

TRADITIONAL MECHANISMS OF CONFLICT RESOLUTION: AN ANALYSIS OF JIRGA IN PAKHTOON SOCIETY

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Abstract: *All societies have their own respective traditional mechanisms for Conflict Resolution at local levels, since ages. These mechanisms continue to operate in one form or the other all across the globe, particularly so in the societies which are built upon tribal lines. The institution of Jirga prevalent in Pakistan's Pashtoon society and in the neighboring Afghan's Pashtoon Society is one example of such traditional ways of dealing with the feuds of all kinds. There are varying opinions on the effectiveness, utility and even very relevance of this traditional institution in today's world. The prevailing discourse, one finds, is either bent upon proving the Jirga as an obsolete way of dealing with the conflict, or, one the other extreme, glorifying it as the only feasible option in tribal society. The reality, however, lies somewhere in the middle. A cursory look at the researchers conducted in this regard shows that Jirga has both positive and negatives aspects. This intended review paper will try to analyze, qualitatively, that what have been the actual gains and losses of this mechanism, particularly over past few decades. The paper will look into the pluses and minuses of the practice/institution and will attempt to suggest as to what can be done to benefit from this centuries-old way. Further, it will try to seek as to how the weaknesses of the present-day Jirga can be overcome to make it an effective and just local level mechanism of Conflict Resolution in Pakistan as well as in Afghanistan.*

Keywords: Jirga, Pukhtoons, tribe(s), disputes, verdict

Introduction

Conflicts are as old as human societies themselves. Historically, individuals, groups and societies have conflicts and disputes with one another over scarcity of resources, power and ideology. By simple definition, conflict is, “a clash of interests between two or more than two parties.”¹ History unveils that human beings and their societies have set their own traditional ways of conflict resolution. According to social scientists, there are different stages of conflict resolving; 1) to prevent or avoid the conflict, 2) if it occurs then try to contain it, 3) to manage the conflict, 4) final stage is resolution of the conflict.

In the contemporary world, societies, social scientist and jurists have developed different means of resolving the conflict.² The accessible literature on the subject suggests that the ways and mechanism to resolve the conflict of any society is determined according to their cultural and historical norms and traditions.

Seeing that different existing examples of traditional mechanisms in the world, Panchayat in India (Baxi and Gallanter 1979; Moore 1985), Mediation Committees in China (Li 1978; Clark 1989), and Jirga in Afghanistan and Pakistan (Carter and Connor 1989; Elphinstone 1992; Olesen 1995; Gletzer 1998) operate as informal mechanisms of conflict resolution vary from one another mainly. Significantly, all these conventional means of conflict resolution are primarily dissimilar from the ways, conflicts resolve in the Western world (Reichel 1998).³ These specific conventional mechanisms for conflict resolution are still prevailing in all societies at local levels, since ages. The ways of operating such mechanisms may differ from society to society, yet they exists everywhere in one form or another.

Origin and Definition of Jirga

Specifically, the institution of *Jirga* exists in Pakistan's Pakhtun areas and in the neighboring country Afghanistan. Originally, *Jirga* is a Pashto word, usually uses for the gathering of the people in few or large numbers; it also stands for ‘discussion.’ Although, it is difficult to draw a comprehensive definition of *Jirga* but few social scientists have given their own definitions. A criminologist, Ali Wardak adds, “these meanings of jirga strongly reflect the rituals and processes of the Pashtun tribal *Jirga* where people gather and sit in a large circle in order to resolve disputes and make collective decisions about important social issues.”⁴ According to Ludwig W. Adamec, “it is a tribal council that has legislative and juridical authority in the name of tribal community.”⁵ *James W. Spain* defines it as, “a group of members of a particular sub-group of Pathans considering a matter of common interest.”⁶ *Qayum Afridi* considers it a court whose judges are nominated in equal number by the disputing parties from amongst the elders of repute.”⁷

Locale of Tribal People

Geographic dynamics of human history dictates, tribal societies prevail across the world, some merged into mainstream, some liked to remain semi autonomous and few remain completely independent to hold their own identity. History illustrates that the institution of *Jirga* is not only limited to the *Pakhtuns* but it is an institution that prevail in many parts of the world with different names. The resolution methodology varies on minor counts but is effective once seen in the

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overall perspective. The common factors in all the tribal societies are finding solution within the realm of customs and traditions. The indigenous justice system (circle) in the North Americans tribes, the *Agaweed* way of conflict resolution in the African tribes in India it called as council or *Punchaiyat*; in ancient Greek cities it described as *Agora*, in Rome called as *Curiata*, in Arabs it named *Shura*, and *Jirga* in the Af-Pak tribal region are all the different facets of tribal's system in imparting social justice and conflict resolution. Although, its procedures, code of conduct and ways to solve the problem are unwritten societal norms and tradition, however, it followed in its true letter and spirits.

While specially talking about *Pukhtoons* or Pathans (as called by other races) it has been noticed that they are significant and major ethnic group living in most parts of Afghanistan and tribal belt of Pakistan. They are in majority in Afghanistan and in Khyber Pakhtoonkhwa province of Pakistan. It is the second biggest ethnic group in Karachi, the capital city of Sindh province and occupy the most populous part of Balochistan Province; in the province of Punjab, they are settled in Mianwali and parts of Attock districts. In India, they are scattered in various parts of the country. They migrated to India during different points of times since 11th Century AD.⁸

Significance of *Jirga* in Tribal Society

Jirga is considered to be an important part of Pakhtun society. It is a mean to resolve conflicts and disputes. There are approximately 40 million *Pakhtun* living today in the East and South of Afghanistan, and the North and West of Pakistan.⁹ In both countries i.e. Afghanistan and Pakistan, most of *Pakhtuns* reside in rural areas. The control of government is very weak in these far flung areas. Mostly Pakhtuns still prefer to practice their own traditional way of life and rarely expose themselves to changes their traditional way of living. For instance, their traditions, customs, social practices, eating habits and importantly the *Jirga* system, as a source of conflict resolution have not been altered yet. The writ of government is not practiced in Pashtun tribal areas. As a result, constitution and formal justice directed by the state is not welcomed, therefore, they trust on their own code of conduct that is called *Pashtunwali*, as a substitute.¹⁰

Pashtunwali: the Tribal Code of Conduct

Pashtunwali is combination of two words; 'Pashtun' and 'Wali'. Pashtun, described as an ethnic name and in literal meanings, Wali which is a suffix in Pashtu which means 'concerning to' and 'relating to'. Hence, its meaning is pertaining to 'Pakhtun's way of life'. A social scientist of Pakhtun culture, Palwasha Kakar, explains the significance of Pashtunwali as tribal law codes are Pashtunwali, and they are widely practiced as a component of customary law, especially in rural Pashtun majority areas and *Jirga* is an unalienable part of Pashtunwali.

As Thomas H. Johnson and M. Chris Mason stated, "Pashtuns believe that their social code produces men, who are superior to those produced under the Western model, and they have no desire to have a new social system imposed on them by outsiders."¹¹ Ideal *Pakhtun* behavior approximates the features Pukhtunwali, the code of the *Pukhtuns*, which includes the following traditional features:

Hospitality (Melmestia): *Melmestia* a basic element of *pashtunwali*. "Melma" means a guest.¹² The concept of hospitality in pakhtun society is quite different with the concept given by Western world. It means offering hospitality to a guest; go beyond to his religion, economic and social background and to provide him not only a roof but a complete shelter and full protection from any danger. In this regard *melmestia* has preference over *Badal* which is another key component of *pashtunwali*. Elphinstone in 1815 observed: "The most remarkable characteristic of the tribal societies is their hospitality. The practice of this virtue is so much a point of national honour, that their reproach to an inhospitable man is that he has no Pashtunwali."¹³

Revenge (Badal): Generally it means "to seek justice or take revenge against the wrongdoer."¹⁴ No specific time period has been allotted for taking revenge from the opponent. The practice of this component caused enmity and bloodshed from generation to generation. Revenge only concluded with revenge in tribal society. Khushal Khan Khattak, the great Pashto poet, warrior and soldier, was not far off the mark when he said: "Let the head be gone, wealth be gone, but the honour must not go, because the whole of dignity of a man is due to this honour."¹⁵

Courage (Tora): A Pashtun must defend his/her land, property, and family from adversaries. He should always stand bravely against tyranny and be able to defend the honour of his name and tribe.

Immunity (Nanawaly): It is another key feature of *pashtunwali*. According to this component, a person can seek shelter in any pakhtun's house in search of protection from his opponent. The pakhtun host is strict to provide full protection from his enemy at any cost. Conventionally, the shelter is given only till such time as the asylum seeker is on the property of the person whose refuge he seeks.¹⁶ The shelter will be removed once he is off the host's belonging.

Bravery (Tureh): it is another component of *Pashtunwali*. In pakhtun culture, it refers as to protect his family (particularly women) his/her property against the attackers. Honor of one's forefathers' should be honored at any cost. Lives can be laid down to defend the honor associated.

Loyalty (Sabat): Another key component of pashtunwali is loyalty, called as “Sabat.” It means that loyalty towards family, friends, tribe and culture.

Righteousness (Imandari): motivated towards goodness both in theory and practice.

Courage/honour (Ghairat): It is called one of the significant ingredients of Pashtunwali. It is said that if a Pakhtun is not courageous he should not claimed to be from Pakhtun tribe.

Along with above mentioned features of pashtunwali some are named here, to defend (Zemaka), Need for compromise (Roogha), equivalence (Brabari), Regard for neighbor (Gwanditop), Gave lift to a person in need (Oogha warkawel), Encouraging collective work (Ashar), Loyalty to the pashtun Nation (Hewal).¹⁷

Palwasha Kakar describes the importance of Pashtunwali, “...tribal law codes are Pashtunwali, and they are widely practiced as a component of customary law, especially in rural Pashtun majority areas. *Jirga* is an unalienable part of Pashtunwali. In order to highlight the importance of Pashtunwali in short it is said, “The Pukhtoonwali or the Pukhtoon code of honour embraces all the activities from the cradle to the grave. Pashtunwali has no legal authenticity. It is not more than unwritten code of honour by which a Pashtun will live by - and die for!.”¹⁸ One example is described here of the mutual decision taken by *Jirga*. A unanimous decision by the tribes was taken related to the expulsion of militants from Wana in South Waziristan in 2007 by Mullah Nazir. All sub tribes of Wazir took a joint decision of expelling foreign militants from their area. This had the added advantage of the government supporting it. Thus, the Wazir (all its sub-tribes and the Taliban) were able to expel foreign elements from their area. It can be called an informal legislative body based on tribal elders, who take decision with consensus. Disagreements between two or more people are heard by this informal legislative body. In tribal areas, the *Jirga* is a tool to providing speedy justice and Pashtunwali is the custodian of this institution.

Modes of Jirga

The mode, type, power and function of Jirga is based on the nature of disputes it takes. There are several modes of *Jirgas*. Most significant of them are elucidate here:

Koranay /Shakhsi Jirga: Shakhsi means personal/private. Shakhsi *Jirga* is a form of *Jirga* which organized at the personal level. Hassan M. Yousufzai and Ali Gohar, prominent Pashtun scholars in Peshawar explained as, “This jirga is formulated in the case of a dispute that arises between individuals and families.” Members of this *Jirga* are usually chosen with the mutual consensus of both parties. This form of *jirga* is limited in its scope and function.

Olasi /Qami Jirga: The *olasi/qami Jirga* is formed for taking up disputes or issues of mutual importance of an area or tribe. Plenteous issues of communal nature such as settling disagreement with other tribes, area share in forests and other natural resources, allotment of irrigation water, initiation of developmental projects, and to deal with outlaws in the area are placed before the *Jirga*.

Sarkari (State-controlled) Jirga: In the official (sarkari) form of *Jirga*, appointments are taken by the political agent from amongst Maliks. A committee of three or more individual whether official or otherwise convened by the Deputy Commissioner and presided over by a magistrate invested with powers under section 30 of the Code of Criminal Procedure 1898. (Ali I, 2003). Another official form of *Jirga* was provided in the Local Government Ordinance 2001. Chapter XI of LGO 2001 consists of five articles (Article 102-106). This chapter provides for *Musalihat Anjuman* (Council of Conciliation). *Musalihat Anjuman* consists of three members (conciliators) headed by a convener amongst them.

Loya (grand) Jirga: *Loi* or *Loya* is a Pashto word which means ‘big or grand’. *Loya Jirga* is the biggest of all its categories. It is a gathering of the people generally arranged for important events such as choosing a new king, adopting a constitution, or discussing important national political or emergency matters as well as disputes in the Pashtun areas. In Afghanistan, the *loya jirga* was originally attended by the Pashtuns, but later included other ethnic groups. In Afghanistan, *Jirga* is quite institutionalized. The House of the People or *Wolesi Jirga* is the lower house of the bicameral National Assembly of Afghanistan, alongside the House of Elders (*Mesherano*). The House of Elders *Jirga* is the upper house of the bicameral National Assembly of Afghanistan, alongside the House of the People (*Wolesi Jirga*).

Silent Features of Jirga System

- ✓ Jirga administers swift justice
- ✓ Jirga helps in resolving community-wide issues and saves the community from surge of intra-tribal clash
- ✓ Jirga is custodian of religious injunctions and Pukhtoons’ code of life i.e. Pukhtoonwali.
- ✓ The members of Jirga have been performing their duties without receiving any fee or emoluments from parties concerned. However, in the recent years, Jirga members in tribal areas have started receiving money from parties in the form of fee and in some cases as bribe.

- ✓ Jirga is reflection of Tribal society; guardian of customs and values of Pakhtuns. However the critics of Jirga named it as rigidity of Pakhtun culture.

Why Still People Prefer Jirga to Courts?

Since FATA is outside the ambit of parliament (thanks to political parties for inclusion of article 247-b in the constitution) there are no courts like elsewhere in the country where disputes could be resolved. Disputes there are to resolve through the unwritten laws of the tribal customs and tradition. In Afghanistan, most of the districts in the Southern and South eastern provinces, where Pashtuns constitute the majority of the population, are out of the government's control. Secondly, illiteracy also has a part to play in the extension of *Jirga* tradition. Finally, the government-run courts are corrupt in general and in rural areas in particular. Low salaries in rural areas are one of the reasons that have been fueling the engine of corruption. In addition to corruption, the lengthy bureaucracy in government-run courts discourages people from bringing their cases before the courts.

Recommendations - How the weaknesses of the present day *Jirga* can overcome?

Reform regarding incorporation of human rights principles into its decision making process should be taken into consideration. Expelling one from his/her residence or forcing a girl to marry victim's brother is all violation of basic human Rights. *Jirga* or consultation committees are prevailing everywhere in the world. The difference with the *Jirga* of pashtun society is, reformations have not been allowed in this system which is the need of today. In order to make it more effective, the need of the hour is, bring reforms and link it with the whole system of the country.

Conclusion

The traditional mechanism of conflict resolution prevails everywhere in the world. The methodology, names may be different from society to society but its effectiveness is unquestionable. The common feature of this mechanism in all the tribal societies is to provide justice and to find solutions of the problems within the sphere of customs and values. In Pakistan's tribal society, constitution of the state gives the right of free will to the people of FATA to follow their own traditional system of justice. The outcome of the War on Terror has weakened the social institutions of the region. It has created a vacuum that's need to be filled by stimulating and reviving the traditional means of conflict resolution.

The whole region is in the phase of political and social transition. This transition can be seen in the field of economy and security as well. History educate us that transitional phase is quite critical everywhere. Hence, *Jirga* as a tool of conflict resolution in the tribal society cannot be left out in this transitional phase.

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TRANSFORMATION FROM WALI'S TO STATE'S JUDICIAL SYSTEM: THE RESULTANT GAP AND POSITIONING OF THE CHESSBOARD PIECES

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Abstract: *Swat – a valley once famous for its beauty, tourism, peace, and prosperity – has been in the news for the phenomenon of militancy and Talibanization for the last two decades. How this rift from tranquility to truculence occurred is a story expanded over a long history of Swat. However, all else equal and apart from the strategic location of Swat, the sprouting roots of the non-state actors phenomenon (i.e., the rise of Sufi-Muhammad's TNSM and Fazlullah's Talibanization) are found in the gap between state and societal justice systems – created after the merger of Swat with Pakistan in 1969. How this gap was created? By whom, how, and when it was exploited? Is there any chance of its further exploitation? Is there any way out from the gap? All these and many others are the central themes of this report. In the contemporary scholarship, however traces of the said gap can be found in many research articles, but there is no single study available exclusively and explicitly dealing the said gap. Moreover, as the study deals with 'lived experiences' of the people and what 'essence' these experiences have got for them, therefore, Interpretative Phenomenological Analysis (IPA) along with semi-structured interviews as a tool of data collection has been used in this paper.*

Keywords: Swat, judicial system, wali's system of justice, Taliban, Fazlullah, Sufi Muhammad

Introduction

Swat, [t]he Switzerland of the East,¹ has been a centre for different civilizations, spindle of invaders and a rivet for different non-state actors. Since two B.C., it has been a game court for different actors to promote their own interests and consolidate their position in the land. Game court in a sense, that different players played freestanding games of their own interests using the same land. Gandhara in two B.C., Islam in eight B.C., Mahmud of Ghazni in eleventh century, Yousafzai in sixteenth century, and *Babas* (Holy Saints) in nineteenth century each player played his role well to consolidate his position till 1917 when a local *Jirga* laid the foundation of a princely state with Miangul Gulshahzada Sir Abdul Wadud Badshah Sab as its first ruler, and *Shairah-Puktoon Wali* as its code of conduct.

As it is seen that in the earlier days, the land per se was a game court. However, since 1969 after the transformation from Wali's to state's (by state here means Pakistan) system, there has been a shift in the game court from the land itself to the 'gap between state versus societal justice system'. As being a part of Pakistan, the land per se is no more a game court. However, in the post merger era, it is the gap between state and societal justice system that has acted as a game court. Different non-state actors at different times have exploited this new game court for promoting their own games of interest. Sufi Muhammad's *Tahrik Nifaz Shariat-e-Muhammadi Movement* and Maulana Fazlullah's *Swat Taliban Movement* are two distinct beneficiaries of this new game court.

The creation, exploitation and past, present and future implications of this new game court are central themes of this paper.

Geographical Location

Swat "is in no way a remote part of the tribal hinterland"² located in the north of Khyber Pakhtunkhwa with 35° North latitude and 72° and 30° East longitude.³ It is about 150 kilometers away from Islamabad and 100 kilometers from Peshawar. Locally, in the north of Swat lies Chitral and Gilgit, Dir in the west, Mardan in the south and in the east Indus separates it from Hazara. Physically, Swat is a home to mountains and hills covering every nook and corner of the region. However, a significant belt of plan area is also found starting at the belly of Malakand mountains till Gabral (Gul Abad) and Buner dale with the former having a length of 91 kilometers.

Strategically, Swat is an integral part of the region where the interests of great powers are indented, coincided or overlapped. Linked with the economic giant, China, through Silk route, having a direct land access to Gwadar port and proximity with Afghanistan through Peshawar and Bajaur Agency and Gorno-Badakhshan Province of Tajikistan through Chitral, Swat consummates a not-to-ignore position for herself in the international environment.

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Historical Background

As of its geographical and strategic location, Swat has been a region of enthrallment and immersion for various adventurers, conquerors and invaders. However, in spite of periodical invasions by various formidable armies, "Swat has [mostly] remained independent or at least semi-independent."⁴

For the sake of convenience, the history of Swat can be divided into four phases. A tacit line of demarcation cannot be drawn between any two phases. However; there are certain themes which distinguishes one phase from another.

- ✓ I. Alexander to Yousafzias
- ✓ II. *Babas* (Holy Saints) and Clergy
- ✓ III. Swat under *Wali*
- ✓ IV. Swat after Merger with Pakistan

Alexander to Yousafzais phase is marked by the invasions of various armies starting with Alexander till the invasion and settlement of present-day Yousafzais in Swat. In second phase, sway of all the affairs of Swat seems in the hands of *Babas* who were religious scholars. Abeyance and anarchy also characterizes this phase. Swat under *Wali* is a phase of relative peace, prosperity, development and order. The last phase starts with Swat merger in Pakistan in 1969 and is continued till today.

Alexander to Yousafzai Phase

Swat has been a 'cradle'⁵ of Gandhara civilization which is a blend of Greek and Buddhist Civilizations. A large number of monasteries and different archeological sites and history of Swat confirms the greatness and presence of this civilization in Swat. Sultan-i-Rome says that it was here in Swat that third school of Buddhism called Vajrayana or the Tantric Buddhism developed and flourished.⁶

Abdul Qayum Balala in his book "The Charming Swat" says that the history of Swat begins with the advent of Alexander The Great in Swat in 326 B.C. through Kunar. After defeating the Buddhist ruler, his army captured Swat valley. However, in 346 B.C. the great general of Alexander, Salukis, gave Swat back to Chandragupta, the Buddhist ruler.⁷

In eleventh century, Mahmud of Ghazni captured Swat defeating Raja Gira, the last Buddhist ruler. Hence, after conquering Swat, Mahmud went back while two Afghan tribes i.e. *Swati* and *Dalzak* were settled here permanently. However, this settlement was shattered into pieces with the advent of Yousafzai tribe in sixteenth century into Swat. The aboriginal Swati and Dalzak tribes were pushed back into Hazara region.

Although, Yousafzai tribe was settled in Swat, but the tribe lived in abeyance without establishing any government or state. They were divided into two opposite blocks called *Dalay*.⁸

Babas (Holy Saints) and Clergy

Since ancient times, religious roots are embedded in every aspect of life in Swat, may it be economical, political or social. Whether Buddhism or Islam, Swat has been a fort to religion without any discrimination on the bases of nature of the religion. However, after the advent of Yousafzai tribe in Swat, Islamic color seems domineering with the influence of Islamic scholars in all walks of life.

In sixteenth and seventeenth centuries, Akund Darwiza, his son Main Karimdad, and his grandson Main Noor were the most influential religious figures who had a political sway in the area. In nineteenth century, Akund Abdul Gaffur alias Saidu Baba, being known for his mysticism, had a great influence in the affairs of Swat. Similarly, Sayyed Akbar Shah who ruled Swat from 1848/50 till 1857 was a descendent of religious figure Sayyed Ali Tarmizi alias Pir Baba.

Similarly, in the late nineteenth and earlier twentieth century, Saadullah Khan alias Sartoor Faqir has remained prominent for his anti-Britain stance. Also, Sandakai Baba was a prominent figure during this era. His disciples were called *Sheikhan* who had stated a "purity campaign" in Swat to protect Swat from any foreign aggression. Importantly, it was the religious factor that influenced the five members' council in deciding the ruler for Swat in 1915. Sayyed Abdul Jabbar Shah, the nominated ruler, was a descendent of Pir Baba. Similarly, all else equal, Miangul Gulshahzada Abdul Wadud also owe his position of ruler ship of Swat as of his lineage with Saidu Baba. In a nutshell, religion has been remained a deciding factor in the public and private lives of people during this era.

Swat under Wali

In April 1915, a five members local council, *Jirga*, of Swat made Sayyed Abdul Jabbar Shah the ruler of Swat, and formally laid the foundation of Swat State. However, in September 1917, on accusation as being *Qadyani*, Sayyed Abdul Jabbar Shah was asked to give the powers back and leave Swat. In September 1917, Maingul Gulshahzada Abdul Wadud

Badshah Sahib, a descendent of Saidu Baba, was made the ruler of Swat. Badshah Sahib disarmed the tribal people, established law and order and laid the foundation of a proper state machinery.

In December 1949, Badshah Sahib abdicated throne in the favor of his son Miangul Abdulhaq Auragzeb. He consolidated the state and ran machinery of the state on modern lines. He wanted Swat to be "modern and full of needs."⁹ He was much focused on education, basic facilities and infrastructure of the state. His period is considered to be "the golden time"¹⁰ in the history of Swat. However, in July 1969, due to some internal and external circumstance, the merger of Swat with Pakistan was announced, and *Wali* divested his powers on August 15, 1969.

Swat after Merger with Pakistan

Justine Fleischner in her report written for Center for Strategic and International Studies Washington D.C. writes: "When Swat merged with Pakistan in 1969, it was by far the most developed state in the frontier, which made decline in governance under Pakistani administration that much more unbearable."¹¹

In August 1969, although Swat was merged with Pakistan and the state was regarded as a part of the Provincial Administrative Tribal Areas (PATA), but there was not any proper mechanism for extension of Pakistani or any other special law to the former principality. This created a confusion among the people of Swat.

However, in 1975 PATA Regulations were introduced which transferred the decision making powers of both criminal and civil cases from judiciary to executive. Also, a four members council, *jirga*, was formed for resolving the disputes, but decisions of the council were subservient to the executive in Swat. Therefore, under PATA Regulations, the executive and bureaucracy became more powerful in Swat, and justice became delayed and expensive. This created a vacuum between the earlier system under *Wali* and the contemporary system.

Howbeit, these regulations were regarded as null and void by the Division Bench of High Court Peshawar and Supreme Court of Pakistan in 1990 and 1994 respectively, but the vacuum created had already paved a way for the rise non-state actors such as Sufi-Muhammad and Fazlullah followed by various army operations.

Significance of the Study

A lot has been written about Swat, some scientific other not, by both local and international scholars. Ancient history of Swat, its archeological sites, its unique customs and way of living, its serenity and good governance style during the days of princely statehood has been attracted a lot of scholars to add to the scholarship regarding Swat. However, in the recent times, it is the phenomenon of non-state actors that has been the point of attraction for policy makers, researchers, scholars, and writers. Most of these writers and researchers attribute the rise of non-state actors in Swat to its past history, being religiousness of its people and bad governance style since the merger of state with Pakistan in 1969.

Here, some important questions rise. Had the merger mechanism handled properly and professionally, had all this episode of non-state actors happened? Had the vacuum between the two systems i.e. system before merger and system after merger not created, had there been a ground provided to non-state actors? Had the grievances of the local people addressed properly, had there a chance of the support for non-state actors? All these questions make this study significant.

The study is also important on four levels i.e. personal level, scholarly level, policy making level and at the level of an average citizen.

On personal level, as being a resident of the area and being exposed to various episodes of the non-state actors makes my first hand experience and insight imperative to the study. Moreover, our parents as being a generation who have been a part of the both systems i.e. *Wali* system and system after merger, puts us at an advantageous position of having an unconscious analysis and comparison of both the systems since childhood.

On scholarly level, the research is exigent and consequential in making a vibrant case and base for a study that a gap in services delivery can be the source of exploitation and revolutions. Nature of the gap and exploitation may be different in different societies and circumstances.

For policy makers, the study is of critical importance. The study will explicitly explain the weak point which is periodically exploited by non-state actors. The study will also provide the policy makers with recommendations for addressing and coping with this weak point. It will be also shown that whether the grievances of people are addressed properly or not. If not, then, is there any chance of exploitation of the same gap or weak point again in the near future?

For an average citizen, the research provides an explanation and comparison of the two systems. It also provides the real objectives, insights and causes behind the rise of different non-state actors in Swat. The research also provides a lens that how a common citizen of Swat views the ongoing situation in Swat, rise of non-state actors and the pattern of behavior of the government in dressing the demands of the local people. In a nutshell, the research is of vital importance at all four levels i.e. personal, scholarly, policy-making and at the level of average citizen.

Research Objectives

- ✓ To analyze whether a gap or vacuum exists between the judicial system under *Wali* and the contemporary system
- ✓ If the gap exists, then, to identify the factors creating this gap.
- ✓ To access whether it was the vacuum or something that was exploited by the non-state actors.
- ✓ To trace, if it was the gap, then how it was exploited.
- ✓ To comprehend that on how many occasions the gap was exploited.
- ✓ To detect whether the gap is filled or not now .
- ✓ To apprehend, if not, then are there any chances of exploiting the gap in the future.

Methodology

Strategy of Inquiry: As the study moves around the 'lived experiences' of Swati people and what is the essence of these experiences (i.e., of personal and social world); therefore, qualitative Interpretative Phenomenological Analysis (IPA) has been used as a strategy of inquiry in this study. The strategy involves double hermeneutics i.e., connecting an empathic hermeneutics with a questioning hermeneutics. In other words, the interpretation process is two tiered: the participants are trying to make a sense of their world while the researcher is trying to make a sense of the participants' world. Importantly, the involvement of researcher into the 'insider's perspective' of participant makes the study subjective rather than objective which corresponds to the claim of knowledge being used.

Sampling: As the strategy of inquiry used is IPA, which involves in-depth and repetitive study of the transcripts and look for the essence of lived experiences, therefore, the sample taken is purposive and small in size consisting of nine participants. However, as of nature of the research problem, certain things were taken into consideration while selecting the sample. These are: that the participant may have witnessed both the systems (i.e., *Wali* System and the contemporary system in Swat) or at least has been aware of *Wali* System through personal studies or experiences of the elders through hearing accounts. Although all the people of Swat are related to the research problem in one way or another, but an effort is made to involve those people who have been directly involved with our research problem. That is why our sample consists of participants ranging from Senior Councils to a common man, from men who have witnessed *Wali's* system or have a part of the system themselves to those who know about *Wali's* System through hearing accounts. Similarly, an effort was also made to involve a non-state actor and army men. But due to time and security constraint it was not possible.

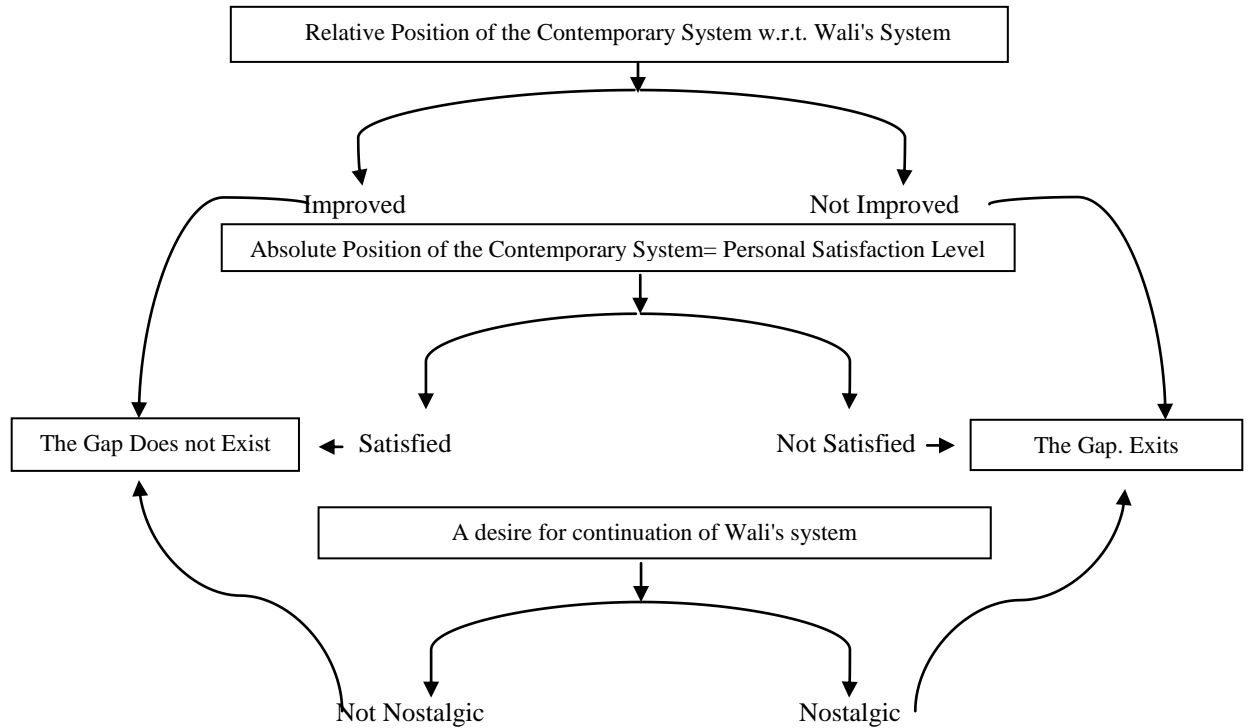
Semi-structured Interviews: As the aim was to engage with respondent's world, therefore, some guided-not-directed questions were needed to be asked to gather the required data. Hence, semi-structured interviews were conducted. Although the questions were pre-planned, but due to the type of interviews a diversion from some of the pre-planned questions was observed many times. The diversion was at advantage of allowing the flexibility and knowing the novel areas. At an average, each interview lasted for twenty minutes. Also, efforts were made to conduct the interview at a comfortable place with the interviewee alone. However, as of availability the participants, the interviews were mostly conducted at work places with plenty of time available for interviews. To maintain continuity and established rapport, all of the interviews were tape recorded with the consent of respondents. Moreover, to keep the essence of participants' world intact, Pashto (mother tongue of the participants) was taken as medium of interviews. Also, to ensure the originality of themes and meaning, a copy of the transcribed interviews were provided to each the participant and discussed. (See a copy of consent form in the appendix).

Analysis: A three-tier interpretative analysis method was adopted for analysis.

Discussion and Analysis

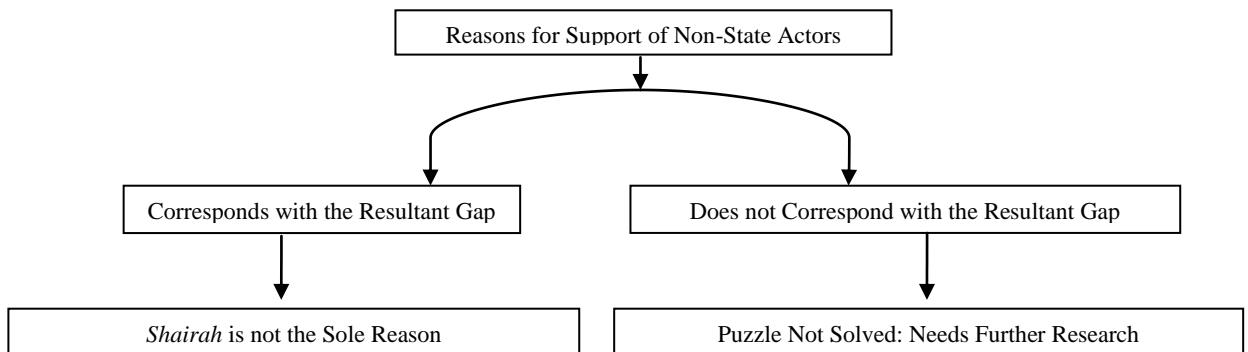
Main Theme	Sub-theme
Characteristics of <i>Wali's</i> System	Monarchical in Nature ; Decisions mostly based on Justice
	Shariah Law: Not the Sole Law
	<i>Riwaj</i> : Main Source of Law
	Accountably and Responsibility
	Quick and Speedy Decisions-Making
	Less Expensive Justice
	Door-step Litigation
	Guaranteed Implementation
Characteristics of Contemporary System	Delay Tactics
	No Proper Implementation
	Expensive
	Decision-making: Rarely influenced by the Social Status

The Resultant Gap: Exists or Not?



Theme(s)	Sub-theme(s)
The System is Comparatively not Improved	No Stability after Merger
	Improved in many Ways; Lost its Essence
Dichotomy in Level of Satisfaction	Common Man – Not Satisfied
	Active Citizens: Satisfied with the System but not the Practices
Nostalgia Level for Wali's System	Golden Phase
	Happy Days etc.
<i>Concluded that: The Resultant Gap Exits</i>	

Theme(s)	Sub-theme(s)
Causes of the Gap	Merger was not Handled Properly
	PATA Regulations- A Black Law
	Post-1990 Acedia
	Musical Chair of Bringing Laws and Regulations
	No Proper Analysis of the Demand of <i>Shariah</i>
	Involvement of Local Administration
Positioning of the Chessboard Pieces	Involvement of PPP Government
	Involvement of Army and Intelligence Agencies



Theme	Sub-theme
Reasons for Support	Only 0.01 % Supported
	Supported in Earlier Days
	In Search of Justice
	Exploited in the Name of Islam and <i>Shariah</i>

In a nutshell:

The reasons for Support correspond with the resultant gap.

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DERA SYSTEM AND ITS ROLE IN ELECTORAL POLITICS OF LAHORE

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Abstract: *Contrary to the formal institutions, informal institutions are socially shared values, where no chain of command exists like formal institutions. Informal institutions, like deras (Pakistan, India), customary village panchayats (India), Jirga (KPK), Salish (Bangladesh) are primarily the structures that exist at ground level of these communities and perform variety of functions, from amongst which, political functions of these institutions are the focus of this paper making deras of Lahore a case study for research. These deras play an important role in politics of the city. Embedded in community, these deras wield political influence because of their unique position of integration with local people on one hand and their links with formal structures and political parties on the other hand. In this paper the role of deras in electoral politics of Lahore is particularly the focus of the study.*

Keywords: Dera System, electoral politics, informal political institutions, qualitative analysis

Introduction

Informal institutions primarily fall outside of the sphere of formal rules and regulations contrary to their counterparts, formal institutions, which have a permanent hierarchy and are created, run with defined boundaries of their powers and functions, enacted by legislature having command of public trust keeping in view the ultimate benefit of people. Contrary to these formal institutions, informal institutions are socially shared values and no chain of command exists like formal institutions.

Informal institutions, like deras (Pakistan, India), customary village panchayats (India), Jirga (KPK), Salish (Bangladesh) are primarily particular structures exist at very ground level of these communities and perform variety of functions among which functions of political nature are under discussion specifically with respect to deras of Lahore. These informal institutions, regarding to their nature, scope and working are primarily independent from formal rules and regulations which makes the term informal amicably suitable for them.

Deras of Lahore, which primarily fall in the domain of informal institutions, perform and offer a variety of functions and services. Basic necessities of life are one thing which is provided to people of that particular locality in the form of bills to poor people for medicine etc. developmental projects in a particular locality are also initiated by informal institutions like, roads, street lights, construction and maintenance of sewerage system, gas, water are the primary developmental projects. Another facet of services provided by informal institutions is social and financial services to people of locality. These informal institutions lend money to needy people, arrange marriages for poor girls and make sure to people who deserve the provision of dowry. Adjudication of disputes is another key function of these informal institutions and a large number of decisions are passed by these informal institutions. Mostly lower stratum of society take benefit of this system because of no influence in formal structures or due to easy access, cheap and quick decisions. Deras also provide people facilities regarding to matters of Thana/Ketchery. Apart from it employment opportunities are also provided to people of locality by these deras.

These informal institutions play an important role in electoral politics. These informal institutions of Lahore, embedded in community structure wield political influence because of their unique position on the one hand because of integration with local people and on the other hand relationship with formal structures and political parties. In this paper the role of deras in electoral politics of Lahore is under discussion.

Research Methodology

Research is the backbone of academics, because it breaks stagnation in a particular field and generates new academic ideas, concepts, and phenomenon's, and also modify existing theories and add something new in the literature. In literature research is defined as "a collection of methods and methodologies that researches apply systematically to produce scientifically based knowledge about the social world."¹

Exploratory research is being used for this research thesis. Exploratory research is used to understand an issue or phenomenon little understood or not addressed before to develop preliminary ideas and move toward refined research questions by focusing on the what question. Exploratory research not only makes the researcher familiar with, settings, facts and concerns but also creates an overall general picture about conditions in the mind of researcher. It also invokes new ideas, conjectures and especially hypothesis along with developed methods or techniques for measuring and locating future data.

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In exploratory research qualitative techniques are used frequently to gather data and are less dependent to a specific theory. Qualitative research in its essence tends to be more open to using a range of evidence and discovering new issues.

Stratified purposive sampling is being used in this research. Stratified purposive sampling is used in qualitative methodologies. In this sampling, researcher selects individuals or places which deem fit to understand the central phenomenon.

Data collection method is primarily based on semi structured interviews in this research. There are several ways to collect data in the frame work of qualitative research. In qualitative research, interviews are considered as one of the prominent way to get primary information during field work.

The process of data analyses will be done in the framework of Grounded Theory. Grounded theory is a qualitative procedure in its essence and systematic as well, is used to explain at a broad conceptual level, a process, an action, or an interaction about a substantive topic.

Dera System and Electoral Politics in Lahore

Deras, as an informal institutions occupy a permanent social space in the community structure of Lahore. Attributes, as well as independent nature of working and scope, outside of the sphere of formal rules and regulations provide an ample justification to these deras to be informal institutions. These informal institutions embedded in societal structure of Lahore, regulate day to day affairs of a particular locality by performing a variety of functions among which political functions are under consideration.

The results of this research clearly depict that formal institutions in Lahore are incomplete to an extent with respect to their structural organization and also functional responsibilities. This thing automatically invokes the justification for the existence and working of informal institutions, such as, deras in Lahore. People prefer these informal institutions, despite having the opportunity of formal because of quick and easy access and also these are less expensive options. The second type of deras run by criminals in Lahore amply justify the the roots of informal institutions as created for to achieve goals or in the pursuit of objectives which are publically unacceptable.

Informal institutions are categorized into different types, I have mentioned earlier, on the basis of circumstances in which they operate, the scope and functioning dimensions of informal institutions etc. this is an indirect inference from the results that deras, being an informal institution, to an extent fall in the typology of competing and substitutive informal institutions.

Deras as an informal institution, established by influential having wealth provides a platform to people of a locality to come, sit and discuss issues. These informal institutions cater the problems, issues and grievances of people. These informal institutions provide solutions when encounter with the issues of people termed as discharge of welfare activities in particular language. Only males gathering at these deras signify the patriarchal structure of society.

Structural organization and day to day actives which follow particular objectives primarily differentiate deras of Lahore into two basic sub divisions. Deras which are run by local influential and discharge welfare activities primarily fall in one particular kind of deras opposite to those run by criminals having no open access to people. The first types of deras respond to problems of people contrary to their counterparts where gambling is played and ash is sold. Adjudication, outside of formal courts, is considered one of the chief prerogatives of these deras in Lahore because most of the decisions are passed through them as lower stratum of society prefers it. Evening time is considered most appropriate for the working of these deras. These deras are equated as local political offices with one of the chief objectives to have role in politics.

The existing deras in Lahore have their roots in history categorized on the basis of friendship and ancestors. Both factors are extremely relevant as provides not only the history of these deras on the one hand and their timeline of creation on the other hand. It is as an agreed thing that issues are addressed at these deras keeping in view merit and welfare objectives.

Deras being informal institutions, enjoy mandate in a particular locality based on respect, following and influence which primarily comes from people against the functions discharge by these informal institutions in Lahore. Problem solving, methods of reception or welcome to incoming people, power in terms of money and influence, personal characteristics of deradars, old residence, open access and as a speaker to convey issues of local people to concerned authorities provide a unique position to these informal institutions to command mandate of people in a particular locality.

These informal institutions perform and offer a variety of services which in our society are perhaps considered indispensable. The range of these services begin from basic necessities of life, developmental projects in local areas, adjudication of disputes, provision of employment opportunities to matters related to Thana/Ketchery.

In Lahore these informal institutions are attached with different political parties and apart from discharging other social and financial services work as local political offices of these parties. Most of the deras belong to PML n, deras which are attached with PTI and PPPP also exist in Lahore. Deras are attached with political parties either because of the

performance of or traditional relationship with a particular party. Apart from it at some places no other party exist except one or the reason to switch off from one party to another party may be of the no catering of the needs of that particular dera by a political party and the process to switch off is adopted through process of consultation.

These deras being an informal institutions exist somewhere between ordinary masses and formal structures and political parties, which gives them a unique position as a mediator to enable both sides to contact with each other through them. Deras change into political offices during elections and because of their integration with local people which ultimately diversify their role in politics especially during elections because of control over street, mohala and union level politics. Most of the candidates for local elections are chosen from these deras.

These informal institutions devise a variety of strategies to make win the candidate to whom they support. Because of a part of local community structure these deras can effectively launch campaign at grass root level called commonly in electoral politics door to door campaign. Deras works as local political headquarters of an electoral campaign in which banners, corner meetings, jalsas and party manifesto is channelized. Local influential are assigned duties regarding to campaign as well as permanent voters attached with these deras bolster their position in electoral politics. Coercive acts are also used as a strategy but primarily those deras fall outside the boundaries of city.

These informal institutions also comprehensively design strategies to counter their opponents in election by which are primarily services centric as what an opponent has delivered to area in his tenure or his accessibility to people. Early vote casting is making sure during Election Day and level of contact with people is increased to counter the opponent through mohala level committees. Provision of meal at these informal institutions at every time during elections with permanent open access to people is also used to counter opponents.

Deras channelize and put forward the demands of a locality to candidates who are taking part in elections. The nature of demands is comprises of the contact of candidates with local people for their problems and provision of relief on the one hand and present local issues relating to development, health and other basic problem on the other hand. The nature of demands also depends upon the area what kind of problems or issues exist in that and protection from undue interference or responsiveness of police. Apart from it at some occasions the suitability of candidate is also considered important. As these informal institutions are part and parcel of society and people from a locality cast votes on behalf of them so this thing make it inevitable for deras to put demands of people in front of contestants.

Deras influence with respect to candidate selection is comprises of two categories at national or general elections and in local elections. It is an agreed fact that in general elections deras are not consulted and decisions are done by party but at local level elections decisions are made by MNA's or MPA's and deras are consulted in this process. Mostly deras which perform better in general elections are awarded ticket at local level elections in case of differences deras either contest elections independently or not support the party candidate but this is done secretly.

Deras position or influence affects from the outcome of elections. If their party or candidate wins it adds to their strength while defeat has also its repercussions. The position or influence of deras is categorized into two things social influence with respect to adjudication and other activities and political influence. In case of defeat in election political influence becomes vague while social influence remains same. Opponents through police raids or by solving the problems of people enhance their influence and are countered by deras through much more active way.

During elections biradri is considered an important element because of cluster voting. The nature of relationship between deras and biradri is interesting because some deras works independently while others have back of boradri in elections. The deras fall in old city less rely on biradri and deras fall outside of city mostly use it. Apart from it the deras which are independent from biradri basically represent different biradries in form of dhara.

Money is another tool which is used in electoral politics to purchase votes in election. The role of deras with respect to money spending is varies relating to election types. In general elections it is not done while in local elections money is not distributed directly by these deras rather people come and demand financial help which is fulfilled by these informal institutions.

Voter registration is an important stage in electoral politics and deras play their role in this. Deras before election inquire from people about the registration of votes and initiate the process if ID cards making, voter registration and provide help to people in these activities. Deras also make transfer of votes from place to another to counter their opponents and voter numbers are distributed before Election Day.

Deras are involved in the creation of wards and polling stations during elections. Consultation is made with them to where polling stations and wards are made for the facilitation of voters. If an inappropriate place for vote casting is chosen it may affect the turnout of election.

These informal institutions because of their unique position in elections enjoy considerable influence in the appointment of polling agents. Deras wield considerable power because in general as well as in local elections the

appointment of polling agents is made by these deras. Some attributes are considered very important for a polling agent like cleverness, experience to handle unlikely situations and deras because of their local networks are considered best for this job.

Deras manipulate results of election indirectly or partially. This is done when the polling agent of another party is weak and deras also appoint experienced persons as polling agents who know very well about the techniques of manipulation. Apart from it manipulation is also dependent on area and deras also take counter measures to stop rigging. Deras do not disturb electoral observation but in times of conflict the presence of electoral observation organizations is completely ignored.

Media which is a new powerful actor in the arena of electoral politics has not undermined the influence of deras especially political influence with respect to elections. At local level elections deras are completely independent but in general elections media affects voting behavior partially. Money is used to purchase media. Media can just project a candidate to a wider level but cannot ensure victory because deras control key things regarding to victory of a candidate like corner meetings, banners, people to people contact and launch comprehensive campaign for candidate and bring voters into polling stations. Apart from it maneuvering techniques at polling station to polling stations are only dependent on deras. Both media and deras deal with people but because of practical welfare work deras enjoy upper hand as compare to media in electoral politics of Lahore.

Deras has principle role in the appointment of election campaigners during general as well as local elections. Deredars have information about people of locality so a team of respectable persons is made by these deredars to initiate electoral campaign in that particular area. Apart from it deras bear all expenses of campaign during local as well as general elections.

Deras play role about political consciousness in people regarding to significance of vote to an extent. People are told that their vote is important and also deras shape the mind of people to what party or candidate they have to cast their vote. People express their opinion when they sit at these deras about political issues. Both national and local issues are discussed but local issues are preferred more in discussion apart from its present issues are under more consideration as compare to issues relating to past. Appreciation or dissatisfaction is also showed by people regarding to governmental decisions and these discussion are used as a tool by deredar to measure the popularity of a candidate or party in masses.

Post-election nature of relationship between candidates and deras depend upon different things. Winners get busy and contact become loses between candidates and deras. Apart from it another factor upon which nature of relationship depends is candidate's futures plans of actions. If he wants to contest elections he must has to remain in contact with these deras. Deras also play a role of line of connection between electorate and candidates. Primarily the post-election relationship of deras and constituents remain same because deras operate in a particular locality and with facility of open access because of its people can approach deras at any time.

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