

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	251
Land:	Pakistan
Kilde:	IRIN, Integrated Regional Information Network
Titel:	How justice works in Pakistan's tribal areas and beyond
Udgivet:	20. februar 2013
Optaget på baggrundsmaterialet:	2. juli 2013

[EN](#) | [DE](#)

- **Source:**
IRIN - Integrated Regional Information Network
- **Title:**
How justice works in Pakistan's tribal areas and beyond
- **Publication date:**
20 February 2013
- **ecoi.net summary:** Federally Administered Tribal Areas: Article on the traditional tribal justice system of so called Jirga courts in the country's border areas [ID 239296]
- **Countries:**
Pakistan
- **Original link** <http://www.IRINnews.org/report.aspx?ReportID=97511>

Recommended citation:

IRIN - Integrated Regional Information Network: How justice works in Pakistan's tribal areas and beyond, 20 February 2013 (available at ecoi.net)
http://www.ecoi.net/local_link/239296/348543_en.html (accessed 25 April 2013)



How justice works in Pakistan's tribal areas and beyond

PESHAWAR, 20 February 2013 (IRIN) - Justice in Pakistan's tribal border areas is a contested issue.

"We are quite clear what justice is. If someone kills, commits adultery or some other offence, they deserve to die," said Javaid Khan of the Utman Khel tribe in Bajaur Agency, one of seven tribal agencies (districts) along the Pakistan-Afghanistan border.

Talking to IRIN from the town of Khar in Bajaur, he said "tribal justice" was practised in the country, and killings had been carried out following verdicts delivered by 'jirgas' (gatherings of unelected tribal elders).

He did not see these as extra-judicial killings or a violation of the law, saying: "We have our own means to keep order here... Yes, over the years, killings have been carried out on 'jirga' orders - for murder, adultery or other offences."

Traditional justice is strong in many of these areas - but that comes at the expense of universally accepted legal rights, say campaigners.

"The 'jirga' may offer justice in some cases, but there are flaws and there is evidence that the will of powerful tribal elders holds sway over the less influential," Asad Jamal, a Lahore-based lawyer, told IRIN. The less influential, he said, "would include women".

The 'jirga' courts are a community-based form of justice, deciding right and wrong in areas where national official judicial structures are out of reach.

Their power is particularly strong in the Federally Administered Tribal Areas (FATA), which are only covered by limited parts of the Pakistan Penal Code and the 1973 constitution.

Instead, FATA operates under the Frontier Crimes Regulation (FCR) of 1901: colonial-era laws that condone collective punishments and lack a right of appeal or trial by jury.

"Jirgas are widespread, notably in tribal areas and affect women more adversely than men by holding back progress for them, keeping them confined to within the four walls of their houses, preventing them from acquiring education, and promoting damaging traditions like child marriage," said Naveed Ahmed Shinwari, chief executive officer of the Lahore-based Community Appraisal and Motivation Programme.

Those who campaign against the justice of 'jirgas', say they often deliver injustice, in part because women have so little power over their decisions.

"Since women are not represented on the 'jirgas', verdicts often go against them," Samar Minallah Khan, a human rights activist and documentary film-maker who has worked extensively in Khyber Pakhtoonkhwa Province (KP), told IRIN from Islamabad.

Far-reaching influence

The hold of tradition and "traditional justice" extends beyond the more legally autonomous tribal belts.

Minallah said women in KP were "frequently produced before jirgas", most often in cases of 'swara' or "marriages of exchange", where they were handed over to an aggrieved party to settle a dispute, including murder or other crime. "Under-age girls are often produced before jirgas by their fathers in such cases," Minallah said.

The 'jirgas' often help reinforce discrimination against women, which can be particularly acute in rural areas in the north.

In the remote Kohistan District of KP where, technically speaking at least, national law applies, three men were shot dead in January this year as a result of a long-standing tribal feud involving allegations their brothers had mingled with unrelated women.

"In Kohistan, the ease with which people are willing to kill women, often on 'jirga' orders, is shocking. It is just something completely acceptable to them," said Farzana Bari, chairperson of the Women's Study Centre at Quaid-e-Azam University in Islamabad and a well-known women's rights activist who headed a Supreme Court inquiry into the case.

"The ease with which people are willing to kill women, often on 'jirga' orders, is shocking", Farzana Bari, Women's Study Centre, Quaid-e-Azam University "In our culture men and women unrelated to each other are not permitted to mingle at all," Nazir Kohistani, a businessman who now lives in Peshawar but has origins in Besham, Kohistan, told IRIN. He said he had moved to Peshawar when his three daughters were infants "so they could be educated and lead a normal life."

Women's rights curtailed

Maryum Bibi, head of the Peshawar-based NGO Khwendo Kor (Sisters' Home, in Pashto), which promotes the education and empowerment of women, told IRIN: "Such traditions, and the power of 'jirgas' hold back women - preventing even their education, as well as other rights."

A survey by the Islamabad-based NGO Sustainable Policy Development Institute (SDPI) conducted in six KP districts and Punjab Province, the results of which were released to the media last month, found a large proportion of men in both provinces believed that there were situations in which it was necessary to use physical violence against women, and that banning violence was a "Western concept".

Nevertheless, SDPI's monitoring and evaluation team said that traditional 'jirga' courts still had a degree of popularity in the surveyed areas.

"It is difficult to change established ways," said Shandana Bibi* who now lives in Peshawar, but hails from Mohmand Agency. "We as women can only try, but despite my efforts I have been unable to persuade my husband to allow our two daughters to study beyond grade five."

She says she will need to "fight hard" to allow her daughters to receive even vocational training in sewing or embroidery, and the right to leave their home to receive the training.

Businessman Kohistani says he has come up against the same issues. He told IRIN: "In areas such as ours, there are women who never, ever leave the four walls of their home, simply moving from the home of their parents to that of their husbands. I did not want my daughters, or my two sons, to grow up in such a culture, and therefore I escaped it."

However, escape is not possible for most. Nor do they necessarily wish to abandon old ways.

"We live as are grandfathers and great grandfathers did, we keep to our own ways as tribesmen; we believe life must follow tradition so we preserve our culture - and we are proud of the morality that comes with this," said Javaid Khan from Bajaur.

He says his main concern is to "keep change away since it will worsen, not improve our lives, ruining morality, especially for women, who need to be modest and kept away from public life."

*Not a real name

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