

# **Indigenous Systems, Migration and Modules of Restorative Justices!**

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## **Abstract;**

Societies around the world have developed their own unique ways to overcome conflict. When the state came into existence, it took away this power from the community. Many communities however preserved their indigenous systems. The common examples are Native American Circle, Sulha in Arab countries, Jirga in Pakistan and Afghanistan, Panchayth in India, gacaca in Africa.

The world is currently facing the biggest refugee crisis since World War II. Globally, one in every 122 humans is now either a refugee, internally displaced, or seeking asylum according to the UN Refugee Agency. Peace builders around the globe will have to come up with new ways to resolve conflicts. In these new circumstances where refugees lives are turned upside down and they have to start afresh what stays with them are their traditions including their old conflict resolution systems. Such indigenous systems which they bring along with them is the foundation for another system to be built on which will not only make it compatible with modern human rights values but preserve their indigenous conflict resolution system in the modern world. A good start is the restorative justice system which has many similarities with many indigenous systems around the world and is thus can be acceptable to the practitioners of many indigenous conflict resolution systems.

## **Indigenous systems of justices;**

Since the dawn of civilization human beings have lived according to sets of rules with have changed with the passage of time and been the foundation for modern legal systems. Each community developed its own system of rules. Some of these community systems are still preserved in one way or another; a fact that speaks volumes of their resilience in the face of many upheavals and revolutions. The most visible structure of such systems (as mentioned before) are Circles in North America, Gacaca in Africa, Sulha in the Middle East, Family Group Conferencing in New Zealand and Jirga in the Pukhtoon belt of Afghanistan-Pakistan.

In these systems the victim, offender and the community are all involved in order to resolve the conflict, therefore is a space for all the stakeholders in the dispute to come to a mutually agreed resolution. However when the concept of a state run system of criminal justice came to fruition, both victim and the local community lost their right to be involved in decision making, as the state became the victim when a law was broken. With this, the victim and their community, apart from their initial involvement, were not engaged and only the state and offender were parties in the dispute. The state system not only kept the parties separated, it served to slow the process down while driving costs up and thus restricting easy accessibility to justice . Additionally, States tended to manipulate traditional conflict resolution systems in order to further their own interests; in the Pukhtoon community of Pakistan the

example is the FCR (Frontier Crimes Regulations 1901) which is still in practice. The FCR was introduced by the British Empire in order to control the Jirga system as it was and is still practiced in FATA and Khyber Pakhtunkhwa regions of Pakistan. Traditionally, Jirga was community based, it delivered speedy justice and was accessible to everyone. It did not however lose its importance due to government interference and to this day remains intact in the Pukhtoon belt of Afghanistan-Pakistan. Jirga is a name given to the model which in Pakhtoon society is used to resolve issues between individuals, communities, tribes and even on international level (Bonn loya jirga of Afghanistan) in order to address concerns and look for solutions acceptable to all the parties having a stake. As such, as a blueprint of Pukhtoon life, Jirga is best summarized as a strategic exchange between two or more people to address an issue through verbal communication. The exchange may, or may not, result in an agreement being reached on an issue, but the process itself leads the parties to maintain a certain level of formal communication. This promotes a situation whereby peace may be kept. Jirga is commonly practiced in Khyber Pukhtoonkhawa, Baluchistan provinces of Pakistan and Pukhtoon belt of Afghanistan. Jirga is organized by respectable greybeard elders whose decision is unanimous, acceptable to all community members. There is difference of opinion within the Jirga process but the final verdict is acceptable to all.

### **Traditional Justice System Case Study: Afghan Refugee in Pakistan**

Refugees even when they migrate retain their cultural practices where ever they settle, an example of which are afghan refugees in Pakistan.

Afghan refugees are from the same Pukhtoon ethnic group that stretches along the Durand line (international Frontier between Pakistan and Afghanistan) on both sides of the two countries. Most disputes are resolved through the local jirga by men.

Two important places within the community are commonly used for solving community problems, the mosque and the hujra. In the mosque men perform prayer five times a day, come to know each other's problems and take remedial action wherever they can. Hujra is the traditional community center where, along with other community issues, Jirga settles the community problems. If the conflict is big and need more people than an open place is selected, all elderly men sit in a circle while the young stand at their back. They discuss the issue and resolved it with consensus. For implementation of their decision the youth play their role, organizing themselves into Laskhar (volunteer force) or Arbakai (community police).

Women have no representation in either of these places due to the strict veil system but females have some meeting places within the community, where minor issues can be discussed and solved without the men involvement.

For example the women will get together in the morning after the men leave for work, gathering at the tribal chief's house called deawdeye (corridor or a house) or another respectable member of the community for gossip and to discuss their issues

and resolve it on the spot. The community oven is another area where women gather for informal meetings and to discuss and solve problems. Women who fetch water from the stream (Goder) and wash clothing or utensils use that as another opportunity to discuss and solve their issues with each other. Women also go to the religious scholar's home to learn the Holy Koran and to discuss some of their problems and here the religious women mostly the mosque imam wife give opinion in the light of Islamic teaching on any issue. There are some influential women in each community (traditional birth attendants or midwives) which visit different houses frequently, due to their age and experience, they can easily discuss any problem with the men in the community as veil is relaxed for them culturally due to their age. In serious cases where women need to be represented these traditional midwives will go before the Jirga members who are sitting to resolve an issue involving that particular woman in order to represent her point of view. The jirga members will take what she says into consideration before raising the issue with the male members/elders of the family in question in order to resolve the conflict. Traditional Afghan culture relies heavily on kinship and family loyalty. Afghans, despite their many ethnicities, languages, and traditions, are united by their commitment to Islam. In traditional Afghan culture, a family's reputation is closely linked to maintaining Islamic culture and values. One tradition has been the purda (veil), the segregation of women from men. The purdah includes protecting the family's honour by limiting a woman's interaction in the public sphere. One example of this is the wearing of the burqa, a cloth that covers all physical features, by women when in public.

Apart from local issues jirga was used to resolve all sorts of issues among Afghan refugees in Pakistan due to nonexistence of any specific law which setup a legal mechanism to resolve their problems.

### **Jirga Role in peace and conflict;**

In the Afghan refugees camps Jirga is still an active conflict transformation institution playing three different roles, like the present day modern legal systems. All the three approaches of modern scientific peace building are embedded in Jirga.

### **Peacemaking;**

Jirga members intervene on the request of the parties in conflict and start shuttle diplomacy, or in case of a ongoing conflict come into the middle and act as a mediator. They declare ceasefire by means of tega (which means a stone is put between the two conflicting parties properties/houses to signify the immediate cessation of hostilities).The ceasefire is declared for a certain period of time and then Jirga members start listening to the parties and trying to convince them to sit down for discussion. Jirga member's role are in flux and change from that of diplomat, to mediator, arbitrator as per the situation. They use their store of religious knowledge e.g. Koranic verses in favor of conflict resolution as well as share personal stories of

the hardships that conflicts causes like blood vendettas. All such tactics are used to soften the hearts of the conflicting parties and give them time to think more on the consequences of perpetuating the conflict. When the parties agree to conflict resolution then they are brought to a common place with large gathering of friends and community members as witness for reconciliation. The parties put hand on the Holy Koran making GOD and community members as witnesses in order to get GOD's blessings. The conflict is resolved by use of Qisas which means an eye for an eye, diyath (blood money) or Forgiveness. Later on after reconciliation jirga members attend both parties' thanks giving dinners in order to further strengthen the friendship between the two parties.

### **Peacekeeping;**

The elders place Tega (stone) symbolically between the parties in conflict and ask for money, weapons etc to be kept with the Jirga as a guarantee not to violate the jirga ceasefire till the final decision of jirga. Jirga then declare ceasefire for interim period before the final decision. If anyone violate the cease-fire the money/other items that is already kept with the Jirga is confiscated by the Jirga. A special volunteer force called Laskhar in such cases imposes the decision of the Jirga by punishing the perpetrator/offender. Such punishments include demolishing of houses, expelling the family or tribe from the area. At their peak time there were 3.2 million afghan refugees residing in 258 villages in the province of Khyber Pukhtoonkhawa, 88 villages in Baluchistan and two in Punjab of Pakistan and during their stay no major incident took place as all issues were addressed by local and refugees elders through jirga with government agencies support.

### **Peace building;**

Apart from conflict resolution Jirga also play active role for the development of the areas. They work closely with the government agencies for the welfare of their people and community. Quotas are allocated to each tribe according to their population in the government jobs, land, and other resources and discussions over this take place with the Jirga members from each tribe. To maintain peace a volunteer force called Laskhar is raised, under the elders supervision, Laskhar is further organized into further small groups called Arbakai (community policing), as well as chagha (Quick reaction force) that is called in case of any emergency.

The above mentioned three roles of Jirga are fully manifested among Afghan refugees whereas in other areas the Jirga can only influence the conflicting parties for resolution of the conflict by means of talks with no recourse to force. They have no Laskhar, or power to confiscate land, demolish houses or expel someone. The only tool they can employ is social boycott and recourse to intervention of religious Scholars who can tell both parties the spiritual benefits of resolving the dispute.

## **Migration-**

If one looks at history the one thing which unites all refugees is that they retain a connection to the land they came from and try to practice the customs of the mother country as far as is possible for them in their new environment and they try to retain their distinct identity.

Humans leave their homes due either to natural or human disasters. Any sudden disaster elicits 3 responses which can be defined as the 3 'F's, i. e., Fight, Flight, and Freeze. In fight and freeze situation humans want to keep their family safe and keep them/take them to a place of refuge. They use land or sea routes in order to reach safe destinations where they are safe. After finding a place of sanctuary they then look to fulfill their other needs such as health, education, social activities.

‘There are 244 million migrants in the world at the moment. More than 65 million people are now forcibly displaced. Half of them are children. Refugees running for their lives too often face grave dangers on their journey to safety. When they arrive, many suffer discrimination and even detention. Facing difficulties in a mobile world, they often travel farther in search of safety and stability. But legal pathways are scarce, and unscrupulous smugglers take advantage, charging exorbitant sums for a risky chance to escape.

Wars are lasting longer and refugees are finding it harder to return home – with the length of displacement in some cases stretching across generations. Contrary to prevailing impressions, the vast majority of refugees are not in rich countries; 86 per cent are in the developing world. And the poorer countries hosting refugees do not receive nearly enough help. Last year, United Nations humanitarian appeals received barely more than half the funds that were sought.

Resettlement options are also a fraction of what they should be. Nearly a million people were identified as needing resettlement in 2015, but just over 100,000 received' it.<sup>1</sup>

In 2015, UNHCR, the UN Refugee Agency, counted 60 million people who were forced to leave their homes. Out of these 60 million, 20 million were refugees, according to the Refugee Convention of 1951. This is the highest number of women, men and children on the move since the Second World War. About 87 per cent of the world's refugees left their country and were given protection in their

neighboring countries, mostly in the global south. Europe has only given protection to around 10 per cent of the world's refugees. Although the numbers of refugees in the European Union (EU) have been comparably low from a worldwide perspective, 2015 was the year in which several EU member states stated over and over that the EU might break apart due to the refugee situation and the lack of the sharing of the refugee burden between EU states. Germany has taken in approximately one million asylum seekers, among them many refugees from war-torn Syria. In February 2016, restrictions were introduced on family reunification in cases of subsidiary protection, and the scope was widened to expel a person who has committed a crime. On top of that, many of the measures of the EU and its member states, including Germany, have the aim of externalizing migration control in countries that lie outside the EU, such as Turkey or Northern African countries, and others that are part of the Khartoum process. This process was started in November 2014 as an initiative of the EU, the African Union, Eastern African countries such as Eritrea, Ethiopia, Kenya and South Sudan, and other countries such as Egypt and Tunisia, to combat the smuggling and trafficking of migrants and refugees on the route from the eastern Horn of Africa to the EU. In the process, the main focus has been to agree on cooperation in the management of border control, the building of reception facilities and the identification and prosecution of smuggler networks.

In many EU countries, racism and racist political parties are on the rise, which makes it more difficult for refugees to access those countries and survive in them.

Challenges for refugees – and their supporters: Refugees are amongst the most vulnerable people in any country. Particularly in countries of the global north, refugees face racism from parts of the population. In many countries, there is also a large group of people supporting refugees in transit or in countries that refugees flee, and working to ensure integration. In Germany, the government let many refugees enter the country to prevent a humanitarian crisis that would have resulted from leaving Syrian refugees stranded at the Austrian and Hungarian border. In line with the general positive mood of the German government, the population reacted in a very positive and receptive manner, supporting refugees in order to fulfil their basic needs quickly. But when, as described above, the government passed restrictive legislation to bring the numbers of arrivals down, movements within the country that advocate racism, nationalism and exclusion grew and became more militant.

Refugees are amongst the most vulnerable segment of society. In many countries all over the world, refugees and migrants are being criminalized, forced to enter a country illegally and often denounced as a threat to national security. In countries such as Mauritania, which find itself under pressure to comply with demands from

the Spanish government to readmit refugees and migrants, xenophobia and racism are also rising, despite the fact that the country previously has been very welcoming towards refugees and migrants in transit. In these cases, there is a great need for civil society groups to make sure that refugees and migrants, not necessarily familiar with local and national procedures and often not integrated into the structures of the local communities, have access to justice and can advocate for their rights.

As Sheikh Saadi (Persian Poet) said:

Human beings are members of a whole,  
In creation of one essence and soul.  
If one member is afflicted with pain,  
Other members uneasy will remain.  
If you have no sympathy for human pain,  
The name of human you cannot retain.

### **Restorative Justice as a Model for refugees**

Each community of the world used indigenous conflict resolution systems to resolve their conflicts before the emergence of modern legal systems. In the indigenous systems both the victim and offender or their representatives were present in the process of resolving the conflict. Community was seen as a secondary victim and thus members of the community in the form of the Jirga for example were involved in resolving the dispute. When the state came into existence, crime was defined by the state as a violation of the state law. State declared itself a party in the legal process and thus closed the door to the victim and which previously was involved in the conflict resolution.

Human beings from birth to death play many roles. These roles are developed due to the influence of external factors and internal decisions that the person makes. In faith-based communities and religious societies, people link good and bad to fate, the guidance of God or the misguidance of Satan and even to the soul. But what about those who don't believe in religion and do not have a faith-based approach? Human nature itself has caused many of the problems humanity faces today. For example, the two world wars have long since ended but still continue to cause pain and suffering today. Human beings can end or find a way out of such problems but they must start with the self. First we must bring about a change within ourselves before we can begin the gigantic task of changing others, of bringing peace to this world.

In the Arabic language, the heart is considered the center of intelligence and affection. Human beings have also been given with the quality of conscience i.e. the ability to make distinctions between right and wrong in regards to one's own conduct (Quran 91:8) and are provided the necessary guidance (Quran 76:3).

The earth will become a place truly worth living in when, following their normal pursuits, people do not become unmindful of keeping their souls desires in control. Power and resources are the two main reasons for all sort of conflicts but above all miss- matching of words are the immediate cause of individual and group conflict that later leads to country and world conflict as well. Human ambition to get more by any means is another reason to use power for gaining resources and use resources in order to gain more power. To curb such inner feelings of greed one needs inner jihad against the soul desires.

Inner jihad is man's internal struggle against the evil within, which can only be achieved if we unite the forces of good to fight against the forces of evil. The Holy Prophet (P.B.U.H) in the following Hadith [saying of the Holy Prophet (PBUH)], explains the concept of inner jihad:

“During the return march from the victories of Makkah and Hunayan, the Prophet (peace be upon him) said to some of his companions ‘We have returned from the lesser Jihad to the greater Jihad. And when one of the companion asked, ‘What is the greater Jihad?’ He (PBUH) replied, ‘It is the war against the soul (Nafs)’.”

Mulana Rumi also mentioned the above saying of the Holy Prophet (PBUH) in one of his eloquent poems:

When I turned back from the outer battle,  
I set my face towards the inner battle:  
We have returned from the lesser Jihad;  
We are with the prophet in the greater Jihad.  
Mathnavi-e-Maanvi, 1:1386

In my training workshops on restorative Justice in Pakistan, I would start my presentations with three things. First; What are human needs? .The vast majority of the refugees would put peace the greatest of Human needs. Secondly according to the Koran, every human soul has three inclinations. One is the inclination is towards doing wrong, evil and sinful acts. This is called Nafs-i-Ammarah (12:53). The other is the inclination towards realization and repentance i.e. to realize immediately if one does something wrong, that what he has done is wrong, and repent of it or rather reproach oneself for it. This is called Nafs-i-Lawwamah (75:2). The third is the inclination towards doing good and righteous deeds. This is called Nafs-i-Mutmainnah (89:27) and also called the soul at peace because satisfaction and peace of mind are the natural outcome of doing good and righteous deeds.

The third aspect of training was Human rights, what are the traditional and religious rights and linking it with the modern human rights. With traditional and religious support this linking with modern human rights was well received by the groups I trained because I linked these concepts to the human condition and their traditional belief systems rather than launching into a lecture on Modern human

rights which many people would have seen as more of a Western concept. As the Sufi poet Rahman Baba explained in one of his poems;

‘Sow flowers to make a garden bloom around you,  
The thorns you sow will prick your own feet.  
Arrows shot at others  
will return to hit you as they fall.  
You yourself will come to teeter on the lip  
Of a well dug to undermine another’

A law can be considered strong not only if it punishes the criminal but also deters others from committing the crime.

An example of a Law which has high deterrence value is divine law which if it is taken in its real sense, is there to prevent community members from committing crimes in the first place. If divine law is not practiced, then the two laws come to challenge each other’s existence. The criminal justice system and the traditional system of different communities are practiced in different part of the world. Such traditional systems are organized in the WEST, under the umbrella of restorative justice systems. Circle in the WEST, Sulah in the Middle East, gacaca in Africa, and Moiré tribe traditional practice in New Zealand. Jirga and Panchayath of Pakistan is the same system, with marginal differences.

All indigenous decision-making processes of the world are similar in nature. There is a strong case to be made for easy and speedy access to the justice system. Justice delayed is justice denied. The above mentioned indigenous system are one of the oldest justice systems that respond to the needs of victims. Yet, there is a strong need to include modern and scientific knowledge in order to foster, or incorporate, notions of human rights and Restorative Justice into them.

In these systems punishment can be in the form of community work. Victim healing is quite visible in the whole decision-making process, trauma healing and mental health aspects of the victim are ignored in the old systems due to lack of awareness and ignorance. The suffering of the offender’s family also needs more exposure so that the victim can understand the conflict from the offender’s perspective.

Elderly men/women enjoy the benefit of their wisdom and age, but younger men also need to come forward, as they are more aware of modern human rights and how that can be incorporated into indigenous conflict resolution systems. Apart from the traditional systems other old methods like storytelling, proverbs, poetry, for the youth needs proper training to equip them in resolving community disputes efficiently.

There is a great need that first of all in the refugees community there is a system of decision making that is acceptable to the refugees themselves and if a system is imposed on them it will make the situation worse as refugees are used to their own system and any change must be slow and gradual (so that they can acquainted with RJ and state law). Refugees from urban and rural back ground both have different

systems which they follow, as urban refugee population are more used to state law but rural refugee population will stick to their religious and traditional values and system.

Introduction of Restorative justice system is easier in the more rural segment of the refugee's population as compared to the urban educated class as the rural population already have such practices more deeply entrenched into their customs and are familiar with it and training them is easier. Storytelling, proverb, religious injunction, poetry and other information are mostly used by the elders to influence the youth and young generation. They are all verbal that they inherit from one generation to another. Elders male female are rich in such knowledge that can be easily used to introduce the RJ system.

Refugees from third world countries will often be trained in separate men and women groups. Both groups will need experts of the same gender for guidance and implementation of the RJ model. It is also observed that in mixed gender groups educated women might be reluctant to speak and will feel easier to share their thoughts/views by being in a women only group with women mentors and guides.

### **Conclusion**

All over the world there are indigenous systems/practices which have a lot of potential in terms of conflict resolution. The only problem is that these practices are not codified for use in peacebuilding or as a subject of learning for future generations. The 'criminal justice system' is under tremendous pressure in the present day and age to provide speedy justice to the masses and particularly in countries where large refugee's population exists. This is where indigenous conflict resolution systems can play a major role as it utilizes community-based approaches to minimize pressure on the police and judiciary. If we want a peaceful environment around us in the community, country or world, we will need to look for such an institution which helps both the community and government. The indigenous systems of the world and restorative justice based on traditional indigenous peacebuilding practice, is the best example for all of us to explore, train, implement and develop the traditional systems of different communities where refugees exist.

Restorative justice system is one of the best tools which has been used to update the indigenous system that we practice in Pakistan and we have gotten good and fruitful results. The system is also very close to the indigenous system all over the world since it evolved from the same system of circle of the Native Americans.

Dispute resolution resources can help these grassroots approaches for peacebuilding which can be updated in order to face modern challenges, as we did in Pakistan and Afghanistan with indigenous system of Jirga. We first did research on Jirga, identified the weak points: see below

[http://peace.fresno.edu/docs/Pukhtoon\\_Jirga.pdf](http://peace.fresno.edu/docs/Pukhtoon_Jirga.pdf),

published a book, made a video: see below

,<https://www.facebook.com/alibabno10/videos/vob.100000262411006/993655120653226/?type=2&theater>

For the world community to understand the system. I re-wrote 'The Little book of Restorative Justice' with the pioneer of Restorative justice Professor Howard Zehr in the Pakistan and Afghanistan context, organized three days international conference, distribute free of cost the book mentioned above. I also trained Police and Community elders, established reconciliation committees in each police station of Khyber Pukhtoonkhawa province of Pakistan,( in 274) police stations, Research on the project success is below)

[http://www.anu.edu.au/fellows/jbraithwaite/\\_documents/Articles/LearningFromPakistan.pdf](http://www.anu.edu.au/fellows/jbraithwaite/_documents/Articles/LearningFromPakistan.pdf) and shared it with the world community for replication.

Reconciliation by jirga in Afghanistan just an example for understanding further the readers.

<http://www.economist.com/blogs/banyan/2014/05/feuding-afghanistan>

. 1 A global response to refugees-By Ban Ki-moon, Published: September 25, 2016,- <http://tribune.com.pk/story/1187776/global-response-refugees/>

Further reading and Video links

Reconciliation committees

<https://www.facebook.com/PTIOfficial/videos/10154097353299527/?pnref=story>

Hujra where youth learn to become MEN

<http://tribune.com.pk/story/615237/hujra-where-boys-used-to-become-men/>

Jirga:an effective tool for peace building; striger Australia;

[http://thestringer.com.au/jirga-an-effective-tool-for-adr-9181#.VI58\\_tLF8bt](http://thestringer.com.au/jirga-an-effective-tool-for-adr-9181#.VI58_tLF8bt)

Samma tv Video on MC with English Captions

<https://www.facebook.com/video.php?v=891168370901902&set=vb.100000262411006&type=2&theater>

Baya sahar sha! True TV Play on Honor killing and Positive Roe of Jirga!with English Capitions

<http://www.youtube.com/watch?v=eztVuVfN3j8#t=27My>

Pukhtoo dai tha weyea! Restorative Justice TV Play with English Capations

<https://www.facebook.com/alibabno10/videos/992578587427546/?pnref=story>

EMU New 12 peacebuilder of the world

<http://emu.edu/now/news/2015/09/special-issue-of-peacebuilder-features-12-international-peacebuilding-institutions-led-by-emu-linked->

The Asian Vision of Change-Kosmos journal

<http://www.kosmosjournal.org/reader-essay/the-asian-vision-of-change/>

Reconciliation committee-DRC video

Dispute Resolution Council (DRC), an alternate dispute resolution mechanism launched in KP to help resolve petty disputes mostly of civil nature, amicably through a free and speedy procedure. The system has been so successful in the province that people now prefer to take their cases to the councils. They provides easy and cheap access to justice for ordinary citizens. People of KP are happy with this easy access to justice. The community members act as a jury, chosen from the civil society, volunteer to hear the disputing parties in the presence of two assisting officials from the police department

<https://www.facebook.com/PTIOfficial/videos/10154097353299527/?pnref=story>

