Compatibility of Rewāj with the Constitutional and Legal Framework of Pakistan with Special Reference to Islamic Law

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Abstract:

The government of Pakistan has finally merged "Federally Administered Areas" (FATA) with the Province of "Khyber Pakhtunkhwa" (KPK) after the enactment of "Twenty-fifth" (25th) Amendment to the Constitution of Pakistan. The erstwhile FATA has a centuries old dispute settlement toll called Rewāj which is practiced through Jirga system and the tribesmen resort to the said system whenever a dispute arises between/among them. Since, FATA has been merged with KPK and the jurisdiction of the statutory laws of the state has also been extended to the said territory, therefore, this study explores that whether Rewāj and the constitutional and legal framework of Pakistan are compatible or not? For this purpose, this study is designed that conducted interviews with the tribesmen of Erstwhile FATA who are well versed in Rewāj and other stakeholders. After the Rewāj is being documented as a result of the proposed interviews, the researchers then critically evaluated the Rewāj within the framework of the Constitution and other formal laws of Pakistan. Moreover, the research article also suggested some fruitful recommendations about Rewāj, which are against the core concepts of Islamic law, human values, logic and the formal laws of Pakistan, for the policy makers for making informed decisions with regard to the future legal reforms in the merged districts.

***Keywords:** Rewāj, Jirga, Fata, Law, Pakistan, Islamic Law*

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Introduction

Literally, `*Rewaj*` means customs, traditions and usages of the tribes in vogue in erstwhile FATA of Pakistan; now called the merged districts of the 'Khyber Pakhtunkhwa' (KPK) province after 25th and 31st amendments to the 1973 constitution of Pakistan (Withdrawn bill of Tribal Areas Rewaj Act, 2017 Pakistan). In this context, *Rewaj* has been a tool for disputes settlement in the erstwhile FATA and is still in practice in the merged districts of KPK. The decisions of life and death of the residents (parties to a dispute) of the erstwhile FATA are directly subjected to *Rewaj*, but it has not been critically evaluated till date within the framework of the formal laws of Pakistan. Similarly, *Rewaj* resolves several disputes on daily basis in the erstwhile FATA between the parties to a dispute, but many questions arise to the legality and procedure of the *Rewaj*. Almost the entire population of the erstwhile FATA believes in *Rewaj* but if we did not evaluate it critically, it may lead to violations of fundamental rights enshrined in the Constitution of Pakistan and basic principles of law and natural justice. Thus, this research study aimed to check the compatibility of *Rewaj* with the Constitutional and legal framework of Pakistan. Since, no systematic study has yet been conducted in this field and it is an immediate need to investigate the matter and analyze *Rewaj* and the formal laws of Pakistan to find possible solution. Though, the jurisdiction of the higher courts and the applicability of the formal laws of Pakistan now extends to the erstwhile FATA after the mergence with KPK, but this formal system would never be fruitful if we did not make it in accordance with *Rewaj*, because *Rewaj* has been in practice for centuries in the said territory and is deeply rooted.

The main themes of the introducing the topic are to: 1) check the compatibility of *Rewaj* with the formal laws of Pakistan; 2) identify drawbacks and deficiencies in *Rewaj* if any; 3) document the *Rewaj* as much as possible; and 4) give suggestions to the Legislature to legislate in accordance with the cultural needs of the target population. Since, many questions are arising such as: 1) what is *Rewaj*? 2) How does *Rewaj* apply? 3) Are *Rewaj* and the formal laws of Pakistan compatible? And, 4) Can *Rewaj* be a suitable substitute for the formal laws of the land? Hence, for this purpose, this study is designed in such a way to explain *Rewaj* and *Jirga* system. It will also discuss different punishments, compensation, damages fixed in tribal *Rewaj* for different offences and private wrongs. Additionally, the research study reveals articulation on the compatibility of *Rewaj* with constitutional and legal

framework of Pakistan. At the end, the researchers also suggests some fruitful recommendations about *Rewaj* which are against the core concepts of Islamic law, human values, logic and the formal laws of Pakistan for the legal regime, policy makers and ease of the readers. Moreover, this study will help the policy makers to make proper procedure and code of conduct for the aforementioned issues.

Literature Review

Factually, many researchers and scholars have defined and discussed *Rewaj* and the *Jirga* System, e.g. Imtiaz Ali narrates: "historically, the conventional *Jirga* system exists in Federally Administered Tribal Areas (FATA) to settle disputes and punish individual crimes in accordance with the local *Rewaj*, the set of unwritten codes, customs, and traditions of the tribal areas".[1]

Similarly, Syed Fida Younas defines *Jirga* as: "the *Jirga* is an assembly of two or more persons to discuss and decide an issue which may range from a personal loan affair to a bloody inter-tribal feud. The size of a *Jirga* depends on the scope and importance of the issue. Qualifications of its members are social and religious status and proximity to the issue as well as confidence of the parties involved".[2]

Naveed Ahmad Shinwari elaborates *Jirga* system in this way, "in many parts of the world, traditional way of justice or locally integrated conflict transformation/resolution institutions are approached to resolve disputes and to ensure peace, stability and communal harmony within the local communities or tribes. Such institutions are often useful and suitable in circumstances in which they operate, as they satisfy the local cultural and religious sentiments. Such circumstances often make them more successful than the contemporary or modern justice system. '*Jirga*' is one such traditional or tribal justice system, being practiced by the Pakhtun ethnic group that lives in Pakistan and Afghanistan".[3]

Ali Shan Shah and Shahnawaz Tariq states: "when Pakistan came into existence, it adopted the colonial legal system prevalent in British India long before the existence of Pakistan. This system was prepared to anglicize the people and to create the English legal culture in the subcontinent. It was a time-tested system, but its lengthy, expensive and cumbersome court proceedings were creating too many difficulties for the people. Therefore, it needed reforms. Arbitration, *Jirga* and *Panchayat* systems were the parallel justice systems prevailing in the different parts of the country".[4]

Noreen Naseer explores in her work: "in *Rewaj*, a tribal woman without a father, brother, husband or a son has literally no socially recognised identity and hence lacks rights, which is a reflection of a predominantly patriarchal society. Her identity in much eulogised patriarchal *Rewaj* is, in fact, a suffering of women in a Pakhtun borderland society. Thus, the social status of the tribal Pakhtun woman under *Rewaj* is symbolic of domestic violence and oppression".[5]

Consequently, many researchers have contributed to the issue at hand, but they have focused mainly on the definition of *Jirga*, its constitution and procedure. No one has critically evaluated *Rewaj* in the framework of the Constitutional and legal framework of Pakistan. Thus, this research study will critically evaluate it and check its compatibility with the Constitutional and legal framework of Pakistan.

Methodology

Keeping in view the proposed issue and the main themes and other questions/issues, qualitative method will be adopted. Data will be collected both from primary and secondary sources. For primary sources, In-Depth interviews with the key practitioners of *Rewaj* would be conducted in order to abstract worthy information from them regarding the issue and observation of civil and criminal cases in *Jirga*. For this purpose, Purposive sampling technique will be used to make the proposed interviews most productive and representative. For secondary sources, data will be collected from existing formal laws of Pakistan, law experts, authentic journals, published articles and books etc.

The Concept of *Rewaj* and *Jirga* System in Erstwhile Fata

Certainly, `*Rewaj*` means customs, traditions and usages of the tribes in vogue in erstwhile FATA of Pakistan; now called the merged districts of the KPK province after 25th and 31st amendments to the 1973 constitution of Pakistan as identified.

In fact, both civil and criminal cases are decided by *Jirga* (council of elders) in the erstwhile FATA. *Jirga* in this regard is synonymous with court. Member of a *Jirga* is called '*Munsif*'; who acts as a judge and decides the case after hearing both the parties to a dispute. *Jirga* consists of one or more than one member.

Indeed, there are usually two kinds of *Jirgas*: private *Jirga* and government *Jirga*. Private *Jirga* is constituted by the parties to solve a dispute through mutual consensus. Government *Jirga* was appointed by

the political administration of the agency under the then black law Frontier Crimes Regulation (FCR). Government *Jirgas* were appointed by the political agent to decide a case between two individuals or two or more than two tribes. *Jirga* decides cases according to a set of principles and traditions called *Rewaj*. Correspondingly, *Rewaj* is not a written or a codified law, but a collection of unwritten principles and traditions respected and practiced by the tribesmen in the administration of justice. Although, there is no clear and well documented evidence, it seems that FCR had been designed in accordance with *Rewaj*. For example, it upholds the concept of "collective responsibility" as it is legal and legitimate under the prevalent *Rewaj* system to punish a person for acts of his father, son(s), brother(s), spouse or even his paternal cousin(s). Similarly, the FCR provisions regarding the women are also aligned with the provisions of *Rewaj*.[6] Thus, *Rewaj* is a tool for settling disputes and conflicts among the residents of erstwhile FATA.

Meaning of *Rewaj*

Rewaj is an Arabic term which refers to customs and usages prevalent in any society. It has many synonyms in Arabic and Urdu, and it is being used interchangeably or in combination with other synonyms such as *Rasm*, *Adat*, *Uruf*, *Narkh*, *Lyar* (*Lara*), *Rasm-o-Rewaj* and *Narkh-o-Adat* etc. it has different connotations with regard to customary variations prevailing in different tribal areas. *Rasm* is also an Arabic word, which means prevailing practices, habits and legal applications. *Adat* refers to a condition caused by the repeated actions of an individual or a group of individuals. *Adat* is adopted and recognized by the society. *Uruf* is an Arabic word, which refers to *adaat* (habits) and practices developed by the Arab society before Islam to run their socio-economic and legal affairs. Like the tribes in the borderland, they also had no central authority to maintain social order under statutory laws and had adopted the *Rewaj* mechanism for conflict resolution to which the holy *Quran* has also referred time and again. Thus, pre-Islamic practices beneficial to the maintenance of social order at the dawn of Islam were commanded to be followed provided they were not repugnant to the teachings of Islam.[7]

In some parts of the Pashtun society, *Rewaj* is called *Narkh*, which means price. The tribesman pays money for the wrong he commits. Thus, the process of determining the price of a wrong by the elders of the council is called *Narkh*. For instance, if a tribesman commits a theft, he pays the price (nine-fold price of the stolen property in *Waziri*

Rewaj) as compensation to the aggrieved party. In some tribes, the term *Lyar* (*lara*), which means path, is used for *Rewaj*. In a legal language, *Lyar* would mean the path, methods, applications, procedures, and precedents that can be followed or used in any dispute resolution.

In this context, *Rewaj* may be defined as the habits, customs, prevailing practices, methods and precedents accepted and recognized by the tribesmen through which disputes are resolved and the social order is maintained in the absence of any formal legal system and writ of the central authority.

Rewaj can be distinguished from the common law in the sense that in the former, disputes are decided by the folk's *Jirga* in the erstwhile FATA, while in the later, disputes are decided by a jury. However, both have a common genesis in the social customs, usages and prevailing practices on the basis of which council of elders and the jury decide cases; hence, they are different from the statutory law enacted by the legislature in its nature and application.[8] The legal experts define "common law as the principles and rules of action embodied in case law rather than legislative enactments applicable to the government, protection of persons and property that derives their authority from the community customs and traditions that evolved over centuries as interpreted by judicial tribunals".[9]

"*Rewaj* refers to the centuries-old socio-cultural and legal norms evolved by the tribesmen to lead their lives in an organized way and to settle their disputes in a peaceful and just manner. These customary laws are totally un-written and are based on the collective wisdom and consciousness of the elders of the tribes and have been transmitted to their posterity through a genetic process and symbol codes.

Rewaj plays a vital role in the growth and development of the socio-cultural life of the Pashtun society. It has binding effects on the Pashtuns as it governs and guides their lives. *Rewaj* has assumed a key role next to *Pashtunwali*. The decision made by the elders of the Pashtun tribes through the council of elders in accordance with *Rewaj* has taken the place of written laws in the tribal areas. In this backdrop, *Rewaj* means the process by which the Pashtun tribesmen resolve their disputes arising out of the prevailing usages, traditions and habits that have deep roots in the tribal life".[10]

Historical Background of *Rewaj*

The evolution of *Rewaj* of the Pashtuns in general and the tribesmen of

the borderland in particular is as obscure as the origin of the Pashtuns in the annals of history. These questions–how did *Rewaj* evolve, and who was its progenitor, how did the scattered tribesmen gather to set such parameters of social life at times when men were living in the dark ages of human civilization, and how did it spread to the rest of the Pashtun tribes–are very difficult to answer. The researchers and scholars need to focus on this aspect of the Pashtuns. However, Mr. Gul Muhammad, expert of Utmanzai *Rewaj*, says that the *Rewaj* of Utmanzai (*Wazir*) was written by Mr. Her Gul, a wise man (who belonged to *Pepalai Qoom*, main branch *Kobal Khel* and sub-branch *Kaji Khel*), during the reign of Britishers in the erstwhile FATA, thinking that Pukhtuns would never obey the Britishers. Therefore, after an agreement with the Britishers, he wrote a detailed *Utmanzai Rewaj* for *Wazir* living in the Erstwhile FATA. The same *Rewaj* is also followed by the *Mehsood* tribe.

Punishments, Compensation, Damages for Different Offences and Private Wrongs in *Rewaj*

Indeed, we all are aware of the fact that *Rewaj* is not codified. As a result of this lack of codification, there are no specific definitions of offences and private wrongs in *Rewaj*. Rather, they are defined in a very general way. However, *Rewaj* has some specified punishments for different offences and private wrongs. It must be noted that the main punishment and remedy imposed by *Rewaj* is monetary compensation or *Swara* i.e giving of girl(s) in marriage, to the aggrieved party or his heirs. The amount of monetary compensation and the number of girls given in marriage for different offences and private wrongs vary from case to case, tribe to tribe and *Rewaj* to *Rewaj* prevailing in different parts of erstwhile FATA. Nevertheless, we will discuss here the punishments and remedies provided by *Utmanzai Rewaj* (*Waziri Rewaj*) keeping in view the length of our study.

Qatl-i-amd in *Rewaj*

According to Gul Muhammad, an expert of *Utmanzai Rewaj*, cool blooded murder is one of the most severe offences in *Rewaj*. For which, the main punishment is death. The heirs of the victim will kill the murderer if they are not willing to allow *Solah* or *Roogha* (compromise) to take place. After the revenge has been taken by the heirs, they are supposed to go to the house of the culprit with sheep/goats after some days in order to bring peace between the two enemy families. *Rewaj* recognizes the revenge whether it is taken from

the real culprit or any other innocent member of the culprit's family.[11] If the aggrieved party is ready to compromise, the culprit is bound to give fifteen lakh (1.5 million) of money as blood money or girl/s in marriage (without their consent) to the heirs of the victim.[12]

Interestingly, if murder is committed during the night and the heirs of the victim nominate a culprit or culprits on the basis of doubt, the accused and 49 other male members of his family are bound to place their hands on the holy *Quran* (if he pleads not guilty) in front of a *Jirga* to show that the accused has not committed the *Qatl* (murder). If the number falls short of 49, the oath is changed into monetary compensation by the Jirga. But, if murder is committed during the day and the heirs of the victim nominate a culprit or culprits on the basis of doubt, the accused and 99 other male members of his family are bound to place their hands on the holy *Quran* (if he pleads not guilty) in front of *Jirga* to show that the nominated party has not committed the *Qatl*. If the number of the male members is less than 99, the oath is converted into monetary compensation by the *Jirga*.[13]

Definitely, in Pashtun society, female members of the culprit's family are not targeted when revenge is taken, but if a female member is hit during cross firing, then the murder of two female members of the culprit's family would be considered a complete revenge. The murder of one female member would be considered half revenge, and one male member or the culprit himself is required to be seriously injured to complete the revenge.

Usually the revenge is not taken on the minors of the culprit's family, but (Gul Muhammad said that) I have personally seen some cases where the revenge was taken on the minor male members.[14]

Qatl Shibh-i-amd, *Qatl-bis-sabab* and *Qatl-i-khata* in *Rewaj*

Like the general exceptions provided in the Pakistan Penal Code (PPC), *Rewaj* also provides some general exceptions regarding offences committed in certain situations. According to an expert of *Utmanzai Rewaj*, *Qatl* (murder) committed by mistake of fact or mistaken *Qatl* is not considered *Qatl-i-amd* and the punishment of such a *Qatl* is half of the blood-money i.e. seven lakh (0.7 million) in *Waziri Rewaj* (it may vary from case to case and locality to locality) and no revenge shall be taken. Similarly, there is no punishment for *Qatl-bis-sabab*, but the offender is supposed to prove his innocence. However, *Rewaj* treats *Qatl Shibh-i-amd* as *Qatl-i-amd*.

Qatl-i-khata by Rash Or Negligent Driving

The commission of *Qatl-i-khata* by rash or negligent driving is also an exception in *Rewaj*. In *Utmanzai Rewaj*, if a person commits *Qatl-i-khata* by rash or negligent driving, death punishment will not be awarded to him. However, he is bound to pay blood-money to the aggrieved family and to take oath on the holy *Quran* that his act was not intentional. If his act was intentional, then he can be murdered in revenge.

Communication Made in Good Faith

Communication made in good faith is also an exception in *Rewaj*. If a person communicates something in good faith to any person and his death is occurred, he would not be liable to any punishment under *Waziri Rewaj*. However, if the communication was not in good faith, the accused and 6 male members of the accused family are liable to take oath on the holy *Quran* (Le/Lo) to deny the fact that it was not in good faith.

Act not Intended and not Known to be Likely to Cause Death or Grievous Hurt done by Consent

Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death, or grievous hurt, is an offence under *Waziri Rewaj* by reason of any harm which it may cause, or be intended by the doer to cause, to any person, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which may be known to the doer to be likely to cause to any such person who has consented to take the risk of that harm e.g. the harms caused during different games etc.

Qatl-i-amd Committed by a Minor

Unlike the general exceptions of the PPC, *Rewaj* does not place the intentional *Qatl* committed by a child of seven or below seven in the category of exceptions; rather it is considered as an offence. Same punishment will be awarded to the offender as mentioned above for the major offender.

Qatl Committed in Private Defense

According to Gul Muhammad, death or grievous hurt caused in personal defense is not punishable with revenge under *Rewaj*, but the person acting in private defense is liable to pay blood-money to the aggrieved person or his family on the basis of a *Waziri* proverb that "*Maarh aw ghalat na de barabar u bal sara*".[15]

Qatl of a Thief, Dacoit, Robber etc.

A thief committing theft during night from a house can be murdered according to *Rewaj* and no revenge will be taken from the murderer, however, the murderer will be liable to pay blood-money to the aggrieved family. Similarly, the *Qatl* of a dacoit or a robber is also exempted from the punishment of revenge but monetary compensation in shape of blood-money will be paid to the aggrieved party.

Qatl Commited by a Lunatic

In *Utmanzai Rewaj*, *Qatl* committed by a lunatic is not punishable with any punishment. Thus, if a lunatic commits *Qatl* whose guardians or responsible relatives were already warned three times about the threat of the lunatic, then in such case, one of the guardians or responsible relative would be murdered in revenge.

Qatl Committed in Response of *Zina bil-jabar* or Sodomy

In *Rewaj*, *Qatl* committed by any person to avoid *Zina bil-jabar* or sodomy is an exception. So, if such an offender is murdered, the murderer would not be liable to any kind of punishment. And, such an offender, if murdered, is called *Ligarh* in *Rewaj*.

Qatl of Tribesman during Tribal War

Tribal war has been the salient feature of the tribal society. Tribal war occurs when a dispute arises on land, mountain and water between two tribes or *Khels*. *Rewaj* enjoins upon the warring tribes to settle the dispute amicably through *Solah* in the first instance and subsequently through *Rewaj* or *Shariah* (Islamic law) if *Solah* fails to resolve the dispute. Sometimes all efforts prove futile and lead to a tribal war for which they raise *Lashkar* of the tribesmen. It is here that *Nikat* system starts functioning. Each family provides fighting men for the *Lashkar* on the basis of its share in *Nikat* who are committed to protect the honor of their *Khel* and families in the comity of tribes. The sturdy, enthusiastic and ardent youths of the tribe take up weapons and march towards the bunkers and mountains tops to fight against the enemy. The youths of the tribe fantasize that if they fight well and show their courage and come back as conquerors or get martyred for their tribes they would be named as heroes and their names would be sung in folklore of the tribes.

No doubt, the tribesmen are not formally trained in warfare strategies, but the way they plan, strategize and fight signifies that they are born soldiers. They have proven their fighting skills in all ages against their

enemies which have made them invincible. We have seen how the tribesmen go to attack the enemy in his own den at night taking back the outposts occupied by the enemy and provide logistics in the rugged hills or green plains. We have also seen and heard the provocative and reactive gestures and voices made by the tribesmen at night against one another. Taking the bunkers/outposts back requires mounting the enemy's dens. The tribesmen most likely come across the enemy's bullets, but they forget they will die and march ahead. In such a situation, a tribesman can meet his fatal death without knowing his killer. It is worthy to mention that though the murderer may be known to both the tribes and families, yet he is not identified and claimed against, for it becomes a taunt for the whole tribe if he roams around and cannot be killed due to the *Rewaj* of Revenge (*Badal*). However, the murdered family or tribe can kill anyone in the enemy's tribe to take revenge of their murder. Sometimes the dispute is resolved through *Solah* (compromise), in which blood-money is paid for the murders committed in the tribal war. The blood-money is shared by the families and *Khels* of the entire tribe irrespective of the fact whether they were accomplice in the murder or not.

The *Rewaj* of the tribal war has a universal application in the whole tribal belt. It is based on the concept of collective responsibility wherein an offense committed by one individual of the locality or tribe may be construed as an offence perpetrated by the whole tribe, for it was an action undertaken in pursuance of the collective benefit of the tribe. This *Rewaj* of collective responsibility was perhaps conceptualized by the Britishers and made a cornerstone for the sections of collective territorial responsibilities under the Frontier Crimes Regulation, which is now considered as the worst piece of law and contrary to fundamental human rights.[16]

The Issue of Honor Killing in *Rewaj*

Honor killing is one of the important features of *Pashtunwali* (centuries-old unwritten moral codes that exist in the Pashtun society of Pakistan and Afghanistan). It has a very special role in *Rewaj*. Any damage to the reputation of any Pashtun or his family causes honor killing in the Pashtun society. If a man and woman (without wedlock or lawful relations) are seen together by their relatives, they are killed immediately. Sometimes honor killing takes place on the basis of doubt or accusation against a tribal man or woman. It has happened multiple times that innocent people have been killed in the name of honor.

Someone accuses them just because of personal enmity and as a result, those innocent souls are put to death. Sometimes, one *tarbore* (cousin/uncle's son) accuses another *tarbore* of harassing his wife. As a result, he puts an end to the life of his *tarbore*. When the case is referred to a *Jirga*, the murderer has to satisfy it. If he succeeds in satisfying the *Jirga*, he wins the case. If he fails, enmity begins between the murderer family and the victim's family.

To rape a girl in the Pashtun society is unimaginable. The reason of it is very clear. The people cannot compromise on their honor, dignity and prestige. If any such attempt is made, the one involved is killed without any trial. The result of it is that one can hardly see rape cases in the Pashtun society.

Zina in *Waziri Rewaj* is punishable with death even if it is done with the consent of the ones involved. The ones involved are killed on the spot. If the girl succeeds in running away, and the boy is killed, then the family of the girl is bound to place their hands on the holy *Quran* in front of a *Jirga* to show that *Zina* has really taken place. In case of harassment, sometimes the male members do harass the female members of the society. If any such thing happens, the female members are bound to tell this to their families. If they do so, they are not killed, but the male members are killed.

Hurt in *Rewaj* and its Punishment

During our research interviews we find two types of Hurt in *Rewaj* namely: first) light bodily injuries: which mean the bodily injuries which do not cause impairing of any human limb or disabling of any limb. While, secondly) bodily injuries/hurts which cause impairment or disablement of any human limb. Thus, punishment for each will be outlined in the following manner.

Punishment for Light Bodily Injuries

Certainly, if a person causes any light bodily injury to any person on such place which could be hidden with *Dastar* (turban) or clothes, revenge can be taken against him. Or in case of compromise, he is liable to one-fold monetary compensation to the aggrieved person, and such compensation would be fixed by the elders of the council according to the nature of the hurt and prevailing practice of the locality.

Similarly, if someone causes any light bodily injury to any person on his face or on any such place which could not be hidden with *Dastar*

(turban), revenge can be taken against him. Or in case of compromise, he is liable to two-fold monetary compensation, and such compensation would be fixed by the elders of the council according to the nature of the hurt and prevailing practice of the locality. For instance, if the monetary compensation is fixed one *lakh* (hundred thousand) for the first kind of hurt mentioned above, the monetary compensation for the latter would be two *lakh*.

Punishment for Bodily Injuries/Hurts which Cause Impairment Or Disablement to Human Limbs

Surely, if someone causes bodily injury or hurt to any person who impairs or disables any of his limbs, the doer of such an act would be liable to revenge if not pardoned. Or to monetary compensation which is half of the blood-money (7.5 *lakh*) in case of compromise. Since, the impairment of a limb is considered half murder in *Rewaj*. The rate of blood-money varies from case to case and locality to locality under *Utmanzai Rewaj*.

The Concept of theft in *Rewaj*

Undoubtedly, *Rewaj* divides theft into two categories, i.e. theft inside a house and theft outside a house. Thus, **theft inside a house** means that if a thief steals something from the four walls of a house/shop etc., it will be considered theft inside a house. The offender of such a theft is supposed to return the stolen property along with nine-fold compensation of the stolen property. While, **theft outside a house** means that if a thief steals something outside from a house/shop etc., it will be considered theft outside a house. The offender of such a theft is bound to return the stolen property along with the same compensation of the price of the stolen property.

House Trespass in *Rewaj*

In fact, *Rewaj* does not punish the wrongs of trespass but there is a concept of *Sharam* (violation of *Chadaar* and *Chardewari*) in *Rewaj* which means that if a person enters the house of any person without his consent, such an act by such person would be equal to the violation of *Chadaar* and *Chardewari*. According to Gul Muhammad, if a person violates the *Chadaar* and *Chardewari* of a person, the aggrieved person may restore his *Sharam* either by slapping the violator or through any other act provided that the aggrieved party will not kill or make disable the violator or the aggrieved party may also receive monetary compensation.[17]

According to the forefathers of *Wazir*, even if the aggrieved person pulls his sword in the herd of sheep/goats and the sheep/goats become afraid, the aggrieved person has taken his revenge and has restored his *Sharam*. No specific punishment has been described for house trespass in *Rewaj*, and it is up to the aggrieved party or *Jirga* to decide its punishment.[18]

Kidnapping Or Abduction in *Rewaj*

Unlike PPC, *Rewaj* has not specifically defined the offences of kidnapping and abduction separately. *Rewaj* considers both the same. According to Shab Nawaz, if a person abducts or kidnaps any person without any reason or despite the fact that the abducted person was ready to initiate *Jirga* proceedings with the claimant, then in such a situation the offender is supposed to pay half of the blood-money (7.5 lakh) as compensation to the aggrieved person. If a person (defendant) is not ready to settle the dispute with a plaintiff and the plaintiff abducts him, then in such a situation there is no punishment for the plaintiff in *Waziri Rewaj*. If the real culprit is not available or cannot be abducted easily, his male family members are abducted or even children of his family are kidnapped.[19]

Mischief in *Rewaj*

Arguably, trees have a significant place in the tribal life. Trees are a source of livelihood for the tribesmen. Allah almighty has blessed the tribal areas with numerous dense forests and green mountains. These wild trees provide logs and woods, which are used as fuel in kitchens, furniture making and carpentry. The tribesmen believe that the green trees are nonliving creatures of Allah and prostrate themselves before Allah in the same way as is done by the human being. Their cutting or chopping off is generally avoided. They cut trees only if they become dry or if their trunks grow much bigger to fall on the ground and cause nuisance for the fellow tribesmen.

Correspondingly, like land and mountain, tribesmen quarrel on trees also which sometimes takes an ugly turn and results in killings. If a dispute occurs on a land or mountain, the trees there bring about a conflict automatically till the land/mountain dispute is decided between the disputants. If any claimant of the land/mountain cuts a tree at that point in time, it results in fighting and aggression. Therefore, *Rewaj* bans cutting of trees on disputed land till its settlement. Besides, tribesmen are more supportive and God-fearing when it comes to charity or help to their needy and poor neighbors. They do not mind if

someone asks to cut a tree to have wood for burning but cutting without prior permission or stealing may lead to a bloodshed and enmity. In addition, a proxy war has been noticed in the tribal life. If a conflict arises between two individuals, the third among the *tarbore* covertly damages the crops, burns the hay or any old muddy habitat to irritate and provoke his inner's man against his disputant *tarbore* which, most of the time, turns into enmity. That is why; it is an old maxim of a tribal elder that it is prudent to avoid keeping a dog and a garden, for they can cause a conflict anytime.

It is evident from the conflict which arose between two *Khels* in North Waziristan over the ownership of trees grown on the top of the nearby hill. The matter was referred to a *Jirga* where it was decided that the dispute would be settled in accordance with the local *Rewaj*. Both the disputants were asked to submit their claims. Submission of a claim in a dispute is a technical job based on the wisdom and logic of the claimant. Therefore, each claimant takes due care in this regard. Sometimes, tribesmen hire *wakil* (lawyer) among the tribal elders who are well conversant in the local *Rewaj*. In the instant case, one of the tribesmen claimed that he was already sleeping under the shade of the trees and if someone could drag him away from there, he was allowed to do so; while the other claimant stated that he had already climbed the tree and was getting fruit out of it; if someone could get him off; so do it. Both the claims were full of logic and reasons. Both the parties desired to own the oath on the holy *Quran* and swear to win the case. It was an acid test for the *Jirga* to adjudicate on. The *Jirga-mar* examined all evidences of the claimants. In addition, they also inquired about the dispute from the local folk to retrieve reasonable information for an accurate judgment. One can see the logic in the decision of the *Jirga* in the instant case. The *Jirga* decided that the sleeping claimant was just sleeping under the shadow of the trees to have a rest and a sleeping man was like a dead man while the other claimant had already climbed the tree getting fruit out of it being an owner; therefore, the letter would put his hand on the holy *Quran* that the trees were left to him as inheritance by his ancestors. The tribesman swore on the holy *Quran* as required and won the case.

Remarkably, in cases of cutting trees, damaging crops or burning tents and houses, the *Waziri Rewaj* was quite clear. In 19th century, cost of the fruit-bearing tree was Rs.100. Burning of home, tents, etc., would cost Rs.100 in addition to the cost of goods burnt or damaged. If the incident would cause killings of inmates inside, it would be construed

as murders in cold blood to be avenged. In case, the accused would deny to have committed the offense he would absolve himself by taking oath on the holy *Quran*. Currently, there is no specific rate of damages of trees, crops, tents and houses etc.; therefore, it depends upon the loss incurred.

In fact, cutting of green trees is prohibited by laws and its destruction is not supported by any of the world religions except for the just cause. When the Britishers came and got control of tribal territories, they upheld the local customs and traditions in order to pacify the tribesmen and thereby banned the cutting of green trees. The ban on cutting trees was so adamant that a person could get himself absolved of a murder case on the ground that the murdered had cut green trees of the murderer in violation of the tribal *Rewaj*. It is said that the tribal *Malik* in *Darpa Khel* village of *Dawar's* tribe killed a person without any obvious reasons. He was fetching logs and trunks of wood wrapped up with a rope coming from the field side. So, he was unaware of his tragic end. And, hence, he was shot dead on his way home on the grounds that he had cut the trees of the murderer. The political officer arrested the murderer and held a *Jirga* which decided that murder could be committed by insulting woman or cutting of tree in *Rewaj*; therefore, the murderer might be released. The decision of the *Jirga* was accepted and implemented accordingly by the political administration. No doubt, cutting of green trees is fundamentally wrong and *Rewaj* has also developed inhibitions in this regard. But, killing of a tribesman on the pretext that he had cut a green tree seems to be quite illogical; therefore, one can disagree with the source/authority. The *Malik* might have either maneuvered or influenced the *Jirga-mar* to decide in his favor, as we have neither seen nor heard any precedence of this sort in *Rewaj* where a murder of the tribesman has been attributed to the cutting of green trees. In fact, *Rewaj* says if a tribesman is accused of cutting green trees or standing crops on the basis of doubt, he has to put his hands on the holy *Quran* to prove his innocence and swear that he has neither committed the offense nor an accomplice to it nor aware of it.

In *Turizona*, the offense of damaging trees, crops, houses and tents has been specifically dealt with and slabs of losses have been mentioned. It says that the accused must return the loss of the goods in addition to any other penalty imposed by the court of the Political Agent. However, if the accused denies the offence, the plaintiff shall take oath on the holy *Quran* that he has not committed the offence. The number

of oaths depends upon the loss incurred.

The *Rewaj* of cutting green trees, damaging crops, tents and houses etc. has almost universal application in all tribes. If the damage is caused in broad daylight, the one involved is punished, which usually leads to enmity. If it happens at night, or in a cagey manner to allege someone for it is resolved through customary oath (Le/Lo) made by the accused in front of the entire *Khel*. Sometimes, a mischief in the family commits such offence against his *tarbore* without the knowledge of the elders of his family. In such a case, the family of the accused takes a *Nanawate*, accompanied by *Pirs*, *Fakirs* and elders of the *Khel* along with sturdy sheep, to the house of the victim's family and begs pardon for the act committed. They assure the *Jirga-men* that they know whatever has happened and return loss by seeking forgiveness.[20]

The Issue of Land Disputes

Land is a *Namoos* in the Pashtun *Rewaj*. The occupation of land by a *tarbore* or any other individual of the *Khel* or tribe is not an attack on land, but rather an attack on the honor of the tribesman. In this respect, such an act tantamount to *Paighore* (taunt) for the tribesman, this is kept in heart even for many generations.

Factually, the tribal belt consists of mountains and valleys. A very minor chunk of land is cultivable. A tribesman who possessed cultivable land in the past is called the *Khan* of the *Khel* or tribe. Normally, the poor person in *Khel* seeks *Khairat* from the *Khan* in the form of wheat, maize or rice to provide his family with bread and butter. He declares land as evacuee for *Kabristan* (graveyard) of the *Khel* where people of the *Khel* bury their relatives free of cost. In fact, land is not less important than the honor of a woman among the Pashtun tribesmen.

Debatably, most of the land in the tribal territories consists of *Shamilat*. However, it varies from Agency to Agency. Some tribal agencies have land settlements, while other has not. Some parts of the same agency may have land revenue record while others may not. For example, North Waziristan has land revenue system, but the land of the *Wazir* tribe is mostly based on *Shamilat*. As a result, there are more land disputes in *Wazir's* tribe than *Dawar's* tribe.

Accordingly, land disputes occur because of *Lashtay* or *lakhtay* (water course), *Salmaa* (water-exit), *Pola* (demarcation line) and *Shuffa* etc. Besides, the tribesmen live in large families based on immediate

kinship; therefore, the division of property keeps pending until the relationship of kinship changes into *tarborewali*–a relation in which blood becomes thinner than water. It is here that the kinship comes to end, and enmity begins. Having a common ancestry, the tribesmen have common property without revenue record. This creates a very serious difficulty.

According to an expert of *Waziri Rewaj*, if there is a dispute regarding a piece land and the possessor has illegally occupied the land and such a land is situated in a settle area, then the plaintiff is asked by the *Jirga* to prove his ownership through the legal documents related to the disputed land. If he succeeds in bringing valid evidences before the council of elders, the case is decided in his favor. If the plaintiff fails to produce governmental record regarding his ownership, the defendant(s) is asked to take oath on the holy *Quran* to win the case. The number of oaths is different from case to case.

If the disputed land is situated in such an area where no land revenue record is kept, the plaintiff is asked to produce documentary evidence i.e. sale deed etc. regarding his claim. However, oral evidence is not permitted in such cases. If the plaintiff produces documentary evidence, the case will be decided in his favor. But, if he does not produce such evidence, the defendant(s) will be asked to take oath on the holy *Quran* to deny the plaintiff's claim. In this regard, the number of oaths depends upon the circumstances and it varies from case to case. Though, it is the discretion of the elders of council to decide the number of oaths for a case.

The Case of Dispute on Mountains

The physical geography of the tribal territory shows that it has been made up of hard mountains, tough terrains, ridges and steep green valleys. The mountains are hard indeed but rich in minerals, oil and gas etc. The terrains and ridges provide them defense against enemies and invaders. Moreover, their valleys are a source of water as well as gateways for the raiders and traders.

Keeping in view these salient features of the tribal territory, one can safely infer the utility of mountains and the rising of disputes among tribes and *Khels* thereon. Mostly, the mountains are *Shamilat* and have no revenue record; therefore, all tribes and *Khels* claim on and fight to getting share thereof. If a dispute appears, it gets ugly turn, for it becomes a conflict between tribes which results in huge human, social

and financial losses. The *Rewaj* on mountains contends that the mountain belongs to a tribe or *Khel* where the muddy water flowing down the hill-top damages its land, crops and population. The elders look into this aspect of the dispute and decide the case accordingly in addition to the revenue record or any other written evidence. If the belligerent tribes fail to arrive at amicable solution of *Solah*, the dispute is resolved through *Rewaj*. The plaintiff produces two witnesses supported by any other historical evidences, if not; the defendants take oath on the holy *Quran* in support of their claim. It is here that maximum number of the tribesmen takes oaths being shareholders in the *Nikat* system. It must be noted that *Rewaj* on mountains has no variation in its application across the tribal belt whether it is decided by a *Jirga* constituted under FCR (repealed now after the merger of erstwhile FATA in KPK) or by the tribesmen themselves.

In short, mountains are of great importance in the tribal areas of erstwhile FATA and the disputes regarding mountains are resolved on the principle of the direction of flowing water from the tops of the mountain. If the water flows towards the lands of the plaintiff(s) from the top of the mountain, he will be the owner. If the water flows towards the lands of the defendant(s), they will be the owners.[21]

Inheritance in *Rewaj*

According to Said Khan (expert of *Utmanzai Rewaj*), *Rewaj* does not provide inheritance rights to women in the property of the tribesmen. There are no punishments for those who do not give inheritance to their daughters or sisters etc. Women are their honor indeed but this honor has been deprived of the right of share in the inherited property. Very few people, having religious tendency and the spirit of justice, share their land and property with their sisters and daughters. Property among men-folk is distributed in accordance with *Shariah* (Islamic Shariah) i.e. equal share to all brothers unless their father has left a will in someone's favor.[22]

Compatibility of *Rewaj* with the Constitutional and Legal Framework of Pakistan

The proceedings conducted through *Rewaj* for dispute settlements are almost similar to the proceedings conducted through the Constitutional and legal framework of Pakistan for resolving disputes. However, there are some fundamental differences in both the systems. In this section, we will discuss the compatibility of *Rewaj* with the constitutional and legal framework of Pakistan.

Initiation of Proceedings

Under the statuary law of Pakistan, when the cause of action arises, the proceedings against the defendant start with the suit by the plaintiff (Order VII) under Civil Procedure Code,1908 or under any other prevailing law in case of civil cases. Whereas, it starts against the accused after the FIR is lodged or complaint is made under Criminal Procedure Code,1898 or any other prevailing law in Criminal cases. Same is the case in *Rewaj*. When the cause of action arises, the plaintiff conveys his message to the defendant about his claims either directly or through the elders of the *Qoom*/*Kabila* or Tribe called *Manzghorhi* (neutral persons). The said *Manzghorhi* take *Baramta* (either money or other valuable things) from both the parties to compel them to start proceedings. In case of denial to start the proceedings, the security taken by the neutral persons is forfeited from the party in violation. The *Jirga* (council of elders) is either appointed through the mutual consent of the parties to the conflict or in case of differences between the parties, by the *Manzghorhi*.[23]

Written Statement

Once the *Jirga* is appointed for a specific dispute as mentioned above, a date is fixed for hearing. Both the parties are required to appear before the *Jirga* on the day fixed. Unlike the statutory laws of Pakistan, in the *Rewaj* system of justice, the plaintiff states his claim(s) himself or through his *Wakil* called *Dawagir* in *Waziri Rewaj* orally before the *Jirga*. At the same hearing, the defendant is asked to respond to the claim(s) made by the plaintiff orally. If the defendant seeks some time for any reason, he is given 15 days in *Utmanzai Rewaj*. However, the time may vary from tribe to tribe or *Rewaj* to *Rewaj* prevailing in different areas of erstwhile FATA) to respond to the claim(s) of the plaintiff.

Concept of Separate Courts or *Jirga* System

Under the statutory laws of Pakistan, different courts have been established for different matters i.e. civil courts for civil matters and criminal courts for criminal matters. In *Rewaj*, there is no such division of courts. The same *Jirga* hears all the matters.

Number of Members in a *Jirga*

There is no restriction on the number of its members. It may be one or more than one appointed through a mutual consent of the parties or by the *Manzghorhi*. In majority cases, the number of members of a *Jirga* consists of two elders.

Time for Adjudication of a Case

Unlike statutory laws of Pakistan, there is no specific time frame mentioned in *Rewaj* for resolving a matter. However, according to an interviewee Gul Muhammad Khan; *Rewaj* is considered a speedy justice system because a *Jirga* usually settles a dispute in a sitting or two.[24]

Remuneration of the Members of a *Jirga*

No specific amount has been fixed in *Rewaj* for the services of the members of a *Jirga*. In some cases, they work for free with the intent to keep peace and harmony in the society. The amount paid for the services of the members is fixed by the parties to the dispute. Some disputes become very expensive due to the stubborn behavior of the parties. In such cases, sheep, goats, cows etc. are slaughtered and served to the members of the *Jirga* and other participants. Millions are spent in order to weaken the opponent financially.

Decision of *Jirga* in *Rewaj*

In *Rewaj*, majority opinion shall prevail. In case where there are two, four, and six… members in a *Jirga* and they are equally divided in their opinion, in such a situation, a new member or members are added to the same *Jirga* to finalize the majority opinion.

Review and Revision in *Rewaj*

Unlike statutory laws of Pakistan, no right of review or revision is granted to the aggrieved party in *Rewaj*.

Appeal in *Rewaj*

The only remedy available to an aggrieved party against the judgment of a *Jirga* is appeal. According to an expert of *Utmanzai Rewaj* Shab Nawaz, the term used for appeal in *Rewaj* is '*Shoba*' which means that if any party is aggrieved by the verdict of the *Jirga*, he may make an appeal by saying that he has *Shoba* regarding the verdict given by the *Jirga*.[25] In such case of an appeal, the then appeal is preferred to a second newly appointed *Jirga* to hear it against the decision pronounced by the first original *Jirga*.[26] The number of members of the appellate *Jirga* called *Jorhay* in *Utmanzai Rewaj* must be equal to that of the number of the original *Jirga*.[27]

Notably, as we have earlier mentioned that majority decision prevails in *Rewaj*, so after the appeal, the opinion of the members of the appellate *Jirga* and the opinion of the original *Jirga* are combined, and the decision of the majority members prevails. According to Gul

Muhammad (an expert of *Utmanzai Rewaj*), an appeal can be preferred up to three *Jorhay* of elders. However, the number of *Jorhay* appointed for the hearing of an appeal varies from tribe to tribe and *Rewaj* to *Rewaj* prevailing in different areas of erstwhile FATA and there is a very famous proverb regarding this of *Ahmadzai* tribe: "*che tar so poray da deg kona wakhathaalay na v, tar haghay poray Rewaj kigi*"; (*matlab che tarso poray Pakhlai kawalay shi*) that one can invoke *Rewaj* till his bankruptcy.[28] It is, however, not compatible with the formal laws of Pakistan.

Costs and Expenditures in *Rewaj*

Unlike formal laws of Pakistan, no costs etc. are imposed upon a party if his claim(s) or complaint(s) are proven fictitious or baseless.

Ex-parte Proceedings

Remarkably, in Rewaj, *Jirga* is appointed through a mutual consent or by the *Manzghorhi*. If a party is in denial to settle a dispute through *Rewaj*, no one can compel him to start the proceedings through *Rewaj*. Thus, no decision can be passed against him. The maximum step which can be taken against him is the confiscation of *Baramtha*. If the defendant has already agreed to initiate the proceedings in a *Jirga* and the *Jirga* has already been appointed by the parties, then the *Jirga* grants him 15 days of time to respond to the claim(s) of the plaintiff. Whereas, if he fails to do so, ultimately the decision is made by the *Jirga* against him and such decision is binding upon him. In case of disobeying a decision by any party, the members of the *Jirga* will become witnesses against the party at all forums in the same matter.

Remedies in *Rewaj*

The remedies provided in *Rewaj* to the aggrieved party are *Neka* (monetary compensation or the girl(s) given to the heirs of the victim in marriage) or Revenge (*Badal*) which is taken by the aggrieved party. The rate of *Neka* or number of girl(s) given in *Neka* varies from case to case, tribe to tribe and *Rewaj* to *Rewaj*.

The Burden of Proof

Unlike the formal laws of Pakistan and a well-established principle of law of evidence states that generally burden of proof always lies upon the plaintiff in civil cases and upon the prosecution in criminal cases. However, in *Rewaj* the case is altogether different. In *Rewaj*, the burden of proof always lies upon the defendant or accused. It must be noted here that, *Rewaj* has no formal law or procedure of evidence to be referred to or applied during the dispute resolution.

Normally, in *Rewaj*, the onus of proof lies on the shoulder of the plaintiff; therefore, he produces written evidences or witnesses which are properly examined. If he fails to produce witnesses, the defendant comes forward to take oath on the holy *Quran*. For instance, tribes where land revenue record exists, disputes are settled accordingly, if not, the dispute is resolved as per the prevailing *Rewaj* of the tribe.

Nevertheless, the system of evidence is deficient in *Rewaj* due to reason that it is based on the availability of witnesses and their credibility. In *Kurram Rewaj*, written evidence can be presented if the dispute is between *Sunni* and *Shia* or Hindu and *Shia*, but a *Sunni* witness cannot appear against the *Shia* and vice versa. Moreover, the number of oath-takers may vary from case to case and tribe to tribe keeping in view the nature of the dispute. If the crime is perpetrated in a broad-daylight, at night, dense forest or mountains, the number of oath-takers in a dispute increases or decreases accordingly.

Oath on the Holy *Quran*

Sometimes a dispute takes such an ugly turn in *Rewaj* that it cannot be settled through *Rogha* and *Solah* (compromise) and is resolved through *Rewaj* which involves customary oath on the holy *Quran* called *Rewaji Le*/*Lo*. This *Rewaji Le*/*Lo* varies from tribe to tribe in term of number of the individuals who swear on the holy *Quran* to prove that they are innocent or the claim(s) by the plaintiff against them are not true.

Oath on the holy *Quran* is the main tool in *Rewaj* to settle disputes. An interviewee tells that there is no proper criterion of credibility for the oath-taker. On the other hand, in formal laws of Pakistan, oath on the holy *Quran* is permitted to be taken by a party when both the parties to a dispute agree. However, in *Rewaj*, oath-taking is mandatory on a defendant(s) or accused unless it is pardoned, or compensation is paid.

Compatibility of a Witness

Like the formal laws of Pakistan, in *Rewaj*, all persons except women can testify unless they are minors, lunatic or habitual drinkers or *podaari*.

The Issue of Re, Cross or Examination-in-Chief in *Rewaj*

According to an expert of *Utmanzai Rewaj* Gul Muhammad said that, there are no such rules of examination-in-chief, cross-examination, or re-examination in *Rewaj* like that of the Qanun-e-Shahadat Order, 1984 Pakistan; the order in which witnesses are produced and examined are regulated by the discretion of the *Jirga*.

Woman is not Allowed to Appear as a Witness

The main drawback and cruelty of the *Rewaj* is the ill-treatment of the woman of the society. It does not allow woman to appear as a witness due to the so called *Gherat* or *Namoos* (Honor) prevailing in Pashtun Society.

Number of Witness

In *Rewaj*, minimum two witnesses are required to prove a case. According to an interviewee, seven or more witnesses are called *Jamba* in *Utmanzai Rewaj* and cases in which *Jamba* appear are usually considered open and shut cases.

Accomplice in *Rewaj*

An accomplice may be a competent witness in *Rewaj*, but it does not mean that the accomplice will be pardoned. If an accomplice makes any confession, then it is the choice of the aggrieved party to take revenge either from the accomplice himself or the principal offender, but the aggrieved party must choose one between the accomplice and the principal offender.

The Issue of Revenge

Badal (revenge) is a salient feature of *Pasthunwali*. It comes into force as a result of an injustice, wrong or injure committed by a tribesman within the tribe or outside of the tribe. Revenge is taken to restore one's honor at all costs even if it takes centuries. Revenge can be for a murder, injuries, abuse or even a *Paighore*.

Usually revenge is based on the concept of tit-for-tat wherein an ear for ear and nose for nose is cut down in return. That is the reason that bloodshed and enmity in Pashtun tribesmen continue unabated for years and years. However, this concept of revenge has undergone a change and in certain tribes the bread-earner is killed instead of awarding punishment to the wrong-doer.

The formal laws of Pakistan are based on the fundamental principal of law that everyone is personally liable for his acts and wrongdoings, but this is not the case in *Rewaj*. In *Rewaj*, revenge (*Badal*) may be taken from the innocent relatives of the real culprit and in many cases; the innocent members of the culprit family pay the price for the offence committed by him. For instance, if a person commits a murder in Pashtun society, *Rewaj* allows the murder of the male members of his family and thus an innocent is murdered for the sin of another.

Similarly, in case of compromise, innocent girls of the culprit's family are given in marriage to the aggrieved family which is totally against

the teachings of Islam. In this respect, *Rewaj* regarding revenge is totally repugnant to the formal laws of Pakistan and *Shariah* (Islamic law) injections.

The Issue of Honor Killing

Honor killing as identified earlier is also a dark side of the tribal *Rewaj*, because this kind of power is frequently exercised in Pashtun society to suppress the opponents. Honor killing is also against the formal laws prevailing in Pakistan and even against the Islamic law particularly Islamic criminal and procedural law.

Right to Inheritance

The darkest side of *Rewaj* is the exploitation of the tribal women rights of inheritance. *Rewaj* is totally repugnant to the injunction of *Shariah* and the formal laws of Pakistan. *Rewaj* totally denies inheritance rights of tribal women. As we have stated earlier that woman is the pride and *Namoos* of Pashtun society but when it comes to her rights of inheritance, they deprive the same Namoos/Honor of her Islamic and legal right. Therefore, *Rewaj* regarding the inheritance rights of women is not compatible with *Shariah* and formal laws of Pakistan.

Consent of Woman in Marriage

Islam and *Rewaj* diverge conspicuously when it comes to a choice of woman in marriage. Islamic law views marriage as a socio-religious contract that requires the free consent of both the partners and parties to the contract. No doubt, the parents and guardians may offer advice to their children for choosing a partner or persuade them for a particular partner, but they cannot force them to marry without their choice. Islamic law allows women to exercise their free consent of marriage as the holy *Quran* says that there is no coercion in religion. The Islamic concept of non-compulsion in religion is equally applicable in all social and religious matters.

Similarly, Pakistani formal laws give great importance to the consent of woman in marriage and punish the offenders that compel a woman to marry without her consent. On the contrary, *Rewaj* does not permit woman's consent in marriage. A Pashtun tribeswoman cannot express her choice of marriage, let alone love-making in the *Khel*, an act involving death and destruction. In most cases, she becomes a victim of arranged marriage within the family or gets married to a man whom she does not even know. Despite of that, whether she likes her partner or not, but she is bound to live with him. In fact, a Pashtun woman

tolerates all problems of life with a smile on her cheeks apparently because she has to keep the honor of her family at the cost of slaying her aspirations and happy dreams. However, *Rewaj* does not bar the tribesman to express his choice of marriage. He can marry a girl of his choice provided it does not destroy his family's honor.

Equally, Islam permits widow/divorcee to remarry whosoever she wants to, while *Rewaj* does not permit remarriage of a widow/divorcee with her free consent. In *Rewaj*, a widow can remarry first to her husband's brother; if no one marries her among her husband's brothers, she can marry his cousin; if cousin is not available, then she can marry any close relative of her husband with the permission of her in-laws. She usually avoids another marriage and prefers to look after her children for the rest of her life. She lives for her children instead of herself.[29]

Firing in Front of Girl's House for Marriage (*Zagh*/*Ghaag*)

Fighting in front of a girl's house by a tribesman for marriage is another obnoxious act in *Rewaj*, which leads to the concept that a Pashtun is one moment a saint, and another a devil. Seldom has it happened in the tribal society that a tribesman likes/loves a girl and attempts to marry her. He sends the *Nanawate* of his elders to her house and seeks her hand in marriage,. But, if he does not succeed, then folks of the *Khel* get informed that the tribesman had sent *Nanawate* to the house of his *tarbore*/folk-man seeking the hand of his daughter/sister in marriage which has been refused. Thus, it becomes a matter of honor and *paighore* which constrains him to take an undesired action of opening fire in front of the girl's house announcing that she will be sitting in his name and will not be married to anyone except him, which has come to be called as *Zagh*/*Ghaag*. The parents of the girl would like to wed her but the people of the *Khel* avoid the risk of wedding such a girl. Sometimes, it takes an ugly course in *Rewaj*. The brother of the girl retaliates and fires in return making announcement that the sister of his *tarbore* (who had fired initially) would sit in his name and could not be married. The tribesman agrees to the marriage proposal as a result of tireless efforts of the boy's family, the elders of the *Nanawate* except the demand of the girl's family for dowry even if it is against the prevailing *Rewaj*, for it is here that *Rewaj* was violated by the boy in the first instance.

This cruel and unethical step of the tribesman spoils the future of the girl, which is absolutely un-Islamic, for Islam permits to know the

choice of a woman for marriage, which has already been discussed in detail in the preceding section. Generally, it has been noticed that the stronger in the *Khel* or the relative of the girl resorts to such disgusting acts. As the basic philosophy of *Rewaj* is the maintenance of peace and social order, it has become an acceptable social norm.[30]

This cruel social norm prevailing in the Pashtun society is totally repugnant to the formal laws of Pakistan.

Power of Attorney in *Rewaj*

Like the formal laws of Pakistan, *Rewaj* also accepts power of attorney subject to the condition that such power of attorney must be extended by the principal to the agent in presence of two adult and sane male witnesses.

Limitation in *Rewaj*

There is no limitation in *Rewaj* for institution of a suit against the defendant regarding a civil matter in Rewaj.

Conclusion

Consequently, *Jirga* system plays an important role in the Pashtun society. It serves the community by resolving all its conflicts. The existence of peace is possible only because of the *Jirga*. Though, it needs to adopt a modernized outlook now considering the effects of modernism on the new generation of the Pashtun community. The old methods and procedures of the system are difficult for the educated Pashtuns to understand. They also question the education of the people being part of the system. Therefore, the *Jirga* system needs to be modernized. Educated people should be involved so that decisions may be made according to the modern law and time keeping in view the guided principles of the *Shariah*. Moreover, the study concludes that *Rewaj*, its methods and the procedures of *Jirga* system present in the erstwhile FATA are almost compatible with the formal legal system of Pakistan. However, the concept of revenge and the inhumane practices against the women of the community need elimination, since they are not compatible with the legal system of Pakistan and Islamic law.

Suggestions

In the backdrop of the positive and negative aspects of the tribal *Rewaj*, we would like to put forward certain recommendations and suggestions in the end for the elimination of *Rewaj* practices, which are in most cases against *Shariah*, human values, logic and the formal laws of Pakistan. Therefore, this study recommend certain positive steps which

are required to be taken at the government as well as tribes' level to make *Rewaj* a substance that attracts other nations to follow and practice.

Rewaj needs to be Codified and Unified

Rewaj prevailing in the erstwhile FATA is not rigid and can be easily molded in accordance with the prevailing social environment. Therefore, the elders of the Pashtun tribesmen should put their heads together and bring about uniformity in its procedures and applications across the tribal belt. So that it may pave the way for its codification---incorporation into the constitution of Pakistan.

Evidently, *Rewaj* is lex non-scripta and provides solutions to all conflicts, but it varies from tribe to tribe. Therefore, it needs codification and unification to provide foundation upon which the edifice of the formal legal system in erstwhile FATA may be erected. In this regard, the political administration is required to constitute *Jirgas* at agency level to discern a viable solution for the unification and codification of *Rewaj* of different tribes. The agency level *Jirgas* can be amalgamated then to constitute a grand *Jirga* of the erstwhile FATA elders to deliberate over the unification and codification of *Rewaj* for the whole tribal belt.

The concept of *Rewaj* being inconsistent to statutory laws and the writ of the central authority is no more valid in the case of Pakistan. Pakistan is a federation wherein the federating units have constitutional power to make legislation on the provincial subjects according to the local environment keeping in view the national and international obligations. Unfortunately, the legal system in Pakistan has been devised on the basis of the inherited English laws without focusing on the local customs and habits of the people of the federating units. Obviously, the law enacted by the parliament means the law formulated by the majority party i.e. the political party winning more seats in the bigger province; therefore, its application on the people of erstwhile FATA would be unrealistic. Hence, it is recommended that the *Rewaj* already prevailing in the erstwhile FATA must be made part of legislation for the said area after certain amendments where required. In this connection, Olaf Caroe mentions, 'that law should be grown out, in some sense, from the society. It should be a projection of the common personality. The law of one community cannot be applied to a society with utterly different standards without the direst results'.[31]

Bad Social Norms must be Abolished

In addition, there are certain practices in *Rewaj* that have been identified as un-Islamic, inhuman. They need to be discontinued. In this regard, the elders of the Pashtun tribes may sit together to eliminate those obnoxious practices and put *Rewaj* in accordance with the modern world legal and social norms. The curses prevailing in *Rewaj* in shape of *Zagh*/*Ghaag* regarding a girl's/woman's marriage and the practice of injustice division of inherited property which deprives tribal women from inheritance must be abolished to bring *Rewaj* in conformity with the modern world legal and social norms as well as with the formal justice system prevailing in Pakistan. Any other fundamental defects must be removed from the *Rewaj* by the elders of the erstwhile FATA to make *Rewaj* compatible with the formal legal system of Pakistan as well as with the International law. Until and unless these curses regarding the tribal woman are abolished, the *Rewaj* would not be sustainable.

***Rewaj* should be Taught Formally**

Indeed, most of the *Rewaj* is unwritten. Therefore, there are very few experts (elders) of *Rewaj* left in the erstwhile FATA. To keep *Rewaj* alive, it needs proper government supervision to establish such institutions, where *Rewaj* is formally taught to the interested youth of the erstwhile FATA.

Proper Remuneration must be Paid to the Members of a *Jirga*

Normally, remunerations are paid by the aggrieved parties and the offenders in *Rewaj*. The government should pay remunerations to the elders of council in criminal cases, because it is the state's duty to prosecute offenders. Since, offence is considered not only against an individual but against the whole society. Thus, it is against the justice system to compel the aggrieved party to pay remuneration to the elders of council. Therefore, the government must pay remunerations to each *Jirga* established for the settlement of a criminal case and the parties should not be held responsible for its payment.

Revenge must be Left to the State Authorities

The most dangerous aspect of *Rewaj* is the validity of concept of *Badal* (revenge). This power is arbitrarily exercised by the tribesmen and results in unending enmity between the parties. After the merger of FATA in KPK, there is no space left for arbitrary actions and thus the practice of Revenge must be left to the state authorities to exercise it.

The Tribal Woman must be Given Importance

From the detailed study of tribal *Rewaj*, one thing is crystal clear that *Rewaj* treats women inhumanly. *Rewaj* gives her neither inheritance rights nor the right to testify any matter. This inhuman treatment of women is completely against the *Shariah* and the formal laws of Pakistan. Thus, *Rewaj* must be amended by the elders of erstwhile FATA in this regard to put an end to the exploitation of the tribal women.

The Government should Provide Enforcement Mechanism for the Execution of Judgments made by a *Jirga*

There is no enforcement mechanism for the execution of judgments made by the elders of council and one can easily violate or deny their judgments. Therefore, the government should back the right judgments made by the elders of council to maintain peace and law and order situation in the erstwhile FATA.

Oath Taking on the Holy *Quran*

The mechanism of oath taking on the holy *Quran* in criminal and family cases is against the *Shariah* principle that everyone is responsible for his own acts. Since, the entire *Rewaj* relies on oath taking on the holy *Quran* only. And, hence, Islamic principles and procedural laws are totally neglected which tantamount to an injustice. Resultantly, in *Rewaj*, instead of the real culprit and defendant, other innocent male members are held liable to take oath on the holy *Quran* for sins and wrongs of others. This practice is mostly un-Islamic and against the spirit of justice. Therefore, the elders of the erstwhile FATA must also amend this practice particularly in criminal, family and personal cases, where the presence of eye witnesses is mandatory. Thus, in this way, the real culprits or defendants should be held liable after mutual consent of the parties by following Islamic procedural law.

Practice of *Neka* (Giving Girls In Marriage) in *Rewaj*

Neka of giving innocent girls/women in marriage without their consent for the offence committed by their brothers/fathers/uncles etc. to the members of the aggrieved family is yet another cruel and inhuman practice of *Rewaj*. Though *Rewaj* is of the opinion that this practice is beneficial in changing the enmity into everlasting friendship, this is not the case and girls given in *Neka* spend their whole lives as slaves and other women of those families consider them inferior in status. Therefore, this inhumane, barbaric, cruel and unjust practice must also be amended and stopped immediately. In case of violation, the

government should arrest the elders of such *Jirga* and punish them.

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