efficient delivery system and legal accountability for all.

8) Right to Fair Justice:

Fairness and to be just and equitable (Adil) is one primary attribute of Allah s.w.t. in Islam unlike Judaism wherein Yahweh was always on their side, Islam declares Allah s.w.t. as impartial Fair, and loving to all his creations. Consequently the Qur’an commands all its followers to develop an attitude of fairness and justice not only toward the fellow believers but all citizens of an Islamic state and society: “O you who believe! Be steadfast witnesses for Allah in equity, and let not hatred of any people seduce you that you deal not justly. Deal justly, that is nearer to your duty. Observe your duty to Allah. Lo! Allah is Informed of what you do” (Al-Mu’ridah 5:8).

When Shariah or Divine Injunctions are implemented in a society and state, the law of land does not discriminate between people of different color, ethnicity, language, tribal origin or religion. When a traffic law violation is done by a Muslim or a non-Muslim, law treats them equally. Similarly, if the property of a non-Muslim is harmed and stolen by a Muslim, Shariah punishment does not change. If a Muslim or a non-Muslim hides in a cellar or drinks, legal authorities cannot intrude in privacy but if such a person irrespective of faith, causes social disturbance and in a public place acts irresponsible, one and the same law has to apply. The judge cannot increase nor decrease the punishment because of faith, so long as a social crime is countered by a person. This equality and right to fair justice unfortunately is not observed despite tall claims by the state institutions in the East and West.

The most recent example is the sentencing of Tarek Mehanna, a U.S. citizen and graduate of Pharmacy and Health Sciences for the Massachusetts College, for 17 and half years on charges of conspiracy and providing material support to terrorists. A fair and just response should also be mentioned which came from Ross Caputi, a former U.S. marine (who served from 2003-2006 in Iraq) who took part in the second battle of Fallujah in November 2004, currently student at Boston University. He wrote in “The Guardian” if Tarek Mehanna is guilty so am I. I too supported the right of Muslims to defend themselves against U.S. troops, even if that means they have to kill them and I try to give the Iraqi resistance a voice through my website. I have done everything that Tarek Mehanna has done, and there are only two possibilities as to why I am not sitting in cell with him: first, the FBI is incompetent and hasn’t been able to smoke me out; second, the U.S. judicial system would never dream of violating my freedom of speech because I am white and I am a victorious of the occupation of Iraq…. I am not afraid to profess my support for Tarek Mehanna, or to advocate for his ideas, because I know the law does not apply equally to all in America.260

9) Right to Associate and to Stand for Truth:

Among the civil liberties a major contribution by Islam, right from seventh common era, is the right to form a party or group of people and to exercise right to freedom of speech in support of ethical good (Ma'ruf) and against spread of evil, wicked and immoral behavior (Munkar) in society. The Muslim community is obliged to have from within a group or party of people who enjoin what is right and forbid what is evil and wrong: “And there may spring from you a nation who invite to goodness, and enjoin right conduct and forbid indecency. Such are they who are successful” (Al-‘Imran 3:104). The Qur’an further mentions: “And the believers, men and women, are protecting friends one of another; they enjoin the right and forbid the wrong, and they establish worship and they pay the poor-dues, they obey Allah and His messenger. As for these, Allah will have mercy on them. Lo! Allah is Mighty, Wise” (Al-Tawbah 9:71). “You are the best community that has been raised up for mankind. You enjoin right conduct and forbid indecency; and you believe in Allah. And if the People of the Scripture had believed, it had been better; but most of them are transgressors” (Al-Imran 3:110).

10) Right to Political Power Sharing:

Islam does not separate between the realms of politics and religion. State is as much as ethical institution as Zakah or Salah (prayer). The Qur’an explicitly commands the behavior that when they are given authority and power in land they ensure realization of system of sabh, system of Zakah and Salah as well as enjoin good and stop people from indulging in unethical activities: “Those who, if We give them power in the land, establish (system of) Salat and Zakah and enjoin ethical good and forbid indecency, and Allah is the sequel of events” (Al-Hajj 22:41).

The right to rule is not limited to a family, tribe or feudal class. On the contrary, every single believer has the potential and right, subject to having capacity, to share in political power: “Allah has promised such of you as believe and do good works that He will surely make them to succeed layastakhilifanahum (the present rulers) in the land even as He caused those who were before them to succeed (others); and that He will surely establish in authority their din which He hath approved for them, and will give them in exchange after the fear. They serve me. Those who disbelieve henceforth, they are the miscreants” (Al-Nur 24:55).
11) Right to Protection of Goodwill and Reputation:

All members of a civil society enjoy protection of their goodwill. No one in society is allowed to harm reputation of a person may be he a Muslim or non-Muslim, male or female. "O you who believe! Let not a folk deride a folk who may be better than they (are), nor let women (deride) women who may be better than they are; neither defame one another, nor insult one another by nicknames. Bad is the name of lewdness after faith. And whoso turneth not in repentance, such are evil-doers.

O you who believe! Shun much suspicion; For lo! Some suspicion is a sin. And spy not, neither backbite one another. Would one of you love to eat the flesh of his dead brother? Ye abhor that (so abhor the other)! And keep your duty (to Allah). Lo! Allah is Relenting, Merciful" (Al-Hujurat 49: 11-12).

If a person is deferred, the Qur’an makes the state responsible for proper investigation and if the charge is valid, to implement public punishment prescribed in the text of the Qur’an. "Those who accuse honorable women but do not produce four witnesses, flog them with eighty lashes, and do not admit their testimony even after" (Al-Nur 24:4).

12) Right to Privacy:

General guidelines on social conduct are enumerated by the Qur’an in several places like in Surah Al Hujurat and Surah Al Furqan, therefore a believer is not supported to spy on other believers, nor indulge in backbiting or have an attitude of pride, the Qur’an and Hadith fully protect privacy of citizens. The Quran mentions: “O you who believe! Enter not houses other than your own without first announcing your presence and invoking peace upon the folk thereof. That is better for you, that you may be heedful” (Al-Nur 24-27).

13) Right to Inheritance:

Islam encourages a person to take active part in economic production therefore trade, industry forming and other modes of economic activity are specifically mentioned in the Qur’an and the Hadith of the Prophet (peace be on him). It does not put any limit on generation of wealth. However it does not approve accumulation or concentration of wealth in a few hands. In Islam, economic and final system there are specific measures which frustrate concentration of wealth badly to a capitalist society. Islamic society is a welfare conscious society. One practical step taken by Islam is the law of inheritance clearly given in the Qur’an. The basis is not what we see in the West or in the East where the eldest son gets major share. Islamic law of inheritance is based on equity (Adil); distribution of left-over is done in view of the role and responsibility of the recipients. It is not based on gender. Since the male heir has to take care of welfare of the widow and other survivors of his share, the share is twice that of a female issue. The widow and other female issues just get their share without any obligation on their part. The good principle is given in Al-Nisa: “Unto the men (of a family) belongs a share of that which parents and near kindred leave, and unto the women a share of that which parents and near kindred leave, whether it be little or much — a legal share.

And when kinsfolk and orphans and the needy are present at the division (of the heritage), bestow on them therefrom and speak kindly unto them” (Al-Nisa 4:7-8).

More specific instructions are given in later part of the same surah: “Allah chargeth you concerning (the provision for) your children: to the male the equivalent of the portion of two females, and if there be women more than two, then theirs is two-thirds of the inheritance, and if there be one (only) then the half. And to each of his parents a sixth of the inheritance, if he has a son; and if he has no son and his parents are his heirs, then to his mother appertaineth the third; and if he has brethren, then to his mother appertaineth the sixth, after any legacy he may have bequeathed, or debt (hath been paid). Your parents and your children: Ye know not which of them is nearer unto you in usefulness. It is an injunction from Allah. Lo! Allah is Knower, Wise. And unto you belongeth a half of that which your wives leave, if they have no child; but if they have a child then unto you the fourth of that which they leave, after any legacy they may have bequeathed, or debt (they may have contracted, hath been paid). And unto them belongeth the fourth of that which ye leave if ye have no child, but if ye have a child then the eighth of that which ye leave, after any legacy ye may have bequeathed, or debt (ye may have contracted, hath been paid). And if a man or a woman have a distant heir (having left neither parent nor child), and he (or she) have a brother or a sister (only on the mother’s side) then to each of them twain (the brother and the sister) the sixth, and if they be more than two, then they shall be sharers in the third, after any legacy that may have been bequeathed or debt (contracted) not injuring (the heirs by willing away more than a third of the heritage) hath been paid. A commandment from Allah. Allah is Knower, Indulgent. These are the limits (imposed) by Allah. Whoso obeyeth Allah and His messenger, He will make him enter Gardens underneath which rivers flow, where such will dwell for ever. That will be the great success. And whoso disobeyeth Allah and His messenger and transgresseth His limits, He will make him enter Fire, where he will dwell forever; his will be a shameful doom” (Al-Nisa 4:11).

14) Right to Public Protest:

If injustice is done to a person, the Qur’an allows him or her to raise voice against it and demand one’s due: “Allah loves not the utterance of harsh speech save by one who hath been wronged. Allah is ever Hearer, knower” (Al-Nisa 4:148).

15) The Right to Life of Child:

The basic argument in favour of population control or planning is economic. It is said that since resources are limited an unplanned, rise in population shall lead to scarcity of resources and parents shall be under pressure to cater for health, food and education of their children. Therefore they should not plan to have more than one or two children. The argument has been challenged, based on empirical studies and analysis of available data by some sociologists and economists in the West. The Qur’an raises a simple question i.e. Can the person who plans to have one or two children for to fear of resources guarantee that he can take care of his own food, wealth and other needs? Is it not Allah who takes care of his needs? If so why Allah cannot take care of a larger family for the simple reason each child comes with an intelligent brain and two hands. The Qur’an mentions: “Certainly your Rabb provides with open hands whosoever He will, but according to capacity. For, He knows and watches His creatures.

Slay not your children, fearing a fall to poverty. We shall provide for them and for you. Lo! The slaying of them is great sin” (Bani Isma’il 17: 30-31).

16) Right to Disagree and Disobey Oppressive Rulers:

Basic Islamic principle that determines relations between...
rulers and ruled is obedience in only what is morally good. The Prophet (peace be on him) has said very clearly that there is no obedience in disobedience to the Creator. The Qur’an asserts the same: “But fear Allah and obey me; And follow not the bidding of those who are extravagant, Who make mischief in the land, And mend not (their way).” (Al-Shu’ara 26: 150-153)

16) Human Rights in Islam: The Gender Issue:

One common misunderstanding repeatedly fed in contemporary discourse on Islam is its alleged unfairness to women. Some major misgivings are that Islam does not allow women to get educated, that they are not given equal share in inheritance, that their evidence in law courts is considered half that of men and that they are denied participation in political matters. It is also claimed that Muslim societies are male dominated and role of women is marginalised in the market place. In the following, we try to look objectively on those issues, in the light of the Qur’an and the Sunnah of the Prophet (peace be on him).

While touching on the rights to inheritance, earlier this author has mentioned the principle based on which inheritance is distributed in Islam. In simple words, it is based on two considerations: first, nearness of blood relationship and shouldering the responsibility. An example may illustrate our point. Let us suppose a person, Zaid, leaves behind his wife Fatima, two daughters, Saima and Ayesha and a son Ahmad. The so-called principle of equality demands that all left-over be divided in four equal portions and distributed among the survivors and close the chapter. Islamic ‘Adl or equity and fairness demand that since Ahmad shall be responsible for welfare of his mother and sisters as well as have to take care of his wife and children, he be given twice the share of his mother and sisters. It is theirs and Ahmad cannot demand from them any part of it. While Ahmad is supposed to pay for the utilities, food, health, carried any other expenses involved in welfare of his mother and sisters, it will be unfair and unjust to give him equal share and yet expect that he be responsible for protection and care of all in the family. Since concept of family in Islam and other cultures is different, people fail to appreciate the reason for allowing two times to a male child.

The argument that evidence of women is considered half is based on a casual reading of the Qur’anic statement in Surah Al-Baqarah when the Qur’an says: “O ye who believe! When ye contract a debt for a fixed term, record it in writing. Let a scribe record it in writing between you in (terms of) equity. No scribe should refuse to write as Allah hath taught him, so let him write, and let him who incurrith the debt dictate, and let him observe his duty to Allah his Lord, and diminish naught thereof. But if he who oweth the debt is of low understanding, or weak, or unable himself to dictate, then let the guardian of his interests dictate in (terms of) equity. And call to witness, from among your men, two witnesses. And if two men be not (at hand) then a man and two women, of such as ye approve as witnesses, so that if the one erreth (through forgetfulness) the other will remember. And the witnesses must not refuse when they are summoned. Be not averse to writing down (the contract) whether it be small or great, with (record of) the term thereof. That is more equitable in the sight of Allah and more sure for testimony, and the best way of avoiding doubt between you; save only in the case when it is actual merchandise which ye transfer among yourselves from hand to hand. In that case, it is no sin for you if ye write it or not. And have witnesses when ye sell one to another, and let no harm be done to scribe or witness. If ye do (harm to them) lol it is a sin in you. Observe your duty to Allah. Allah is teaching you. And Allah is knower of all things (Al-Baqarah 2:282).

Hypothetically it means two women and one male or two males alone shall be agreeable witnesses or in other words one male equals two women! But if we only translate this command in to a practical situation, the conclusion changes completely. Let us imagine that Zaid and Bakar reached a financial agreement involving 500 million rupees. With Ahmad, Ayesha and Saima as legal witnesses. After ten years the agreement is contested in a law court where Ahmad testifies that it was a 500 million transaction while Ayesha recalls it as 50 million rupees and Saima recalls it as 500 million rupees. What should be the judgment in this situation? The one is evident that judge shall accept evidence of Ahmad and Saima and disregard statement of Ayesha. In the final analysis, the matter is decided on the basis of one male and one female valid witness and not on the basis of one male equals two women.

Moreover, in case of manslaughter, when there is only one female eye witness, Islamic Shari’ah accepts her evidences as valid. In case of dispute on child’s motherhood, the evidence of one single nurse who was present at the time of child’s birth is taken conclusive against the claim of five heavyweight males who claim otherwise. In the case of rape, the evidence of victim is conclusive and no Muslim jurist has, in the past fifteen hundred years, demanded four eye witnesses to act. The Prophet (peace be on him) himself ordered a person to be executed on the solitary statement of a Sahabiyyah that he attacked her. It is no less than a fiction to say that Shari’ah demands four witnesses in case of rape. All these examples indicate that the assumption one male equals two women is based on generalisation of an ayah while other Qur’anic Ahkam indicate single evidence of a believing women is accepted in not one but in many civil and criminal matters. Dealing with family life, the Qur’an tells us that if there is no evidence but only an allegation from wife on her husband then he will repeat his oath three times and fourth time say that if he is lying, Allah may curse him. If it is the other way, same is said by the wife, she is not supposed to take oath six times.

In other words it is a serious misunderstanding that evidence of a Muslimah is less than a Muslim male.

Participation in political decision making is one of the rights given by the Qur’an and the Sunnah to all Muslim women. The Qur’anic Hukm that all matters of the Muslims shall be decided with consultation (Shura) includes both men and women. The members of election commission appointed by the second khalifa ‘Umar bin Khaṭṭāb for the election of his successor went to each and every house of al-Madinah to seek their opinion about who should be ‘Umar’s successor. Islam happens to be the only faith which questions dogmas and insists on reasoned judgment based on knowledge. The first revelation makes it an obligation on men and women to learn, acquire knowledge and excel in areas of specialised knowledge. The Qur’an persuades both men and women to pray to Allah: “pray Lord increase in knowledge” (Ta Ha 20:114). The same is stressed by the Prophet (peace be on him) that “it is obligatory on Muslim (male and female) to acquire knowledge”. Needless to say Ummul mu’mineen Sayyida ‘Aisha r.a. was herself teacher of Fiqh, Hadith and Qur’an and produced six favor jurists of Madina. It is incorrect to think that Islam does not encourage women to get education.

The fact of the matter is that Islam does not accept gender discrimination. It takes a qualitative approach and does not
look on the gender issue from a quantitative perspective. Qualitatively, if women excel in knowledge, Allah consciousness (Taqwa) or in expertise in Fiqh, Islam considers them superior to men. The basis for this qualitative and not gender based approach is in the Qur’an when it states: “Lo! men who surrender unto Allah, and women who surrender, and men who believe and women who believe, and men who obey and women who obey, and men who speak the truth and women who speak the truth, and men who persevere (in righteousness) and women who persevere, and men who are humble and women who are humble, and men who give alms and women who give alms, and men who fast and women who fast, and men who guard their modesty and women who guard (their modesty), and men who remember Allah much and women who remember - Allah hath prepared for them forgiveness and a vast reward” (Al-Ahzab 33:35).

In brief, women in Islam have the same rights as men. In some cases, they enjoy more privileges then men.

17) Rights of Child:

We have already briefly touched alone on the child’s right to be born. In other words, infanticide of the fetus is strictly prohibited in Islam. The only exception is when a medical professional has to choose between the life of a would-be mother and life of a fetus. If continuation of pregnancy can be allowed to conduct abortion.

The economic argument that every child born is an economic liability is rejected by the Qur’an on two counts. First, it is Allah alone who feeds the parents of a child therefore He can also feed the child. Second, that every child born also brings manpower, skills, creativity, intelligence to resolve issues. Therefore, children in Islamic society are welcome and not considered a threat to food resource.

18) Right to be Known after Biological Parents:

Islam does not allow changing parentage of a child. Even when a child is adopted, his parentage cannot be changed.

19) Right to have a Meaningful Name:

A Prophetic guidance tells us that children should be given beautiful names. Studies in child psychology also indicate influence of name on the personality of a child.

20) Right to Education:

Since the Qur’an and the Sunnah of the Prophet (peace be on him) enjoin seeking knowledge on every believer, it is an obligation on family, society and state to ensure all children get a minimum level of education to give them sense of what is ethically allowed (Halal) and what is prohibited (Haram). It means not only knowledge of the Qur’an, Hadith and Fiqh but all other sciences. The Prophet (peace be on him), as soon as he came to Madina, established an academy in the Masjid al-Nabavi. In Suffah youth and old were taught by the Prophet (peace be on him) and others history geography, literature as well as the Qur’an and Hadith.

Knowledge in Islam is confined to the so-called religious sciences (Dlium diniyyah). The fact of the matter is Din includes all aspects of life.

21) Right to Subsistence:

The second Khilafa ‘Umar bin Khattab r.a. made a state legislation to allow stipend to each child born, and the mother in the Islamic state, during the period of nursing and after this period was over. This improved quality of life of child as well as mother.

22) Right to Health Care:

It is an obligation on parents to take care of bodily needs of their child including circumcision and later inoculations and the needed medical treatment.

23) Love and Security:

It is also right of a child to receive love and affection from parents and other members of family. Necessary steps must be taken to ensure child’s physical, psychological and spiritual security.

Conclusion:

Discussion on Human Rights generally trace their history back to seventeenth century Europe. John Lucke, the English philosopher talked about natural right to life, liberty and property. The Bill of Rights enacted by the British Parliament in 1689 reflected these ideas. The declaration of independence by the thirteen American States in July 1776 was a translation of these ideas. These ideas inspired the French Revolution of 1789. But in case of Islam, the Qur’an and Prophet (peace be on him) declared Human Rights in seventh century, one thousand years before their discovery in Europe.

The Human Rights given by the Quran and Sunnah do not discriminate between humans on the basis of gender, colour, race and ethnicity. The Qur’anic principle is one who is better in Akhlaq (morals and manner) and in observing Ma’ruf (good) and Adl (equity) and Qist (balance) and moderation (Wasatiyyah) is superior to the other. Islamic scheme of Human Rights is given by the Creator of mankind, therefore these are applicable on all human beings and in all times to come.

Islamic Human Rights are not a matter of resolutions or conventions as these carry legal value and anyone who violates them is subject to appropriate punishment under shari’ah law. These are Huqq of Allah’s servants given by the Lord and Ultimate Authority itself.

The human laws are in line with human nature and once implemented lead to a peaceful, just, equitable, balanced and tolerant socio-political and legal order. They provide dignity and honor to men, women and children of all ages and background.

Selected Bibliography:

- Abul A’la Mawdudi, Human Rights in Islam, Leicester (U.K), 1978
- Sheikh Showkat Hussain, Islam and Human Rights, Selangor (Malaysia), 1991
- International Commission of Jurists, Human Rights in Islam, Kuwait, 1982
Annexure
Training Needs Assessment Questionnaire

We always hope to make our trainings as effective and useful as possible. This questionnaire is one way we do this. This is an anonymous questionnaire. Please do not put your name on this paper. Do make sure that you write your unique code on this paper. PLEASE make sure you write the same code on both pre and post-test.

Write your unique code here: ______________________________. (Example: 786, SWA1 etc.)

PART I: ATTITUDES
Please indicate how strongly you agree/disagree with the following statements.

1) Amongst different justice systems, the Jirga-system is the best and most effective system?

<table>
<thead>
<tr>
<th>Strongly Agree</th>
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<th>Undecided</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
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2) Jirga-system follows the international and national standards of the dispensation of justice and needs no improvisation?

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<thead>
<tr>
<th>Strongly Agree</th>
<th>Agree</th>
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<th>Disagree</th>
<th>Strongly Disagree</th>
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3) Does Jirga-system have all transparency, fairness and impartiality?

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<th>Strongly Agree</th>
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<th>Undecided</th>
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4) The formal court system is full of corruption, injustice & expenses and does not deliver at all?

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<th>Strongly Agree</th>
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<th>Undecided</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
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5) Fata and other tribal regions must have the full implementation of Fundamental Rights granted by the constitution of Pakistan and international treaties?

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<tr>
<th>Strongly Agree</th>
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<th>Disagree</th>
<th>Strongly Disagree</th>
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6) Olasi Jirga needs to be formalised and legally accepted?

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<th>Strongly Agree</th>
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<th>Strongly Disagree</th>
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7) Women and religious minorities must be given due representation in the process of justice through Jirga?

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<th>Strongly Agree</th>
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</table>
8) *Jirga* be based on the principles of justice and should not violate the basic rights of every class of citizens and all customs based on discrimination against any such class need to be abolished?

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<th>Strongly Agree</th>
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9) *Jirga*-system (both FCR and *Olasi*) are perfect and needs no reformed?

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<thead>
<tr>
<th>Strongly Agree</th>
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PART II: KNOWLEDGE

10. How *Jirga*-system is better and effective from other justice system, operating in other parts of the country.

________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________
_______________________________________________________________________________________

11. List down at least five principles of justice through *Jirga*?
1. __________________________________________________________
2. __________________________________________________________
3. __________________________________________________________
4. __________________________________________________________
5. __________________________________________________________

12. List down three positive elements about *Jirga* Justice System?
1. __________________________________________________________
2. __________________________________________________________
3. __________________________________________________________

13. List down three basic criteria’s for a *Jirgamaar*?
1. ___________________________________________________________________________________
2. ___________________________________________________________________________________
3. ___________________________________________________________________________________

PART III: LEARNING

Please indicate how strongly you agree/disagree with the following statements.

14. Are you satisfied with the probing/investigation system of justice through *Jirga*?

<table>
<thead>
<tr>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Undecided</th>
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<th>Strongly Disagree</th>
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</table>
15. Amongst various systems, *Olasi Jirga* should be the most preferred form of justice system in the tribal areas?

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<tr>
<th>Strongly Agree</th>
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16. Does *Jirga* plays both preventive and response role?

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<th>Strongly Agree</th>
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<th>Disagree</th>
<th>Strongly Disagree</th>
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17. Do you think that the *Jirgamaars* need to learn more about other contemporary justice systems?

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<th>Strongly Agree</th>
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<th>Strongly Disagree</th>
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18. *Jirga* protects the rights of victim and provides sufficient defense opportunity to accused?

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<thead>
<tr>
<th>Strongly Agree</th>
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<th>Strongly Disagree</th>
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19. International fundamental principles and rights under constitution of Pakistan are well defined and based on unanimity?

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<thead>
<tr>
<th>Strongly Agree</th>
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<th>Undecided</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
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20. International instruments and other formal legal systems can help to improve the justice through *Jirga*-system?

<table>
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<tr>
<th>Strongly Agree</th>
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21. Do you think that FCR *Jirga* is fair?

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<tr>
<th>Strongly Agree</th>
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22. Does *Jirga* violate women rights?

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<tr>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Undecided</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
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23. Does *Jirga* violate minorities' rights?

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<tr>
<th>Strongly Agree</th>
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</table>
### Comparison of Fundamental Rights and *Jirga* System

<table>
<thead>
<tr>
<th>Constitution of Pakistan 1973</th>
<th>Respect of such Rights under Pakhtunwali and Justice through <em>Jirga</em></th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 9: No person shall be deprived of life or liberty</td>
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<tr>
<td>Article 11: Slavery is non-existent and forbidden.</td>
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<tr>
<td>Article 14: No person shall be tortured for extracting evidence.</td>
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<tr>
<td>Article 25: Equality before law and equal protection of law.</td>
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<tr>
<td>Article 10: No one has to be detained in custody, without being sooner possible informed about the grounds for such arrest.</td>
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<tr>
<td>Article 12: No penalty greater than or of a kind different from penalty prescribed by the law at that time.</td>
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<tr>
<td>Article 14: Dignity of a person is inviolable, subject to law and privacy of home.</td>
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<tr>
<td>Article 15: Right to move freely, reside and settle.</td>
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<tr>
<td>Article 35: The state shall protect marriage.</td>
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<tr>
<td>Article 23: Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan</td>
<td></td>
</tr>
<tr>
<td>Article 24: No one will be deprived of his/her property, save in accordance with law.</td>
<td></td>
</tr>
<tr>
<td>Article 20: Subject to law, public order and morality, every citizen shall have the right to profess, practice and propagate his/her religion.</td>
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<tr>
<td>Article 19: Every citizen has the right to freedom of speech and expression.</td>
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<tr>
<td>Article 16: Every citizen has the right for the peaceful assembly, without arms.</td>
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<tr>
<td>Article 17: Right to form associations or unions.</td>
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<tr>
<td>Article 27: No citizen, otherwise qualified for appointment in the services of the Pakistan shall be discriminated against in respect of any such appointment on the grounds only of race, religion, caste, sex, residence or place of birth.</td>
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<tr>
<td>Article 38-A, B: State will promote educational and needs of backward classes and will provide free and compulsory education.</td>
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<tr>
<td>Article 38 B: State will facilitate for work and adequate livelihood with reasonable leisure and rest.</td>
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<tr>
<td>Article 38 C: State will provide social security to its citizens.</td>
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<tr>
<td>Article 38 C: State will make provisions for securing just and humane conditions of work.</td>
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<tr>
<td>Article 38 D: State will provide adequate food, clothing, housing, education and medical relief for all citizens.</td>
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<tr>
<td>Article 28: Any section of society having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose.</td>
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Annex III

Comparison of Rights of Women and Minorities under International and Domestic Law

<table>
<thead>
<tr>
<th>Rights of Women and Minorities under International Law</th>
<th>Rights of Women and Minorities under The Constitution of Pakistan 1973</th>
<th>Rights of Women and Minorities under Pakhtunwali and Justice through Jirga</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEDAW, Article 2 – States to work towards eradicating discrimination against women by introducing new laws or policy, changing existing discriminatory laws and providing sanctions for discrimination where it occurs.</td>
<td>Article 25 – Guarantees that all citizens are equal before law and are entitled to equal protection of law. There shall be no discrimination on the basis of sex alone. (Exceptions: the state can make special provisions for the protection of women and children)</td>
<td></td>
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<tr>
<td>CEDAW, Article 3 – States to actively promote women’s full development and advancement, so that they can enjoy Human Rights and fundamental freedoms on the same basis as men.</td>
<td>Article 34 – The state should take steps to ensure full participation of women in all spheres of national life.</td>
<td></td>
</tr>
<tr>
<td>CEDAW, Article 6 – States to eliminate all forms of trafficking of women and exploitation of prostitution of women.</td>
<td>Article 11 – Slavery; forced labor and trafficking of human beings are prohibited in Pakistan.</td>
<td></td>
</tr>
<tr>
<td>CEDAW, Article 10 – Urges countries to ensure that women have the same opportunities as men in all aspects of education and training -Women should have access to the same curricula, professional staff and programs of continuing and adult education, especially those aimed at reducing any existing gender gaps within education, and opportunities to benefit from the same scholarships and grants as men. Governments are required to ensure that stereotypical concepts of the roles of men and women are eliminated</td>
<td>Article 25 A – Guarantees that the state shall provide free and compulsory education to all children from the age of 5 to 16. Article 37 B and 37 C – The state is responsible to remove illiteracy and provide free and compulsory secondary education. Also the state should take steps to promote and make technical and professional education available to everyone.</td>
<td></td>
</tr>
<tr>
<td>CEDAW, Article 11 – States to protect women’s rights to work, to ensure that women have the same training and employment opportunities as men, that women receive equal pay for work of equal value, that women have access to the same benefits, compensatory schemes, and allowances as men, especially in relation to retirement and incapacity to work.</td>
<td>Article 27 – No employee should be discriminated on the basis of race, religion, caste, sex, residence or place of birth (Exceptions: specific services can be reserved for members of either sex if such posts/services require duties which cannot be adequately performed by the members of other sex, e.g. Lady Health Visitor) Article 37 E – The State should legislate provision for securing just and humane conditions of work. Article 38 A – The State is responsible for the well-being of the people, irrespective of sex, caste, creed or race by ensuring equitable adjustment of rights between employers and employees.</td>
<td></td>
</tr>
<tr>
<td>CEDAW Article 14 – States ensure that the particular needs of rural women are met in relation to access to services, training and employment opportunities, and social equity schemes.</td>
<td>Article 37 A – The State should promote educational and economic interests of backward classes or areas.</td>
<td></td>
</tr>
<tr>
<td>CEDAW Article 15 – States to treat women and men equally in all matters relating to the law, including civil matters, contractual matters, and property ownership.</td>
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<tr>
<td>CEDAW Article 16 – States to ensure that women and men have equal rights in the freedom to choose a spouse and enter into marriage; the same rights and responsibilities as men within marriage and upon divorce, especially with regards to choosing a family name, a profession, and the rights of ownership; and equal rights in all matters relating to the birth, adoption and the raising of children.</td>
<td>The International Covenant on Civil and Political Rights, Article 27 – Protects the rights of persons belonging to minorities to their national, ethnic, religious or linguistic identity, and signatory states are under the obligation to ensure all individuals under their jurisdiction enjoy their rights; this may require specific action to correct inequalities to which minorities are subjected. The International Covenant on Economic, Social and Cultural Rights Article 2 (2) – The States Parties to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</td>
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<td>Article 36 – The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services.</td>
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