

Legitimizing Informal Justice: Culture, Authority, and Alternative Dispute Resolution in Pashtun Society

Fayaz Aslam

MPhil (Sociology) Scholar, Department of Sociology & Criminology, University of Sargodha

Dr. Shahzad Khaver Mushtaq

shahzad.khaver@uos.edu.pk

Assistant Professor, Department of Sociology & Criminology, University of Sargodha

Muhammad Atif Ali

MPhil (Sociology) Scholar, Department of Sociology & Criminology, University of Sargodha

Corresponding Author: * Dr. Shahzad Khaver Mushtaq shahzad.khaver@uos.edu.pk

Received: 05-12-2025 **Revised:** 29-11-2025 **Accepted:** 08-01-2026 **Published:** 18-01-2026

ABSTRACT

The current research paper focuses on the cultural legitimacy of the Alternative Dispute Resolution (ADR) among Pashtun people. It dwells on continuity, social approval of ADR in the Pashtun society and ethics. Through the insight that has been gained after nine in depth interviews and one focus group discussion held at district Karak of Khyber Pakhtunkhwa, this research study focuses on the way that traditional systems like the Jirga are able to legitimize themselves by the way that they are able to command the trust of a community, religious authority and through culture embeddedness. Conversely, hybrid mechanisms, such as DRCs aim at institutionalizing ADR though they hardly achieve the same level of moral legitimacy. Considering the notion of social solidarity as put forward by Durkheim, the theory of traditional authority by Weber and the notion of governmentality as put forward by Foucault, the analysis reveals that the authority of ADR is more related to the collective morality concept than legal formality. Yet, contemporary trends such as modernization, gender exclusion and political interference to such legitimacy claim that this legitimacy needs reforms that would strike a balance between culture continuity and procedural fairness.

Keywords: *Alternative Dispute Resolution, Jirga, Pashtun Society, Cultural Legitimacy, Legal Pluralism, Pashtunwali*

INTRODUCTION

Pashtuns subscribe to an unwritten code called Pashtunwali to bring an order to their society even though it is not without exceptions and variations (Siddique, 2012). The Pashtunwali which is the traditional code of conduct of the Pashtun is anchored on such concepts as honor, hospitality, and justice often through these traditional ADR practices. It is a multilayer phenomenon, albeit in an over-dramatized and simplified manner. One of the levels holds the legislation and judgments, which are referenced and utilized in the management or resolution of a certain dispute. At the second level, it has the tradition that is a guidebook of dos and don'ts to every Pashtun. At other levels, it is a mindset, as no Pashtun chooses to go against it yet it has to be accepted (Spain, 1995). The Jirga system which is the community elders mediate and resolve disputes through the offer of solutions which are likely to be widely respected and acceptable in the community. Although formal legal systems have been introduced, such traditional ADR practices remain common because of their cultural appeal, social proximity and availability (Butt & Sultan, 2025).

ADR systems have long formed part of community-based justice in societies where cultural norms and traditions are more important than formal legal institutions (Afridi & Khan, 2024). In Pashtun society, the

Jirga as an ADR mechanism is not only a form of dispute resolution but also a basic social institution and crucial to communal harmony (Shahzad & Ahmad, 2022). This institution, merged in the code of Pashtunwali, commands moral legitimacy, representation, and reconciliation. However, over recent years, the introduction of government-supported DRCs has transformed the dispute resolution landscape. Merging customary and legal elements into hybrid mechanisms stimulated the new era of legitimacy, acceptance, and due process (Fatima, 2024). This paper discusses how ADR mechanisms derive, maintain, and adapt their cultural legitimacy within Pashtun society and how modernization and formalization replace that cultural legitimacy with legal legitimacy.

LITERATURE REVIEW & THEORETICAL LENS

Jirga is the traditional and historical institution and assembly of the tribal elders which in every age has played the role to settle our tribal nation's political, social, economic, cultural and even religious disputes through mutuality, consensus and respect-based decisions (Dennys & Marjana, 2012). The Jirga, an assembly of elders, is an integral part of Pashtun society, serving as the most significant mechanism for Alternative Dispute Resolution (ADR). Literal translation of Jirga is "gathering" or "assembly" of the party for resolving a dispute and it is an autonomous body of a certain type (Barakatullah & Sajid, 2013). Infused heavily in the cultural context and underpinned by Pashtunwali, the Pashtun code, the Jirga is the epitome of communal values of justice, honor, and social harmony. Generally, Pashtuns take the Jirga as authoritative under Pashtunwali, which is the code of honor most Pashtun tribes employ to resolve their disputes. Pashtuns highly value Jirga and regard it as the central pillar for Pashtunwali (Sheenwary, 2017). This assembly consists of wise elders and community leaders who are elected based on their wisdom, honesty, and vast experience. Of particular interest is that the members of a Jirga are typically voluntary, as they cannot receive any remuneration for services. This way, membership in a Jirga constitutes a community service (Sheenwary, 2017). The Jirga proceeding is conducted in Hujra (public place), mosque, and guest house or even at the shade of a huge tree. The verdicts given by the Jirga are binding even though it has no formal legal authority because the social and moral pressure that is exerted by the society makes it effective. Failure to abide by a jirga ruling can have serious social repercussions such as the threat of being ostracized or losing his status in his society. These consequences act as strong sanctions which enforce compliance to the group verdict (Barfield and Thomas, 2003).

Many informal justice systems purport to be legitimate and this has been discussed in different sociological and anthropological literature. Durkheim believed that justice was one of the ways of expression of social solidarity hence enhancing moral cohesion in the society (Durkheim, [1893] 1984). Weber placed a high level of emphasis on the traditional authority as a type of legitimacy which is a product of inherited norms, respect and continuity of the past (Weber, 1978). In fact, the jirga, which represents both aspects, in the Pashtun society is the stressor of moral order propelled by traditionally strong customs and established continuity.

Jirga decisions are considered legitimate due to the involvement of the community, moral reputation of the elders, and the observance of Islamic principles (Ahmed, 1980 and Ali, 2010). The Jirga is less a legal institution and more a moral and social institution; this institution of justice is accomplished by reconciliation (not punishment). Nevertheless, as Khan (2017) and Yousafzai (2021) note, the appearance of DRCs is the demonstration of the desire to unite the cultural legitimacy with the state-sponsored power, which is often burdened by the political factor, gender inequality, and the loss of personal reputation.

The sociological concept of Emile Durkheim, in particularly his theories of social solidarity, collective consciousness, and the role of law, can then be reasonably applied in explaining the Alternative Dispute Resolution process of the Pashtun culture. In the case of Durkheim legal and institutional arrangements

were much more than an administrative tool, they were the moral fabric and the collective conscience of society (Cotterrell, 2002). Prolonging this conceptual vision onto ADR, it sheds light on the extended meaning of the institution as a cultural based practice that intertwines with the communal beats of life. Closely connected with the concept of solidarity is the concept of collective consciousness the general moral and cultural system that the collective brings people together. The main pillar of Pashtun identity is Pashtunwali the native normative code that determines the social behavior and moral expectations. The Pashtunwali is based on the Pashto linguistic and cultural tradition which lays a lot of stress on values like courage (tura), honour (nang), hospitality (melmastia) and collective responsibility. It is not only a cultural rule but an actual ethical model according to which the Pashtuns govern the relations between each other and maintain the order within the community (Pamir, 2023).

The sociological theory developed by Max Weber gives a more detailed perspective on the topic of Alternative Dispute Resolution (ADR) as a system influenced by authority, legitimacy as well as greater rationalization processes. Weber had categorized three types of legitimate authority as traditional, charismatic, and rational-legal on the basis that the last type of authority provides the most stable and predictable basis of governance. According to him, authority only becomes legal when it is accepted and acknowledged by the people thus minimising the chances of coercion and resistance through violence. (Auerbach, 2021). The main point of Weber in the sociology is his legitimate authority theory in its traditional, charismatic and legal-rational forms (Spencer, 1970). All these manifestations are represented in the various ADR mechanisms that operate within the Pashtun society. The traditional authority based on age old traditions and inherited practices are still very clear in the functioning of jirgas and other informal community forums. Meanwhile, hybrid models have already started to emerge, incorporating the elements of these traditional frameworks with the characteristics of the models of the dispute resolution that are regulated by the state. This is not a sign of replacing traditions and that it is its adaptation to the limits of legal-rational order. This connection might not be enough to satisfy all observers, although others are satisfied,... informal law is actually the substantive-rational law of the four-fold scheme of Weber (Sheleff, 1997).

The sociology of Michel Foucault can provide a critical framework under which Alternative Dispute Resolution (ADR) can be explored as a highly entrenched practice of power, discourse and social regulation. Contrary to mainstream legal discussions of ADR, which tend to cover it as a functional substitute of traditional formal courts only, Foucault framework suggests the reflection of the inscribed power relations, which are the source and driving force of such systems. Similar to Durkheim organism metaphor Foucault regarded the society as a social body, "His focus is very much directed to avenues in which the major norms, values and beliefs of a society are normalized (Caputo et al., 1993). Foucault and his understanding of power as being decentralized is of great relevance to the study of ADR. One can observe that local empowerment that has at times been attributed to decentralization has been quite spurious as decentralization rather seems to strengthen inequalities (Berkhout, 2005). He argued that power is not necessarily in state agencies but deployed in social practice and localized systems of control. In the Pashtun society, decentralization can be well seen in processes of ADR but the jirga process where the responsibility in settling disputes is transferred to the community-based actors who are usually the elders or respected figures in the community. The rules to legitimize these people are not the formal legal codes but rather the cultural norms which are deeply embedded and shared community expectations. Their role shows how authority and conflict resolution may work effectively beyond the formal provisions of the state through social trust, collective memory, as well as culturally based conceptions of justice. Foucault goes a step further than considering power as simple oppression of the powerless by the powerful in an attempt to examine how it is practiced in day-to-day interactions between institutions and individuals (Balan, 2010).

METHODOLOGY

This study is based on a qualitative interpretive approach. For data collection, nine in-depth Interviews and one focus group discussion with the members of DRC, disputants, and local elders in district Karak of Khyber Pakhtunkhwa were organized. The analysis of data is conducted in a thematic way through inductive approach of coding.

Qualitative study design refers to the approach of studying and comprehending the human experiences, behaviors and social phenomena. Unlike the quantitative research that would mainly utilize numbers and statistical data to develop a study, the qualitative research design would take a more subjective and interpretive approach in developing a study. This is achieved through focus groups, interviews, observations and content analysis to achieve a full contextual information. It is through this that researchers become part of the community that they are studying, in order to understand the underlying meanings and patterns that arise out of the data. Complexities are defined in qualitative research, and the unexplored fields are researched because the formation of profound insights and a full understanding of the topic under study are the best intentions in their development (McLeod, 2023).

Emile Durkheim theory of social solidarity, Max Weber concept of traditional authority, and Michel Foucault model on the relations of governance and power influenced the interpretation theoretically. The theoretical approach of the paper is three-pronged and provided an analytical profundity to the insight of understanding ADR, as a moral, social and power-driven institution.

FINDINGS AND DISCUSSION

Traditional Roots of Legitimacy

The Jirga continues to be an institution of ADR credibility within the Pashtun society. As most participants have mentioned, community leaders owe their power to the general respect of the masses. They are considered as the reservoirs of communal wisdom in general and they are seen to be neutral and exercise procedural fairness. This Jirga legitimacy is also amplified by the fact that it is a decision made by consensus, participative, and normative to the norms of Pashtunwali, hence, a collective and socially encrypted system of justice. Classic Jirga continues to be the central one and is appreciated by its cultural validity, moral authority, rapidity to settle scores, and the capacity to provide reconciliation and long-term peace. The consensual strategy of the Jirga, its open design that it can be chosen by the disputants, the surety money, and the supposed impartiality have made it still pertinent particularly to the elders.

Religious and Moral Authority

Religion increases the ethical validity of ADR. Spiritual approval of resolutions is accorded because religious scholars are involved in the dispute resolution processes. Most of the respondents observed that they accept decisions made that are within the Sharia context since the endorsement by God strengthens obedience. This means that the religious ethics is precisely that moral status which brings faith to justice and continues the validity of ADR beyond social norm. ADR is influenced by religious norms with a number of conflicts particularly those involving the inheritance or dowry being settled according to the Islamic doctrines and ensuring that people in the particular culture continue to prefer informal and Sharia based laws, rather than court proceedings.

Accessibility and Communal Trust

There is also the flow of legitimacy of ADR on the basis of access. Since sessions are conducted in the local hujras or mosques, the discussions are conducted in the setting of disputants; hence, the costs and barriers are minimal. As one of them puts it, ADR is theirs; they do not feel that in the courts. The structural, practical and cultural influence of the Alternative Dispute Resolution (ADR) mechanisms, used in place of formal judicial processes, in the Pashtun society relies on a constellation of influences. To start with, there is the strong-tied social belief in the elders of the community and religious scholars, the feeling that they are wise, unbiased, and moral. Their presence makes the process legitimate and in case of religious people, the spiritual significance of their participation increases compliance with decisions. Also, besides being trustworthy, access and convenience matters are at the center of ADR preference formations. In the process, participants stressed a lot on the fact that ADR processes are quick, less expensive and less complex than the formal courts. This, considering the resolutions are set in probably frequently frequented locations like hujras or mosques, and in fact no legal representation is necessary, is especially suitable to individuals with low economic or educational capital.

Transition to Hybrid Mechanisms

The legal reforms, official paperwork and growing institutionalization have brought with them forms of ADR that are more hybrid such as police liaison committees and extended local administrators and these are more indicative of wider socio-legal change. Although it is socially acceptable, the Jirga is not governed by the legal system of the state and as a result the decisions made by it are not enforceable. Associated with this is the advent of Dispute Resolution Councils (DRCs), which is a major structural change in the realm of ADR, and it provides a semi-formal mode of operation that is upheld by the state to resolve the disparities between the old and the formal legal system. The evolution of the DRC is one of the institutional breaks. DRCs codify, regulate, and institutionalize customary ADR using the state sponsorship. Though the respondents found that there are good aspects including increased transparency and reduced court congestion, a good number of respondents actually found that the moral legitimacy of DRCs is lower than the one that traditional Jirgas enjoyed. Their bureaucraticism and association with the government made them looked like outside regulating control and not a community self-regulation.

Tradition and Modernity Interplay

These modifications of the dispute resolution mechanisms suggest the transition of the exclusively oral traditions to the systems informed by the procedural law and technological consciousness. The fact is that there still exist tensions in balancing cultural compatibility and institutional credibility. Moreover, this is accompanied by a new interface of conventional and new ADR approaches: Jirga is still very popular with older people because of its communitarian nature and flexibility, but younger generations have more and more confidence in more formalized systems such as DRCs. The difference is, though, in legal validity and perceived impartiality, but in many cases, these two systems are interrelated and interdependent e.g. cases referral to ADR forums at the mutual agreement. Such a developing relation of tradition and modernity, of cultural authenticity and legal formality, of the ongoing development of ADR in Pashtun society as well as its mediation with shifting social norms, and legal expectations and forms of governance.

CONCLUSION

This paper has concluded that legitimacy of ADR in Pashtun society is a culturally and morally constructed issue rather than a legal one. Jirga system is respected due to the fact that the conceptual framework is aligned to collective norms, religious values and community unification. Nonetheless, transparency,

inclusiveness, and fairness are becoming more and more relied upon by the increased legitimacy of ADR, as modernization is taking place, and new types of ADR are being created. It is difficult to retain the moral text of ADR and institutionalize procedural protection to achieve equity. To ensure ADR continues to be not only a culturally appealing but also socially fair mechanism of conflict management in the Pashtun society, the answer to this will be moderation between the traditional and the reform.

This paper has found out that ADR mechanisms, specifically the jirga are established as socially legitimate tools guided by the culture and traditional authority. They do not only play instrumental roles in terms of generating social order and cohesion as observed by Durkheim but they also exist within a rationalized regime of legitimacy and power as furthered by Weber. The Foucault theoretical prism helped bring more understanding to the unravelling of the power relations, normalization, and control that were present within these informal systems.

REFERENCES

- Afridi, I. M., & Khan, A. S. (2024). Comparative Analysis of ADR and Conventional Legal Systems in Former FATA. *Dialogue Social Science Review (DSSR)*.
- Auerbach, M. P. (2021). Power and Authority: Rational-Legal Authority. *EBSCO*.
- Balan, S. (2010). M. Foucault's View on Power Relations. *Cogito. Multidisciplinary Research Journal*.
- Barakatullah, & Sajid, I. A. (2013). Jirga System in Pakhtun Society: An Informal Mechanism for Dispute Resolution. *Pakistan Journal of Criminology*.
- Barfield & Thomas. (2003). Afghan Customary Law and Its Relationship to Formal Judicial Institutions. *United States Institute for Peace, Washington, DC*.
- Berkhout, S. J. (2005). The Decentralisation Debate: Thinking about Power. *International Review of Education*.
- Cotterrell, R. (2002). Emile Durkheim: Law in a Moral Domain. *International Journal of the Sociology of Law*.
- Dennys, C., & Marjana. (2012). *The Jirga: justice and conflict transformation*. COMMUNITY APPRAISAL AND MOTIVATION PROGRAMME and SAFERWORLD.
- Durkheim, E. ([1893] 1984). *The Division of Labor in Society*. New Yor: The Free Press.
- Fatima, S. (2024). *Reviving the Jirga System as Alternative Dispute Resolution (ADR) in Pakistan's Tribal Areas*. Samreen Fatima.
- McLeod, S. (2023). Qualitative vs Quantitative Research Methods & Data Analysis. *simplypsychology*.
- Pamir, E. (2023). Some Aspects of Pashtun Culture. *Randwick International of Social Science Journal*.
- Shahzad, K., & Ahmad, W. (2022). Comparative Analysis of Formal and Informal Dispute Resolution Council in Tehsil Razzar, District Swabi. *Qlantic Journal of Social Sciences and Humanities*, 3(1), 23-40.

Sheenwary, B. (2017). Institutionalizing Customary Dispute Resolution in Afghanistan: Lessons from the Navajo Approach to Harmonizing Traditional and Formal Justice. *OHIO STATE JOURNAL ON DISPUTE RESOLUTION*.

Sheleff, L. S. (1997). *Social Cohesion and Legal Coercion: A Critique of Weber, Durkheim, and Marx*. Atlanta and Amsterdam: Rodopi.

Siddique. (2012). *The other Pakistan: Special Laws, Diminished Citizenship and the Gathering Storm*. .

Spain, J. W. (1995). *Pathans of the latter day*. Oxford University Press.

Spencer, M. E. (1970). Weber on Legitimate Norms and Authority. *The British Journal of Sociology*.

Weber, M. (1978). *Economy and Society*. University of California Press.