

Analyse der Staatendokumentation



AfPak

Principals of the tribal & clan structure

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1. Ethnic Groups and Structures

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Introduction

From an ethnic standpoint - by any definition of the term "ethnic" - Afghanistan can be characterized by pronounced diversity.¹ Questions concerning ethnicity have not always been as politically-significant as they are today. The chaos of Communist rule in the 1980s with a nationality policy based on the Soviet model, the civil war of the 1990s, the frontlines of which often followed ethnic borders, and the Taliban rule from 1995 to 2001 with its intractable interpretation of Islam and linguistic preference for Pashto increased the significance of ethnic issues. It therefore became necessary to refer in Afghanistan's legal framework to the ethnic make-up of its population for the first time, in Article 4 of the new constitution, which was adopted in 2004. In the third paragraph, it states

The nation of Afghanistan is comprised of the following ethnic groups: Pashtun, Tajik, Hazara, Uzbek, Turkman, Baloch, Pashai, Nuristani, Aymaq, Arab, Qirghiz, Qizilbash, Gujur, Brahwui and others.²

This article makes it clear that Afghanistan's national unity is not to be based upon the rejection of ethnic differences. This nomenclature, however, also gave legal significance to these groups in Afghanistan's political affairs. Such lists give the impression that these groups can be readily and precisely discerned using comparable criteria. In everyday life, however, things are not usually as clear or straightforward. For instance, one might ask why the speakers of four completely different languages (Kati, Ashkun, Waigali and Prasun) were grouped under the collective term "Nuristani", whereas the speakers of various Pamir languages are not

¹ Different definitions of the categories "ethnic identity", "ethnic group" or "ethnicity" can be found in the scientific literature on Afghanistan. As an example, reference is made to the following works and the literature cited therein: Orywal 1986: 73-74, Schetter 2003: 63 ff., Tapper 1988.

² English translation quoted according to International Law Project Information, <http://servat.unibe.ch/i~l/af00000-.html>

mentioned at all, although they are not only linguistically but as Ismaili also religiously distinct from most other groups. One might also ask why “Baluch” and “Brahui” appear as two separate entries on this list, particularly since Baluch politicians continuously emphasize the unity of these groups and always present the Brahui as an inseparable component of the Baluch tribal organization, despite their different first language.

There is no doubt that some of these inconsistencies can be accounted for by examining the political and military balances of power in the first few years following the fall of the Taliban, while the text of this constitution was being drafted. Other inconsistencies pertain to the ambiguity of the group names listed here. Some can be more clearly differentiated from one another. Some group names are more flexible than others and hence it is sometimes a matter of interpretation as to who belongs to which group, whereas with other groups such interpretations are inconceivable. Some group names describe a long-existing *status quo*, whereas others describe groups that are in flux. This ethnic nomenclature is thus based on mixtures of a variety of different criteria. Language is one possible distinguishing feature, but this criterion is not necessarily equally applicable in every case.

However, one thing that all of these groups share is the fact that in most of the languages in Afghanistan, they are known collectively by the generic name *qaum*.³ However, this term can also refer to other groups and in a given case is not necessarily any more definitive than each individual group name.

In this respect, the ethnic nomenclature in the Constitution actually reflects the complicated reality. The ambiguity of the term *qaum* caused evident difficulties when the text of the Constitution was translated from Dari and Pashto into English or German. The term *tribe* was preferred in a translation published by the Afghan embassy in Washington, DC.⁴ In a German translation that was done in collaboration with the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, three different terms were used as German language equivalents for the source language word *qaum*, namely: *Völkerschaft* (people, tribe), *Ethnie* (ethnicity, race) and *ethnische Gruppe* (ethnic group).⁵ Owing to the ambiguity of this word, none of the three possibilities can be considered the only adequate translation. At times, *qaum* is actually used as essentially equivalent in meaning to *qabila*, *tāyefa* (both of which mean “tribe”) and other words, in which case it designates a tribal confederacy which can vary in size and genealogical depth. In other cases, *qaum* can acquire the meaning of words such as

³ In this text the character q stands for a guttural plosive formed deep in the throat that is close to k but has no counterpart in English. A simplified transcription essentially based on English phonetics is used for other native words and names. Most characters and pairs of characters (sh, zh, ch, kh, ai, au) can be pronounced almost like in English. A macron over a (ā) shows that a must be pronounced as a long vowel. The combination gh should be pronounced as guttural 'r' (sometimes known as French 'r').

⁴ See *The Constitution of Afghanistan*, Article 4.

⁵ See *The Constitution of the Islamic Republic of Afghanistan*, Articles 4 and 6 on p. 4 and also Article 20 on p. 6.

*melliya*t (ethnic group, people) or even *mellat* (nation). Other meanings that are more or less similar to the ones mentioned here may also be appropriate in certain cases.

The concept of *qaum* should be viewed as a continuum within which human groups become defined by the inclusion and exclusion of other groups in a given region and at a given time.⁶ It describes identity as a cumulative or polymorphic feature that coalesces from a pool of individual features such as origin and ancestry (via the paternal line), language, culture, shared history, customs, lifestyle, religion, settlement area, etc. Depending on the situation, different individual features from this pool may be used or ignored to classify someone as belonging to the same group or as a member of another group. The situation-dependent nature of identity reveals a broad spectrum of possible compositions. When it comes to classifying other persons as belonging to the same *qaum*, the same criterion by which certain groups are excluded from a *qaum* can seem less important with respect to other persons or groups. Decisions of this kind follow social rules and are neither based on individual judgments or preferences, nor a result of arbitrary factors.

Languages

Both Dari and Pashto are official languages in Afghanistan (Dari: *zabān-e rasmi*, Pashto: *rasmi zheba*). It is no coincidence that no reference is made to a “national language”, as such a status would not be appropriate for either of these languages.

Dari refers to the variety of Persian (*fārsi*) spoken in Afghanistan, which is closely related to the Persian (Farsi) of Iran and the Tajik of Central Asia (in Tajikistan and Uzbekistan). The first time that the name “Dari” was used as an official designation was in the 1964 Constitution, in order to distinguish the Afghan variant of Persian from Iranian Persian and Tajik. The name *fārsi* (Persian) is still frequently used in colloquial language today as a designation for Afghan Dari. The subtly chosen combination designation *fārsi-ye dari* (Dari Persian) is also heard. In recent years, however, Dari has become increasingly more common as the name of the language, even in less politicized contexts. A modified Arabic alphabet is used for both Dari and the Persian (Farsi) that is spoken in Iran.⁷ Persian has a highly developed written tradition. For centuries it was the leading cultural, scientific, and administrative language in the region that includes Afghanistan and its neighboring countries. Hence Persian or Dari has remained the leading language in these areas today.⁸ The Dari dialect spoken in Kabul has acquired national significance as a colloquial language. It has been disseminated via the media and many view it

⁶ Also see Orywal 1986, 74.

⁷ The same script was also used for the early forms of Tajik, before it was replaced by a Latin-based and later by a modified Cyrillic script. See Perry 2005, 33–60.

⁸ For information on the development and historical role of Persian/Dari in the Islam world, see Lazard 1975 and Fragner 1999.

as the modern form of the Dari-Persian language in Afghanistan. Some ethnic groups in Afghanistan (see below) speak Dari or one of its dialects as a first language. Members of many other ethnic groups are proficient in it as a second language.

Pashto, the second official language, is primarily spoken as a first language by the Pashtuns in Afghanistan and Pakistan. Pashto has a confirmed written tradition dating back to the late 16th century based on the Arabic alphabet.⁹ Although there were numerous efforts during the 20th century to promote the use of Pashto as an official language, it still remains less standardized than Dari. There are far fewer Dari speakers who are proficient in Pashto as a second language than vice versa. In the context of everyday language, Pashto exhibits considerably more influences from Dari than vice versa.¹⁰

There are also numerous minority languages in Afghanistan. Some are spoken only in Afghanistan, whereas others are also spoken in neighboring countries. In 1980, five minority languages were elevated to the status of so-called "national languages" (Dari: *zabān-e melli*, Pashto: *melli zheba*), in order to distinguish them from the two official languages Dari and Pashto on the one hand and from the languages of smaller minorities on the other.¹¹ These languages include Uzbek, Turkmen, Baluchi, Pashai and Nuristani.¹² Elementary school books, newspapers and books are published in them and radio programs are broadcast in them.¹³ Article 16 of the 2004 Constitution provides that these languages, as well as the Pamir languages, are recognized in their speaking areas as third official languages along with Dari and Pashto and that publications are permissible in all languages spoken in Afghanistan.¹⁴ Among the minority languages, Uzbek, Turkmen, Baluchi and some of the Pamir languages are also spoken in neighboring countries, although they have different writing systems and standard forms there.

Dari and Pashto are the languages of instruction in Afghan schools. Reading and writing are taught in one of these two languages, depending on the region, and the respective other official language is generally taught as a second language from the 3rd grade on. Speakers of minority languages are also instructed in Dari or Pashto from the beginning on. As an additional course offering, some institutions offer instruction in one of the "national languages".

A few other minor languages (for exampleOrmuri, Parachi, Wotapuri, Tirahi, Sanglechi) are currently in a very precarious position. As a result of extensive migrations and small numbers of speakers, they are at risk of being given up completely and are considered relict languages.¹⁵

⁹ Also see MacKenzie 2009, 464.

¹⁰ For information on the not always tension-free relationship between Dari and Pashto, see Rzehak 2012a.

¹¹ The term "national language" as used here refers to "nationality" (*melliyat*) and not "nation" (*mellat*).

¹² Actually Kati, the most widely spoken language of Nuristan, which also serves as a *lingua franca* there.

¹³ See Kieffer 1983, 79 ff. and Grünberg 1992: 239-242.

¹⁴ *Qānun-e asāsī*, Article 16.

¹⁵ Kieffer 1983, 84 and Kieffer 1985 provide an overview in table form of the typology and status of the languages of Afghanistan.

Ethnic Groups

The Pashtuns

We do not have reliable statistics on the peoples or ethnic groups of Afghanistan, nor on the numbers of speakers of the various languages. For this reason one can only assume that the Pashtuns may account for approximately half of the population. The settlement area of the Pashtun people is a crescent-shaped belt that extends from Northwestern Afghanistan, across the entire south of the country and the regions east of Kabul, and into Northwestern Pakistan. Smaller groups are scattered throughout the entire country, including its northern region, where Pashtuns were intentionally relocated at the end of the 19th century or where they have since decided to settle.¹⁶ There they are referred to as *nāqelin* (immigrants).

Depending on the region and dialect, they refer to themselves as *pashtun* or *pakhtun*. They call their language *pashto* or *pakhto*, respectively. The term *pathan* is also found in the literature and is a foreign term. It is used in Southern Asia and was introduced into the English language by British colonists. Members of other ethnic groups in Afghanistan frequently refer to the Pashtuns as *afghān* or *aughān* (Afghan), and to an increasingly greater extent in recent years, also *pashtozabān* (Pashto speakers). Equating “Afghan” and “Pashtun” in this manner is a key factor for the Pashtuns’ self-image as the State-reigning or at least eponymous ethnic group of Afghanistan. The meaning of “Afghan” as “citizen of Afghanistan” postulated in the constitution (see above) therefore does not always correspond to its use in language.

Their genealogical traditions and the tribal structure based thereon form the basis of the Pashtun identity. According to tradition, all Pashtuns see themselves as descendants of a certain Qais, who is said to have lived during the lifetime of the prophet Muhammad and who adopted the name Abdur Rashid after converting to Islam. His three sons and one adopted son became the founders of four super-tribal confederacies. Their sons and grandsons became the forefathers of tribes and sub-tribes whose descendants in turn founded sub-tribal confederacies. Theoretically, with every new generation new confederacies can appear. A key feature of the Pashtun tribal structure is that it is entirely patrilineal (based on the paternal line). There are kinship groups of different sizes, depending on how many generations are taken into account. Lastly, every Pashtun living today knows more or less precisely how his own kinship group fits into this patrilineal tribal system, even though certain details of the genealogy may be open to debate. Such knowledge is preserved and handed down in written form in the form of

¹⁶ Also see Tapper, Nancy 1983 and Schetter 2003, 228 ff.

family trees (*shajara*). This tribal structure is dynamic, as each new generation gives rise to new subgroups whose male members in turn found other subgroups.¹⁷

The most important unit in everyday life is a kinship group usually designated as *kahol* in Pashto and which is more or less the same as a clan. In most cases, the common ancestor of such a group lived six to eight generations ago. Most issues of everyday life are governed at this level of tribal structure: marriages are arranged, people help one another in farming or in building homes and land disputes are arbitrated and mediated. This is also an important level for political opinion-forming. Larger tribal confederacies are called *qabila* or *tāyifa* (tribe), *taber* (sub-tribe), *zai* or *khel* and *plarina* or *psha/pkha* (clans). They are not necessarily unilocal structures, and their members may be widely scattered. Pashtuns constitute the only ethnic group in Afghanistan which has such a highly developed tribal structure with an all-encompassing genealogical tradition, wherein every member alive today can theoretically trace his lineage back to a legendary ancestor of all Pashtuns and identify the corresponding links. Although other ethnic groups have comparable tribal structures, they do not have the genealogical depth of the Pashtun tribal structure.

Large Pashtun tribal confederacies in Afghanistan include the Ghilzai,¹⁸ with the Tokhi, Hotaki, Sulaimankhel, Alikhel, and other sub-groups, the Durrani with the Alikozai, Acakzai, Popalzai, Barakzai, and other sub-groups, and also the Yusufzai with the Momand, Afridi, Shinwari, Waziri, Safi, Mangal, and other sub-groups.

Closely linked to the tribal structure is a complex system of moral concepts and codes of behavior, which are frequently grouped under the name “Pashtunwali” and which prescribe that for a Pashtun it is not enough merely to speak Pashto, but that it is also necessary to “do Pashto”, in other words follow the rules of this code of honor and behavior.¹⁹

Belonging to a certain tribal confederacy not only entails many obligations but also rights, which is why such confederacies can be seen as solidarity groups. When two Pashtuns meet each other for the first time, they may spend the first several minutes discussing their respective tribal affiliations. If they discover common ancestors at some level, then what started as a casual acquaintance may quickly develop into a relationship with far-reaching obligations and offers of assistance.

The Pashto language is a necessary and important, but ultimately not a sufficient, criterion for identification as Pashtun. In some regions of Afghanistan, Pashtuns have long since stopped using Pashto and speak Dari as their first language instead. No Pashto-speaking Pashtuns remain in the city of Herat; all Pashtuns living there use the local dialect of Dari as their first

¹⁷ For information on Pashtun tribal structure, also see Steul 1981, 28 ff. and Anderson 1979, 223 ff.

¹⁸ The name forms ending in *-zai* are actually singular and as tribal names it would be better to use the plural form ending in *-zi*, for instance Ghilzi in this particular case. However, the *-zai* forms have become established in the literature and shall therefore be used here as well.

¹⁹ See Steul 1981, Anderson 1979 and Rzehak 2011 and the corresponding chapter in this book for information on this.

language. There are also Dari-speaking Pashtuns in rural areas of Herat Province,²⁰ in Nimroz Province, in parts of Uruzgan Province, in Balkh Province, in the western part of Nangarhar Province, and also in the city of Kabul.²¹ Neither their neighbors nor other Pashtuns have any doubt that these groups are Pashtuns. Some may consider them to be “bad Pashtuns” for having abandoned the language of their ancestors, but they are nevertheless thought of as Pashtuns. Tribal structure and behavior according to the code of honor are more important for classification than the sole criterion of whether the Pashto language is still spoken.

In Southwestern Afghanistan there are Pashtun groups who speak Baluchi as their first language, and Baluch groups who speak Pashto as their first language. In spite of the linguistic differences, they feel that they are members of common tribes, which are either Pashtun or Baluch tribes, as the case may be. Such mixed groups are referred to as *aughān-balōch* (Pashtun-Baluch).

The Pashtun people were traditionally nomadic or semi-nomadic cattlemen, farmers and traders. They have long since become urban dwellers, where they pursue a wide variety of trades. Pashtun tribes have always provided military support to the Afghan monarchy and were granted certain privileges (including, for example tax breaks and a large degree of autonomy in internal affairs) in exchange for this.

The Tajiks

Historically, speakers of Dari-Persian have identified themselves using very different criteria. These include their settlement area or their region of origin. Accordingly, they called themselves *kāboli* (from Kabul), *herāti* (from Herat), *mazāri* (from Mazar-i-Sharif), *panjshēri* (from Panjshir) or *badakhshi* (from Badakhshan), for example. They could also be named for their way of life. The name *tājik* (Tajik) thus referred to sedentary Persian-speaking farmers or city residents of the Sunni denomination. In a similar manner, the names *aymāq* and *ēlāt* stood for Persian-speaking semi-nomadic tribal groups, likewise of the Sunni denomination. Speakers of Dari-Persian could also be grouped and designated according to their ethnic origin, for example as *hazāra*, *arab* (Arab) or *balōch* (see below). These names and accompanying meanings are still common today. Dari-Persian is a feature that unites all of these and other groups. In spite of that, there was no all-inclusive name under which all of these groups could be classified according to the language criterion. The word *pārsiwān* (Persian speaker), which was heard far more often 20 or 30 years ago than it is today, could be considered as such an all-inclusive group name. In reality, however, this name was never applied to all speakers of

²⁰ Here Pashtuns are classified according to their way of life as *māldār* (cattlemen, ranchers) or *kuči* (nomads), and on a higher level as *aughān* (Pashtuns), regardless of their respective languages.

²¹ Observations by the author in field studies conducted between 2002 and 2012 in the regions in question.

Dari-Persian.²² The term *tājik* (Tajik) is now being proposed as a category under which nearly all speakers of Dari-Persian can be classified. Before the civil war, this name was used as a term of self-designation almost exclusively by Dari speakers in a few mountainous regions in Northeastern Afghanistan.²³ Nowadays, Dari speakers in Kabul, Mazar-i-Sharif or Ghazni also use it as a term of self-designation. Furthermore, government authorities also use the name “Tajik” in reference to Dari speakers in many other regions. Only the Dari-speaking residents of Herat still seem to have some difficulty in viewing themselves as Tajiks; however, when it comes to establishing their ethnic affiliation in official documents (for example, when applying for a personal identity document), they have no trouble being considered as Tajiks. After all, the constitutionally-established nomenclature of Afghan ethnic groups does not recognize any *herāti* entry. Similarly, other Dari-speaking groups such as the Aimaq, Arabs, or Dari-speaking Baluch people in Northern Afghanistan, and even the speakers of Pamir languages in Badakhshan Province, are often officially registered as Tajiks nowadays.²⁴ In present-day ethnically-dominated political conflicts, the greater the number of members a group is able to show, the more political influence it seems to have. Hence the ethnic designation “Tajik” is being favored from a political standpoint. Because of the politically-motivated inclusion of many other groups, Tajiks can be viewed as an ethnic group in a nascent state. It appears that the Shiite Hazara is the only Dari-speaking group to whom the name “Tajik” is not applicable.²⁵

The Hazara

The Hazara (who refer to themselves as *azāra*, *azra*, *āzra* or *āzragō*, depending on the region and dialect spoken) traditionally settled in the highlands of Central Afghanistan, which extend from Kabul in the east to Herat in the west, i.e. in the region known as Hazarajat (*azārajāt*).²⁶ The heartland of this region comprises Bamiyan, Ghazni, and Daikondi Provinces as well as the western part of Wardak Province. Individual parts of Ghor, Uruzgan, Parwan, Samangan, Baghlan, Balkh, Badghis, and Sar-i Pul Provinces can also be considered as part of this region.

²² In some regions, especially in Western Afghanistan, only Persian speakers of the Shiite denomination were designated as *fārsiwān*. In other regions, including Kabul or northern Afghanistan, the name *fārsiwān* as a designation for Dari Persian speakers formed a sort of contrast to Pashto speakers or to speakers of Turkic languages such as Uzbek or Turkmen, the criterion of religious denomination playing no role whatsoever. Orywal 1986a: 49-50 and observations by the author in Kabul and northern Afghanistan between 1988 and 2012.

²³ As speakers of another language, the Pashai in Eastern Afghanistan also used the name Tajik to distinguish themselves from their Pashto speaking neighbors. Orywal 1986, 22.

²⁴ This information is based on surveys conducted by the author among the population in Kabul and Herat as well as in the provinces of Balkh, Kunduz, Takhar and Badakhshan between 2002 and 2012.

²⁵ There are exceptions here as well: Hazara who settled in the border province of Nimroz after returning from exile in Iran were supposedly registered as Tajiks according to statements by Baluch informants from this province.

²⁶ Older texts also give the name *gharjestan* as a designation for this region, although this term is only used for nostalgic reasons nowadays. See Shahrīstānī 1366 and 1367.

Key features of the ethnic identity of the Hazara are the Shiite denomination (mostly Twelver Shiites) and their visual appearance, leading to the commonly-held belief that the Hazara are of Turko-Mongolian descent. There is an Ismaili (Sevener Shiite) Hazara minority living chiefly in the northeastern part of Hazarajat. Just as important as religion and ancestry to the ethnic self-image of the Hazara is a long history of oppression, displacement, and marginalization.²⁷ From 1891 to 1893, the Afghan emir Abdurrahman Khan waged a war of conquest against the Shiite Hazara in the Central Highlands and, as a result, countless Hazara were driven from their former settlement areas and Pashtuns took over their territories (especially in present-day Uruzgan Province). Even before then, Hazara used to move to the cities in the surrounding plains to find work as porters. However, after the conquest of Hazarajat a massive exodus began. Many Hazara emigrated abroad, chiefly to Iran and to present-day Pakistan,²⁸ and also to other regions in Afghanistan, especially in the north. After being driven to cities such as Ghazni, Mazar-i-Sharif, and Kabul, impoverished farmers were forced to work as water carriers or porters at the bazaars or undertake other forms of menial labor.²⁹ In the civil war years after 1992 and after the Taliban seized power, the Hazara experienced renewed waves of massive ethnic oppression and pogroms. Once again, many fled to Iran and Pakistan, where some of them spent twenty years in exile. More than a few took advantage of this opportunity and attended schools and universities in Iran, in order to return to Afghanistan as young academics after 2001. Several private institutions of higher education have been founded by such Hazara who have returned from Iran and can be found today in Kabul. These schools have branches in other cities as well. They are attended by students from nearly every ethnic group in the nation.³⁰ Within the Hazara group, there are individuals who claim to be descendants of the Prophet and who are thus considered to be Sayed.³¹ They have an elitist self-image and therefore do not permit their daughters to marry Hazara who are not Sayed themselves, although they may marry the daughters of Hazara who they do not believe to be Sayed.

The Hazara speak their own dialect of Dari Persian, which is called Hazaragi (*azāragi*) and differs distinctly from standard spoken Dari.³² However, this dialect is only spoken in the traditional settlement area in Central Afghanistan and by larger emigrant groups in rural regions of other parts of the country. The Hazara who went to Kabul or to one of the other cities in Afghanistan strive to speak standard Dari or the respective local dialect in order to avoid

²⁷ See Monsutti 2005: 62.

²⁸ At that time many Hazara settled in the Iranian city of Mashhad and the surrounding area, where they have since become known by the name of *khāwar*. There is also a large Hazara community in the Pakistani city of Quetta, which dates back to the displacements of the late 19th century.

²⁹ See Monsutti 2005: 63-68, Schetter 2003: 223-227.

³⁰ Notable examples are Ibn-Sina University (see <http://www.ibnsina.org.af/>) and the Gharjistan Institute of Higher Education (see <http://www.ghu.edu.af/>).

³¹ More detailed information on the Sayed is given below in the subchapter on Arabs and Sayed.

³² See Efimov 1965 and Dulling 1973.

discrimination because of their speech.³³ As a Shiite minority, however, they still suffer religious persecution.

The Uzbeks

The Uzbeks (who refer to themselves as *uzbak* or *özbek*) traditionally settled in the northern parts of the country that were known as Afghan Turkestan until the end of the 19th century and had close cultural and economic ties to neighboring regions in Russian Turkestan and in the Emirate of Bukhara. After the establishment of Soviet power in Russian Turkestan (1919), these ties were severed and during the collectivization years (1928-1938) in particular, many Uzbeks fled from there to Afghanistan, where they became known as *mohājerin* (migrants) in order to distinguish them from the long-established “native” Uzbeks (*watani*). Some groups still have names that indicate their original settlement areas north of the Amu Darya (*bukharai*, *farghanachi*, etc.).³⁴ A tribal classification with genealogical tradition is not an absolute necessity for the ethnic self-image of the Uzbeks of Afghanistan.

Uzbeks are Sunni Muslims³⁵ and their settlement areas are in both rural regions and urban centers (Mazar-i-Sharif, also Kabul, Kandahar, Lashkar Gah, etc.), where their economic systems and lifestyles differ very little from those of Dari-speaking groups. Inter marriages between Uzbeks and Tajiks are not at all rare. Uzbeks in the cities and in many rural areas are bilingual. Along with the Uzbek language, they also have a near-native command of Dari. Uzbek belongs to the Turkic language group.³⁶ A written form of the language has been in existence since the 15th century, when a standard language with a classic literary tradition developed under the rule of the Chaghatai Khanate. In later times, the written language was often simply designated as *torki*. The frequent bilingualism notwithstanding, the Uzbek language plays a key role in the ethnic self-image of the Uzbeks.³⁷ Efforts are currently underway to transcribe Uzbek in Afghanistan to the Arabic-Persian alphabet.³⁸ During the Soviet era in Uzbekistan, initially a Latin-based script and then a Cyrillic-based script were used. There has been a tendency towards a Latin alphabet since Uzbekistan’s independence.

³³ The Hazara (*khāwari*) who have been residents in Mashhad for many years strive to speak the Persian dialect of Mashhad. The Hazara who have been living in Quetta since the end of the 19th century speak a unique form of Hazaragi, which from an Afghan perspective has many archaic features and is also strongly characterized by the linguistic conditions in Pakistan (influences from Urdu, English, and Pashto).

³⁴ See Shalinsky 1979: 1-4.

³⁵ See Baldauf 1989 and others for information on the religious practices of the Uzbeks in Northern Afghanistan.

³⁶ See Baldauf 2011 for information on the Uzbek dialects in Afghanistan.

³⁷ See Shalinsky 1979: 9, and also Baldauf 2010, Centlivres 1975, Rasuly-Palaczek (1993), Orywal 1986: 24-25.

³⁸ See Baldauf 2005 for information on this.

The Turkmen

The Turkmen (who refer to themselves as *torkman* or *türkmen*) are Sunni Muslims and their chief settlement areas lie in the northwestern regions of Afghanistan between Herat and Balkh. Smaller groups are found in Kunduz Province and in the cities of Kabul and Lashkar Gah. They have a genealogical tradition that unifies the entire group. The most important tribal confederacies in Afghan territory are the Arsary (Ersari) and the Teke (Tekke). There are also the Saryk (Sariq), Yomut (Yomud) and others. In the early 20th century, many Turkmen moved from Soviet Turkmenistan to Afghanistan, where, like the Uzbeks, they too were classified as *mohājerin* (migrants) and *watani* (natives). Turkmen were traditionally nomadic horsemen. The majority in Afghanistan now live a semi-nomadic lifestyle based on agriculture and animal husbandry. Karakul sheep as well as carpets and jewelry are important economic products. Besides Afghanistan and Turkmenistan, Turkmen can be found in Iran, Turkey, Pakistan and China.³⁹ Turkmen is a Turkic language. In Afghanistan, efforts are currently underway to transcribe Turkmen into the Arabic-Persian alphabet.⁴⁰ Meanwhile, a Latin alphabet is used in Turkmenistan.

The Aimaq

The Aimaq (who refer to themselves as *aimāq* or *chahār aimāq*) are Persian-speaking groups of Sunni Muslims. Their chief settlement areas lie in the northwest of Afghanistan (Herat, Badghis, Faryab, Ghor, and Farah Provinces) and they originally led a nomadic or semi-nomadic lifestyle. The majority have since adopted a sedentary lifestyle and nowadays only certain members of Aimaq families accompany the herds for the migrations in search of grazing land. The word *aimāq* means “tribe”, and the other designation that one encounters (*čahār aimāq*), means “four tribes”. Accordingly, there are four distinct groups that are considered part of the Aimaq: Taimani, Firuzkuhi, Jamshidi, and the Sunnite Hazara of Qaleh-ye Now. Each of these groups has its own genealogical tradition and a tribal structure based thereon. However, there are no overall genealogical connections. Other groups such as the Timuri, Zuri, Maleki, Mishmasht, and Taheri are sometimes also assigned to the Aimaq. Individual groups claim genealogical connections to the Pashtun tribal structure. Their ethnic self-image as Aimaq is based on Dari Persian being their language, the Sunni faith, and a relatively closed settlement area in Northwestern Afghanistan.⁴¹ Since the Aimaq are Dari speakers, efforts are currently

³⁹ See Franz 1972, Orywal 1986: 28-29.

⁴⁰ A dictionary of the Afghanistan version of Turkmen, with parallel entries in Dari, was published as a first step. See Rāsekh 1388.

⁴¹ See Rzehak/Pristschepowa 1994, Janata 1962/63, Orywal 1986: 29-34

underway in some areas to assign them to the Tajik ethnic group (see above). Scattered Aimaq populations can be found in neighboring regions in Iran and Turkmenistan.

The Baluch People

The Baluch people (also spelled “Baloch”, who refer to themselves as *Baloch*) have a genealogical tradition with a tribal structure based thereon. However, this tradition does not exhibit the same genealogical depth and complexity of that of the Pashtuns. The Baluch people were traditionally nomadic cattlemen. Nowadays, they mainly engage in sedentary agriculture and animal husbandry. The settlement areas of the Baluch people extend over several States (Pakistan, Iran, Afghanistan, and Turkmenistan). There are more or less closed settlement areas of Baluch people in the southwest of Afghanistan, specifically in Nimroz, Farah, Herat, Helmand and Kandahar Provinces. The Baluch people in these areas speak Baluchi (*balochi*) as their first language and have also largely maintained their tribal structure. Among them lives the “Brahui” (*brāhui*) who are thought of as a separate tribe within the Baluch tribal structure. Although they speak a Dravidic language (Brahui) as their first language, they are all proficient in Baluchi as a second language and also view themselves as Baluch.⁴² Mixed Baluch-Pashtun tribal confederacies with either Baluchi or Pashto as their first language have already been mentioned above.⁴³

Isolated groups of Baluch people are scattered over many areas in Central and Northern Afghanistan. They differ from the Baluch living in South-West Afghanistan in that they lack a closed settlement area and analogous genealogical traditions, and have a different language. None of these groups speak Baluchi. The majority speak Dari Persian and there are some Uzbek- and Pashto-speaking groups as well. There are a few Baluch in Uruzgan and in North Afghanistan who are of the Shiite denomination. All other Baluch people living in Afghanistan are Sunni.⁴⁴ Baluchi is an Iranian language. After 1980 and again after 2001, attempts were made to introduce a writing system based on the modified Arabic alphabet of Dari and Pashto.⁴⁵ In Pakistan, a writing system for Baluchi based on the modified Arabic alphabet of Urdu has been in existence for several decades, but has only been adopted to a limited extent.⁴⁶ Baluchi is mostly just a spoken language in Iran.

⁴² See Orywal 1982 for information on Baluch and Brahui people in SW Afghanistan.

⁴³ See the Pashtun chapter.

⁴⁴ See Rzehak 2012 and Orywal 198: 34-36 for information on this.

⁴⁵ These efforts resulted in the publication of a dictionary of Afghan Baluchi with parallel entries in Dari, Pashto, and English. See Pahwal 2007. For information on the transcription efforts, see Rzehak 2003 and Kieffer 1983: 79 ff, and also Grünberg 1992: 238 ff.

⁴⁶ See Jahani 1989.

The Nuristani

The settlement areas of the Nuristani (who refer to themselves as *nurestāni*) are located in difficult-to-reach high mountain valleys in Kunar and Laghman Provinces in the eastern part of Afghanistan. Until they were forcibly converted to Islam in 1895 and 1896, their settlement areas were known as Kafiristan or Baloristan in reference to their indigenous religions (both names mean “Land of the Infidels”). After their conversion to Sunni Islam, the name was changed to Nuristan (“Land of Light”).⁴⁷ The Nuristani speak four different languages (Kati, Ashkun, Waigali, and Prasun). Along with the much larger Indo-Aryan and Iranian language groups, they form a separate group within the Indo-Iranian language group. The individual Nuristani languages are sub-divided into various dialects and vary greatly.⁴⁸ Kati has the status of a *lingua franca*.⁴⁹ Closely-related languages are spoken in a few neighboring valleys in the Chitral District of the Pakistani province of Khyber Pakhtunkhwa. Linguistic diversity notwithstanding, the Nuristan group identity is based on the settlement area, a shared history, and especially on the perception and classification of the inhabitants of Nuristan as a group by foreign scientists and by the Afghan State.⁵⁰ Since the 1980s, there have been efforts to transcribe Kati into the Arabic-based alphabets of Dari and Pashto.⁵¹

The Pashai

The settlement areas of the Pashai people (who refer to themselves as *pasha'i*) are located to the south of Nuristan, in Laghman and Kapisa Provinces. Their group name is derived from the name of their language, which was originally only used in the western settlement areas but now also refers to the forms of the language spoken in the eastern settlement areas. Pashai is a Dardic language (a branch of the Indo-Aryan languages) and it is only spoken in Afghanistan. The Pashai people are Sunni Muslims. Their society is made up of local but not interconnected tribal confederacies. An overarching group self-image based on the language has developed among the Pashai people, chiefly due to its increasing mobility and contact with members of other ethnic groups. The efforts initiated in the 1980s to develop a written form of Pashai and the radio programs broadcast in this language have also contributed to it.⁵²

⁴⁷ See Edelberg/Jones 1979.

⁴⁸ The diversity of dialects explains why different numbers of Nuristan languages are sometimes given. For example, see Orywal 1987: 52.

⁴⁹ See Degener 2002 and Gryunberg 1980.

⁵⁰ See Ovesen 1986.

⁵¹ See Grünberg 1992: 241 and Kieffer 1983: 80 ff.

⁵² See Orywal 1987: 54-55 and also Kieffer 1983: 79 ff. and Grünberg 1992: 239 ff. For information on the development of a group self-image among the Pashai people, see Ovesen 1987.

The Arabs and the Sayyid

The Arabs (who refer to themselves as *arab*) living in Afghanistan are Sunnites and the majority are speakers of Dari-Persian. The number of Arabic-speaking Arabs is estimated to be extremely small and there may well be none left today.⁵³ There are scattered populations of Arabs in various provinces of Northern Afghanistan. The majority have a lifestyle based on agriculture and animal husbandry, however there are also a few Arabs living in the cities. Their origin is uncertain and their group self-image is based more on their pastoral economy and to a lesser extent on myths concerning their origin. Arabs have a reputation as excellent livestock breeders.

Sayed (also "Sayyid" or "Seyd") is an honorary title given to descendants of the prophet Muhammad. Sayed are found throughout the Islam world, including in Afghanistan. They are encountered in a great variety of ethnic groups and speak the respective language of one of these groups as their first language. Hence there are Sayed in Afghanistan who speak Dari, Pashto, Uzbek, Baluchi, or some other language as their first language. The self-image of the Sayed is based on their noble origin and for this reason they do not feel that they belong to any of the groups among whom they live and whose language they speak. The ratification of the constitution of 2004, however, caused them to rethink this to some extent. Small groups who were not mentioned in Article 4 of the constitution fear that they will not receive sufficient political recognition. For this reason, the Sayed joined with the Arabs in order to found a common organization for the protection of their cultural and political rights, namely the "Council for the Harmony of Afghan Arabs". In this manner, the Sayed are able to act under the aegis of one of the ethnic groups listed in the constitutional nomenclature.⁵⁴

Other Groups

Other ethnic groups in Afghanistan are likewise pursuing the strategy of forming cultural associations in order to preserve their languages and cultural traditions and thus hopefully gain greater political recognition. This includes some small groups who are only mentioned under the category "other" in the text of the constitution. For example, there is a cultural center for the Qizilbash (who refer to themselves as *qezelbāsh*), a Persian-speaking Shiite minority group whose members are descendants of the Turkish mercenaries whom the Persian ruler Nadir Shah left behind as an occupational force in Eastern Afghanistan in the 18th century. Most of them now live in the cities.

⁵³ In the 1970s, Arabic was apparently only spoken in four villages in Jowzjan and Balkh Provinces. See Orywal 1983: 39. In the author's field research studies conducted in northern Afghanistan between 2010 and 2012, it was stated that all Arabs speak Dari.

⁵⁴ See Rzehak 2013: 25.

A further example is the Sunnite Gavar (who refer to themselves as *gāwar*), who speak a Dardic language similar to Kohistani in Northern Pakistan and who live in a few high mountain valleys of Kunar Province and have also founded a cultural association.⁵⁵

Other small groups that should be mentioned include the speakers of the East Iranian Pamir languages in the outermost northeastern region of Afghanistan: Shughni, Rushani, and Wakhi along both sides the Afghan-Tajik border, as well as Sanglechi and Munji (who all are predominantly Ismaili Muslims). All of them are sometimes grouped under the designation Pamiri. Most of these languages are only spoken in a few villages. Many Munji speakers emigrated to Pakistan during the civil war and the current status of Munji in Afghanistan is therefore uncertain.

The same applies toOrmuri, which is spoken in Kunar Province, and to Parachi, which is spoken in two valleys north of Kabul (both of these are Southeastern Iranian languages). In the 1970s, there were an estimated 500 Ormuri speakers and approximately 5,000 Parachi speakers.⁵⁶ The fear expressed by scientists back then that these languages would soon be displaced and replaced by Dari or Pashto may have since become a reality.⁵⁷ Many Hindus and Sikhs, who are speakers of the Indo-Aryan languages Sindhi, Punjabi, Gojri, and Lahnda, left Afghanistan during the civil war.

Lastly, mention should be made of various migrant groups such as the Jogi, Sheikh Mohammadi, Kutana or Ghorbat, who are encountered in various parts of Afghanistan. As peddlers, traveling entertainers, or fortune tellers, they live a nomadic lifestyle not based on animal husbandry. Although they have their own languages, they also speak Dari or Pashto.⁵⁸

Identity and Environment

Surroundings have always played an important role in the shaping of group identities. Relict languages have survived in isolated high mountain valleys, where they have not been influenced or superseded by other languages to the extent that they have in the lowlands. Rural and urban environments have provided people with different opportunities for development. Cities, with their job and educational opportunities, have drawn and continue to draw people from the countryside. Accordingly, members of all Afghan ethnic groups can now be found in Kabul. Other cities such as Mazar-i-Sharif, Herat, Ghazni, Kandahar or Jalalabad possess a similar pull on people from rural areas. People with a common origin frequently settle in the same city districts or stay in the same hotels on short visits. Although migrants to cities

⁵⁵ See Rzehak 2013 for information on the Qizilbash and Gavar cultural associations.

⁵⁶ See Orywal 1987: 63-65.

⁵⁷ See Kieffer 1977.

⁵⁸ See Rao 1987.

maintain their relationships with their respective places of origin and ethnic groups, they adapt to the urban environment culturally and linguistically, sometimes even to the point of changing languages completely. Urban life also has some influence on self-perception and the perception of outside groups. Sometimes this becomes evidenced in different group names. Migrants who have established residence in Kabul, for example, are popularly referred to - not without an ironic undertone - as *kāboligak* (Kabulians) by their countrymen, in order to distinguish them from other members of their ethnic group. Common experiences during college or high school, military service, or in the working world can also give rise to personal alliances with obligations and rights, such as those arising in the context of the previously-described *qaum* groups.

Another area in which identities are influenced by environmental conditions is the high degree of mobility of Afghan society. Afghanistan was traversed by various routes of the Silk Road until the early 19th century. With their caravansaries, Kandahar, Kabul, Herat and even cities that seem rather insignificant today, such as Kholm (also Tashkurgan) in the Northern Afghan province of Balkh, were centers of transregional trade that persisted into the 20th century and also included the exchange of ideas and cultural values. Afghan children and youth have been attending Islamic schools (madrasas) in Pakistani cities near the border for decades. Because these cities are populated by the same ethnic groups as in Afghanistan, members of these groups hardly feel that they are in a foreign country. After the Communist coup of 1978, mobility increased greatly due to mass emigrations. In the 1980s, there were more than three million Afghans residing in Pakistan and another three million residing in Iran, initially in refugee camps. From there, many of them were able to integrate themselves into local societies, where they still live today. Afghan refugees also fled to other countries in the region such as Tajikistan, Uzbekistan, Turkmenistan, or the Arab Gulf countries. Many went to Western Europe and Russia, the USA, Canada, or Australia. Afghanistan must be understood as a mobile society in which migrations are a normal state of affairs rather than an exception.⁵⁹ An important feature of this mobility is the fact that contact with the respective native regions persists. For strategic reasons, an individual will sometimes be left in the region in Afghanistan where a group owns property. Likewise, in strategic fashion, migration to other countries can be agreed upon within the group. Transnational networks with, in some cases, far-reaching trade and economic relationships have arisen in this manner.

People returning to Afghanistan after many years of living in exile in one of the neighboring countries bring changed cultural standards and ideals with them. This is most clearly observable in the case of those returning from Iran. There is a distinct gender difference in this regard: in particular, women who have lived for a long time in Iran are often readily recognizable as returnees from that country by their clothing, their demeanor, and sometimes

⁵⁹ For information on this, see Schetter 2012 and Monsutti 2005.

their language as well. They wish to show that they are no longer satisfied with the role traditionally assigned to women in Afghanistan. In present-day Afghan society, returnees from Iran are jokingly and sometimes disparagingly referred to as *irānigak* (Iranians) or *zawār* (pilgrims).⁶⁰ Common refugee experiences form the basis of new identities. Hence ethnic identities cannot be viewed as something natural and unalterable, not even in Afghanistan. They are in a constant state of flux.

⁶⁰ These statements are based on observations made by the author in Kabul, Herat, and other places between 2002 and 2014. The designation *zawār* (pilgrim) indicates that the Iranian city of Mashhad, where many Afghan refugees used to live and still do live, is an important pilgrimage site because of the Imam Reza shrine.

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2. Pashtunwali: an analysis of the Pashtun way of life

FATA Research Centre (FRC)

The FATA Research Centre is a private, non partisan and apolitical research organization based in Islamabad, Pakistan.

Introduction

Customs and traditions are the subtle chains with which a man in a traditional and primitive society keeps the pattern of his society intact. Pashtun society is no exception where custom and traditions are the only tools with which a Pashtun carves the shape of his culture. The cultural values and rules of behavior defined in Pashtunwali (the Pashtun way of life) have determined the way of life of Pashtuns since ancient times. It is a verbal code of life, which depicts a complete set of characteristics, or traits associated with basic Pashtun identity that a Pashtun is expected to exercise. It is framed on the principle of equality and retaliation and is deeply ingrained in the social structure of a Pashtun's life. Pashtunwali is highly esteemed and held sacrosanct by all Pashtuns irrespective of their financial and social status. There are serious repercussions of any kind of deviance from these basic codes. These consequences are referred to as 'Heavy Nogha' (fine) i.e. burning of one's house, expulsion from the area, etc.

Though Pashtuns are men of swords and guns, their history is full of romance, traditions and glorious adventures. In spite of a rigid and tough society, the Pashtuns have inherited a rich culture with rigidity on one hand and softness, romance, and beauty on the other. Pashtuns have thousands of customs that are inseparable from Pashtun society, and are followed vehemently. These cultural norms are heterogeneous in nature, and vary due to the geographical locations of these Pashtun tribes. Thus, resulting in these tribes to be different in terms of language, psyche, traditions, aspirations, and socio-cultural norms.

The character of Pashtun tribes inhabiting Pakistan and Afghanistan has been shaped by centuries of violent struggle for survival. Lying on a geo-political fault-line, these tribesmen have found themselves trapped in a conflict between world military powers fighting over the glittering prize of the South-Asian subcontinent, as well as the equally enticing overland trade routes of Central Asia and sea-lanes of the Persian Gulf and the

Arabian Sea. The ongoing three decade old geo-political upheaval in Pakistan-Afghanistan region is no exception, and once again the indomitable Pashtun is the center of the war.

Pashtun culture is traditionally thought to be millennia-old, pre-dating Islam and surviving with its tribal structure essentially intact; it may just have been that the rigid structure, along with geographical isolation, has supported Pashtun culture despite waves of wars and conquests through the centuries. However, after the Soviet invasion along with the emergence of non-state actors, and the US invasion of Afghanistan, the traditional forms of Pashtun society have experienced an abrupt and traumatic realignment.

Methodology

Descriptive and exploratory modes of research were employed to compile the study. Both, primary and secondary data were relied upon to formulate conclusions. The primary data was collected through in-depth qualitative interviews with Mashers (elders), members of Jirga (gathering of elders to resolve an issue) and academics who are expert on Pashtunwali (the Pashtuns way of life). Secondary data was collected through extensive review of books on Pashtunwali, Pashto dictionaries, and past FRC research reports on Pashtunwali.

Pashtunwali

Pashtunwali⁶¹ is a social, cultural, and quasi-legal code largely controlling and balancing the form, character, and discipline of the Pashtun way of life. It is the name of a traditional customary law that portrays the collective mental approach of Pashtuns towards life, and is believed to have been adopted by Pashtuns from time immemorial.⁶² Although Pashtunwali is not an official law, it embodies all the customs, traditions, heritage, customary law, usages, and all social relations conveying the meaning of tribal social, economic, political and cultural systems in its totality.⁶³ It is a manifestation of a complete set of features or traits that a Pashtun is expected to follow.

⁶¹ ***Pashtunwali** is a social, cultural and quasi-legal code controlling, guiding and balancing to a large extent the form, character and discipline of Pashtun way of life.*

⁶² Interview with a renowned elder, expert on Pashtunwali and a renowned expert in Peshawar, DNUJW, October 03, 2015, Peshawar

⁶³ Atayee, 1979, pp. 76-77

It is the core of social behavior for Pashtuns although unwritten and not defined precisely. It is part-fiction and part-reality, and can be found in songs, proverbs, metaphors, and so on. Thus, it is never far from the individual's mind. Many of Pashtunwali's most basic precepts are rooted in the Mosaic law of "*tooth for tooth*", and is based on the principle of equality⁶⁴.

In a Pashtun society, Pashtunwali is the focal point to manage all the social and internal affairs of the community manifested in Pashtunwali codes like *Melmastiya*⁶⁵ (hospitality), *Nang*⁶⁶ (honor), *Nanawatai*⁶⁷ (seeking forgiveness), *Ghairat*⁶⁸ (Dignity) etc. While social institutions like *Jirga*⁶⁹ (gathering of elders to resolve an issue), *Maraka*⁷⁰ (Council of elders to resolve minor issues) etc., represent democratic structures. Likewise, to deal with legal affairs it embodies a proper legal system in the shape of *Jirga* (alternative dispute resolution), *Tigah*⁷¹ (ceasefire), *Nogha* (fine) etc. It also includes a proper executive mechanism, i.e. *Lashkar*⁷² (Civil Militia), *Tsalwashtees* (Peace Forces)⁷³, *Cheegha*⁷⁴ (call for action), and so on.⁷⁵

Pashtunwali is applied on every individual living in a Pashtun inhabited area. For instance, a Pashtun living in any part of the world would have to lead his life in accordance with Pashtunwali owing to his identity as a Pashtun,⁷⁶ it has equal validity everywhere. Although the principles of Pashtunwali remain the same everywhere, its interpretation varies marginally from one area to the other. This interpretation is

⁶⁴ Interview with an elder and politician, SJ, October 01, 2015, Bajaur Agency.

⁶⁵ *Melmastiya* is an important aspect of Pashtunwali, and connotes hospitality and profound respect to all visitors, regardless of distinctions of race, religion, national affiliation as well as economic status and doing so without any hope of remuneration or favor.

⁶⁶ *Nang* connotes honor. It is to guard the courage, grace, generosity and other good qualities of Pashtunwali.

⁶⁷ *Nanawatai* connotes forgiveness the word literally meaning is "going in or entering into someone house" for seeking forgives.

⁶⁸ *Ghairat* means that a Pashtun must maintain his dignity or honor. Honor has great importance in Pashtun society and most other codes of life are aimed towards the preservation of one's honor or pride.

⁶⁹ *Jirga* is a council or assembly of tribal elders called for resolving issues of various forms, i.e. waging war, resolving a conflict between individuals or between tribes etc.

⁷⁰ *Maraka* is a council of elders for resolving issues of minor issues in Pashtun society.

⁷¹ *Tigah* means ceasefire or truce. It refers to the placing of a stone between the parties in conflict that they are not supposed to cross; however, the term is largely symbolic, and the physical placement of stone is rarely the case.

⁷² *Lashkar* is a militia responsible for implementing the verdict of Jirga.

⁷³ *Tsalwashtee* is a tribal militia in the Waziristan Agency who are responsible for the implementation of Jirga decisions.

⁷⁴ *Cheegha* is a body of Qaumi lashkar raised spontaneously in case of robbery and other offenses of such sort.

⁷⁵ Khan, 2008, p. 72

⁷⁶ Interview with academican and expert on Pashtunwali, FA, October 02, 2015, Peshawar.

referred to as *Narkh*⁷⁷ (set of laws in Pashtunwali covering punishments and penalties). For instance, Pashtuns living in the northern belt of Pakistan speak the Yousafzai dialect, while those dwelling in the southern belt of Pakistan and Eastern Afghanistan speak Qandahari dialect.⁷⁸

Important Codes of Pashtunwali

The main codes of Pashtunwali are;

Melmastiya (Hospitality)

Melmastiya (hospitality) is an important aspect of *Pashtunwali*. *Melmastiya* means offering hospitality and profound respect to all visitors, regardless of distinctions of race, religion, national affiliation, as well as economic status, and doing so without any hope of remuneration or favor. *Melmastiya* also demands security for the guest, and takes precedence over *Badal* (revenge) at times. Therefore, if an enemy comes seeking refuge it must be granted. This aspect of *Melmastiya* used to be a bone of contention between the British colonizers and the tribal Pashtun. For instance, an outlaw or criminal in the settled areas of Khyber Pakhtunkhwa can flee to the tribal areas of Pakistan (FATA) and take refuge and protection there.⁷⁹ Pashtuns consider the *Malma* (guest) a blessing of God. *Melmastiya* is exemplified in the Pashtu folk story of Price Bahram. There was a *Deo* (evil creature) named Toroban who was in love with princess *Gulandama*, the wife of Price Bahram. One day Torodan entered the palace and carried her away by force. When Price Bahram got to know about the kidnapping of *Gulandama*, he left his father's kingdom to search for his wife. After travelling for two years, he came to know that *Gulandama* is alive and is locked up in an iron cage in Mount Qaf- the highest mountain of the world. Price Bahram then mustered his father's troops joined by two other armies of Sayafun and Saif ul Muluk. The three armies supported by the armies of crow set out on a long journey to the Mount Qaf. When they reached the mountain an army of fairies joined them, and they waged a mighty war against the *Deos*. During the battle, *Price Bahram* spares the lives of six Jinns whom he defeated in a single combat, because their sister had shown him hospitality by

⁷⁷ **Narkh** is common customary law, covering penalties and punishments for all kind of offenses against the native custom, norms and traditions.

⁷⁸ Interview with a renowned elder and Poet, HHUA, September 30, 2015, Bajaur Agency.

⁷⁹ Gohar, 2005, p. 58

offering him food. At the risk of his own life he unties the *Jinns*, feeling that it would be wrong to refuse the sister's request.⁸⁰

Badal (Revenge)

*Badal*⁸¹, meaning revenge in *Pashto* language, is to seek justice or take revenge against wrongdoers. Whoever commits an offense must pay *Badal*. *Badal* may be levied by the *Jirga*, *Maraka*, the offended person, or any member of his family.⁸² This applies to injustices committed both in the present, and the past. If the wrongdoer, his family members, or his relatives still exist, then revenge or *Badal* will be taken. According to a Pashto proverb, "the Pashtun who took revenge after 100 years said, "*I took it too quickly*".⁸³ This in turn leads to a blood feud that can last generations and involve entire tribes with the loss of hundreds of lives. However, this can be avoided with the help of reconciliation referred to as *Nanawatai* (seeking forgiveness).

Nanawatai (Seeking Forgiveness)

*Nanawatai*⁸⁴ connotes forgiveness; the word literally means going in or entering into someone's house for seeking forgiveness. The rationale behind *Nanawatai* is the complete supplication or surrender of a person against his antagonist, and asking him to forgive him and forget the *Badal* intended to be taken against him. The one asking for forgiveness is then protected at all costs. Moreover, people trying to escape the law must also be given refuge until their situation is clarified under the law of Pashtunwali. *Nanawatai* can also be used when the vanquished party is prepared to go in to the house of the victors and ask for their forgiveness.⁸⁵

No *Nanawatai* is accepted in case of an assault to *Namoos* (guarding chastity of women) or for sexual intercourse with a woman the offender is not married to.

Nanawatai is adopted in many ways. One way is that the person seeking *Nanawatai* goes to his enemy's house admitting his guilt and seeking forgiveness with his womenfolk, who are unveiled and bear the Holy Quran over their heads. The

⁸⁰ Ahmad A., 2010, p. 14

⁸¹ ***Badal*** means revenge in a Pashtun Society.

⁸² Ahmad A., 2010, p. 11

⁸³ Ahmad A., 2010, p. 13

⁸⁴ *Nanawatai* connotes forgiveness the word literally means is "going in or entering into someone's house" to seek forgiveness.

⁸⁵ Atayee, 1979, p. 66

tribesmen, like Muslims all over the world, have a deep faith in the Holy Quran and they, therefore, regard it as a disrespectful act to deny the favor asked for through the Holy Book. In addition, the women are held in high esteem by all Pashtuns, therefore, a favor solicited through them is seldom denied. Sometimes the person seeking *Nanawatai* goes to lay inside the grave already dug for a dead person belonging to his enemy's close or distant relative.⁸⁶ Another mode of *Nanawatai* is in the form of a *Jirga* of local elders, notables and *Ulemas* (religious scholars) who, on request of the supplicant, accompany him to the enemy's house and beg pardon (*Bakhsh*) on his behalf. In this regard, the *Jirga* efforts are always countenanced with favor, and the very presence of the petitioner in the enemy's house or *Hujra* (Community Center) creates a sociable atmosphere for resumption of friendly relations. In some cases the elder throws his turban at the feet of the elder of an aggrieved family and begs for forgiveness. They (those seeking forgiveness) bow at the feet of the enemy, and later slaughter a sheep at the *Hujra* entrance as a symbol of forgiveness. The aggrieved party responds positively to these gestures.

From the custom of *Nanawatai* arises the obligation of protecting and defending a culprit, a murderer or rebel even against the government, irrespective of his crime. It is a matter of honor to defend those who seek shelter under the roof of a Pashtun.⁸⁷

For instance, it is said that once a gang of robbers attacked a village. The villagers, both men and women, went out to defend their hearth and home, with the exception of an old woman who could not take part in the conflict due to her old age. Standing at the doorway of her cottage, she was watching the scene impatiently while two of her sons were taking active part in the fight. After a long fight, the robbers were defeated. But two of them took shelter in the house of the old woman. The villagers hotly pursued them. On reaching the old woman's house, they were surprised to see the old woman raising her hands and trying to stop the pursuer from entering the house. One of the villagers approaching her said, "*Mother, what you are doing? Get out of our way. Don't you know that these two men are responsible for the death of your two sons?*". The old woman replied proudly, "*that may be so, but they have come for Nanawatai to my house, and I cannot see anyone laying hands on them so long as they are under my roof.*"

⁸⁶ Khan, 2008, p. 75

⁸⁷ Interview with an elder and expert on Pashtunwali, MD, October 05, 2015, Kandahar.

Nang (Honor)

Nang connotes honor. It is to guard the courage, grace, generosity and other good qualities of Pashtunwali. It is the central point of Pashtunwali, and all good qualities i.e. hospitality, respect of elders and women, forgiveness and so on, are based on the principle of *Nang*⁸⁸. *Nang kowal* (practicing honor) is to protect one's right, and it is binding on Pashtuns in order to safeguard his family and his tribe. All those who die in *Nang* (honor) are not forgotten, as they become legendary figures for their fellow tribesmen.⁸⁹

Ghairat (Dignity)

Ghairat means that Pashtuns must maintain their dignity and honor. Honor has great importance in Pashtun society, and many other codes of life are aimed towards the preservation of one's honor and pride. They must respect themselves and others to be able to do so, especially those they do not know. Respect begins at home, among family members and relatives⁹⁰. *Ghairat* is a part of *Namoos* (guarding the chastity of women), and it is said that if one has no *Ghairat* he cannot keep his *Namoos*⁹¹. Calling one *Begairat* (undignified) is an insult, and something nobody dares to call another. For instance, if a Pashtun woman becomes *Toor*⁹² (women found guilty of illicit sexual relationships), it is a matter of *Ghairat* to shoot the accused woman and her partner.⁹³

Mehrana (Courage)

The word *Mehrana*⁹⁴ connotes an act of courage. Pashtunwali demands whenever there is a need for sacrifice to overcome his rival, to protect his family's right and even to safeguard the barriers of his homeland, a *Pashtun* must demonstrate *Mehrana* by practically proving this. The one not possessing this trait is not called a Pashtun. The word is derived from '*Mehra*', meaning husband. A member of a tribe can also be referred

⁸⁸ Interview with an elder and politician, SJ, October 01, 2015, Bajaur Agency.

⁸⁹ Interview with a renowned elder and Poet HHUA, September 30, 2015, Bajaur Agency.

⁹⁰ Interview with an elder and politician, SJ, October 01, 2015, Bajaur Agency.

⁹¹ *Namoos* literally means chastity, but in common usage it means women. Guarding the chastity of women is guarding *namoos*.

⁹² *Toor* means rape of women or her involvement in illicit sexual relations with another man.

⁹³ Mohmand, 2006, p. 12

⁹⁴ The word *mehrana* connotes an act of courage. Pashtunwali demands whenever there is a need for sacrifice to overcome his rival, to protect his family's right and even to safeguard the barriers of his homeland, a Pashtun must demonstrate *mehrana* by practically proving this.

to as *Mehra*.⁹⁵ A *Pashto* proverb says, “where there are *Mehranas*, there are homes”,⁹⁶ and home here refers to prosperity, wellbeing and civilization.

Narkh (Set of Laws Covering Punishments for Crimes)

Narkh is the tribal customary law. *Narkh* is a wide concept; the penalties and punishments for all kinds of offenses and crimes are given in it. Some tribes have *Narkh* of their own, but the main principle of all *Narkh* is the same.⁹⁷

There are two types of *Narkh* among Pashtuns, namely the *Ahmadzai Narkh* and the *Razmak Narkh*. *Ahmadzai Narkh* consists of the *Issa Narkh* and the *Mussa Narkh*, of which the *Issa Narkh* is very strict and precise. The area of the *Ahmadzai Narkh* extends from Ghazni to Nangarhar including Logar and some regions of Patkiya province of Afghanistan. The *Razmak Narkh* is in force in Waziristan and its surrounding areas in Pakistan.⁹⁸

Narkh is tribal law and is binding on all members. Those refusing to obey *Narkh* are refused tribal memberships and rights. The Pashtuns say, “*Dawatanwowzakhi day Nakha ma woza*”, meaning one may leave his homeland but he cannot forget its *Narkh*. This proverb explains the fact that the Pashtun give the utmost importance to the *Narkh*.⁹⁹

Narkh is a very simple judicial system and serves the spiritual and material needs of the tribes. With the development of the tribes, *Narkh* changes, and the individual may use *Narkh* in his own favor through *Maraka and Jirga*. *Narkh* is used only in *Jirga*, and not in the modern government panel and civil codes. Tribes that have *Jirgas* have *Narkh* too. In the western part of Afghanistan, *Narkh* has lost its importance, and civil courts have taken its place. Only the word *Jura* (reconciliation) has been preserved there, which is *Rogha* (reconciliation) in the eastern and southern parts of the country. Both of these words mean reconciliation and truce. When the differences between two persons or two families become so involved that they are harmful to the whole tribe, then one will say “*Jura pre waghwarey*”, meaning to settle their dispute and reconcile them. Here *Jura* stands for the very crude *Narkh* that was once used.¹⁰⁰

⁹⁵ Atayee, 1979, p. 59

⁹⁶ Khan, 2008, p. 76

⁹⁷ Atayee, 1979

⁹⁸ Interview with an elder and expert on Pashtunwali, MD, October 05, 2015, Kandahar.

⁹⁹ Atayee, 1979

¹⁰⁰ Atayee, 1979

In the eastern and southern provinces of Afghanistan, every tribe has a *Narkh* of its own. This difference indicates the process of the weathering away of the tribal life, but two main types of *Narkh* prevail. The Ahmadzai *Narkh*, and the Razmak *Narkh*, does not only govern the judicial life of these people but other tribes refer to them for the settlement of their disputes too.¹⁰¹

Nogha (Fine)

Nogha,¹⁰² is a fine levied on an offender. The limits of the fine are determined in *Narkh*, but if the offense is grave, new, or committed through a newly invented means then the *Narkhiyaan* have the authority to determine how heavy the *Nogha* shall be. For example there's a certain amount of *Nogha* for cutting down a forest tree, and for theft. The *Nogha* for *Mirata* (killing all the male members of a family) are heavier. Not to pay *Nogha* makes one liable for another *Nogha*.¹⁰³ *Nogha* can be abated through begging pardon, but the tribal man will not do this as it is considered a disgrace for the whole tribe.

Tsalwekhtee (Civil Militia)

This word is used in respect to guarding forests or common tribal property, and guarding against common danger, which is considered a mutual duty among tribes. When *Brid* (attack) is carried out against common property of a tribe, or the tribe itself, then a group of armed men - usually more than fifteen - will be assigned by the order of the *Jirga* to arrest the offenders. This group is called *Tsalwekhtee* (Civil Militia). The *Tsalwekhtee* will be armed, and will set out to start their duty before sunrise. Those assigned to *Tsalwekhtee*, who refuse to comply, must pay *Nogha* which is usually determined by the *Jirga*.¹⁰⁴

Cheegha (Call for Collective Work)

Cheegha is a call, usually by drumming, for help or a call for collective work. *Cheegha* is also called for in times of impending danger. When *Cheegha* is heard everyone runs home, takes up his arms and rushes to the place where *Cheegha* is called. When *Cheegha* is called for to go to *Jugra* (armed clash between tribes), everyone goes to

¹⁰¹ Interview with an elder and expert on Pashtunwali, MD, October 05, 2015, Kandahar.

¹⁰² **Nogha** is fine levied on the offender and the limits of *Nogha* are determined in *Narkh*.

¹⁰³ Atayee, 1979

¹⁰⁴ Atayee, 1979

the place where *Cheegha* is called and partakes in the *Attan* (tribal dance performed at times of clash or marriage ceremonies), from wherefrom they go to the *Jirga*. *Nogha* is levied on everyone absent from *Cheegha*. For important events the *Nogha* is so heavy that it requires the burning down of the absentees' house. The proverb saying, "*the midnight Cheegha is not without some happening*", indicates that *Cheegha* is usually called in times of imminent danger.¹⁰⁵

In tribes where tribal customs remain in their ancient form, the drums for *Cheegha* are drummed with such skill that the type of drumbeats announces the kind of looming danger. For example, the drumming to announce the imminent *Chapaw* (attack without warning usually carried out for looting) is different from those announcing flood or fire.

Those arriving first to the *Cheegha* place are considered courageous and zealots, and those arriving late are looked down upon and sometimes even penalized.

The term *Cheegha* is used in the eastern and southern regions of Afghanistan. In the western part of Pakistan regions they call it *Nara*, wherein a trumpet is blown instead of the beating of drums.

These 10 pillars are not the only components of Pashtunwali. Additional values that are important to the code are "equality, respect, loyalty, pride, bravery, *Purdah* (veil), pursuit of romantic encounters, the worship of Allah, the unselfish love for the friend, *Jirga*, *Tigah* (ceasefire), *Hujra* (multipurpose gathering place), *Tsalwashtees*, and so on."¹⁰⁶

Pashtunwali is revered by nearly every *Pashtun* who owes allegiance to it, and practices it to varying degrees, and is deeply engrained in the social structure of a Pashtun's life irrespective of their social and economic status. Although there are no legal sanctions or state sanctions behind it, yet it is binding on every individual dwelling in a Pashtun inhabited area.¹⁰⁷ Ghani Khan, comparing Pashtunwali with the Anglo-Saxon law reveals that;

"...you call it a law and keep it in a book, while he calls it custom and keeps it in his wife's treasure chest... you have to be a judge or lawyer to know it while he knows his customs before he knows how to eat. He doesn't have to consult a learned man in a wig to know the law against which he sinned... he knows it as soon as he does it".¹⁰⁸

¹⁰⁵ Atayee, 1979

¹⁰⁶ Atayee, 1979, pp. 76-77

¹⁰⁷ Interview with academician and expert on Pashtunwali, FA, October 02, 2015, Peshawar.

¹⁰⁸ Ghani Khan, 2010, pp. 14-25

The more an individual (Pashtun) adheres to the basic precepts of Pashtunwali or Pashto, the more he is revered and enjoys high esteem in his local abode and vice versa.¹⁰⁹ Pashtunwali codes demand a Pashtun to defend his homeland, to grant asylum to fugitives irrespective of their creed, caste or financial position, to offer protection (even to enemies), and wipe out insult with insult and death to anyone who molests his women. He always boasts of his *Pashto or Pashtunwali* and is highly proud of it. Usually Pashtuns in anger taunt each other by saying “*you are not Pashtun you have no Pashto*”.¹¹⁰ While in Pashtun localities a person’s age and rank earns him respect, the concept of equality is extremely important for a Pashtun.¹¹¹ Pashtunwali considers each *Pashtun* to be the equal of another. There is not much of a distinction made between the powerful and their cohorts, and the prosperous and the underprivileged. Rich and poor alike carry themselves with pride, which is seen as necessary to avoid being taken advantage of by antagonists. Being ordered to do something is anathema to the *Pashtun*, and as a result a *Pashtun* leader is more of a prime inter pare than one who can give orders and expect that he will automatically be obeyed.¹¹²

Institutions and Forums in Pashtunwali

The Important social institutions of Pashtunwali are;

Jirga (Gathering for Resolving an Issue)

Jirga is a council or assembly of tribal elders called for resolving issues of various forms, i.e. waging war, resolving a conflict between individuals or between tribes, and so on. It is a large meeting where *Masharans* (elders) partake to investigate and settle important problems in Pashtun inhabited areas.¹¹³ It is a multi-purpose assembly headed by elders or Malaks,¹¹⁴ or *Spingrey* (white beard elders), with a social purpose of dispute resolution whereby the elders resolve problems, be it individual or communal. Members of the Jirga carry out Maraka (discussion) regarding the pros and

¹⁰⁹ Interview with an elder and politician, SJ, October 01, 2015, Bajaur Agency.

¹¹⁰ Interview with a renowned elder, expert on Pashtunwali and a renowned expert in Peshawar, DNUJW, October 03, 2015, Peshawar

¹¹¹ Interview with a renowned elder and Poet HHUA, September 30, 2015, Bajaur Agency.

¹¹² *ibid*

¹¹³ FRC, 2012, p. 13

¹¹⁴ a person with good reputation selected by the government of Pakistan and people of FATA together to be a bridge between the community and the government

cons of the issue at hand according to *Riwaj*¹¹⁵ (custom and traditions) or the Islamic law, i.e. the Sharia.¹¹⁶

Both the parties in dispute or conflict give *Waak*¹¹⁷ (authority) to the elders, and the *Jirga* finds a *lyar* (way out) of the problem. *Mashars* nominated by the parties in conflict, who are mostly influential *Jirga Mar*¹¹⁸ (a person well versed in Jirga matters) or *qula war* (eloquent person), then investigate the issue or problem in a *Jirga*. Before proceeding, both parties are given the option to either resolve the issue in the light of local *Riwaj*, or the Sharia.¹¹⁹

Once the *Jirga* gives its decision, the parties involved cannot challenge it. It becomes binding on everyone; however, the aggrieved party can challenge the decision before another *Jirga* of their own choice. But the new *Jirga* does not see the case as fresh; rather, it looks into its final decision to see if the decision is deviating from the *Sharia* or the customary law. If someone violates the decisions of the *Jirga*, then he/she has to face serious consequences, i.e. burning or demolishing of the person's house, fine, giving *Swara*¹²⁰ (marrying a girls to victim's relative as compensation to resolve the conflict), expelling the person from his native area, and so on¹²¹.

Whenever the local elders and members of *Jirga* are unable to resolve certain issues in accordance with local customs and traditions then the Islamic law of *Sharia* is consulted.¹²² Islamic scholars who are conversant with local customs and traditions, and are revered and respected in the local community, are consulted to resolve the issue in the light of Islamic Sharia. The *Jirga* members and elders of the community then make sure that the decision made in light of the Islamic law is implemented. There are many examples in where an issue is sought to be resolved with the help of Sharia law by both parties involved. In such cases, the *Jirga* members take it in writing from both the parties in conflict that they want to resolve this issue in the light of Islamic Sharia.¹²³ Renowned and revered *Qazis* (religious experts) are consulted, who then in accordance with the Islamic Sharia give a verdict. In case of the violation of the verdict

¹¹⁵ *Riwaj* embodies all the customs, traditions and norms in the light of which a Pashtun lives his life.

¹¹⁶ Interview with academician and expert on Pashtunwali, FA, October 02, 2015, Peshawar.

¹¹⁷ *Waak* is the authority given by both the parties in conflict to *Jirga* for resolution of the conflict.

¹¹⁸ *Jirga Mar* a person well versed in matter of *Jirga*.

¹¹⁹ *Islamic Shariah* is the Islamic law in the light of which all the Muslims around the world are abound to live their lives.

¹²⁰ *Swara* is tribal tradition according to which the offender offers a girl in marriage to the aggrieved to resolve the conflict.

¹²¹ Interview with academician and expert on Pashtunwali, FA, October 02, 2015, Peshawar.

¹²² Interview with a renowned elder and Poet, HHUA, September 30, 2015, Bajaur Agency.

¹²³ *Ibid*.

given, serious consequences have to be faced. Heavy *Nogha* (fine), i.e. burning of house, expulsion from the area etc., will be levied on the violator.

There are four main types of *Jirga*:

- 1) Individual level *Jirga* or *Maraka*: It is conducted between two parties belonging to the same *Khel* (sub-tribe) for minor issues i.e. debts, inheritance, distribution of land, robbery etc.
- 2) *Qaumi* or *Ulas* or Grand *Jirga*: This type of *Jirga* involves a tribe or tribes for a co-opted decision to resolve issues like murder, feuds between tribes, foreign aggression, development programs, etc.
- 3) *Hokumati Jirga*: This is convened by Government officials, or lead by Political Agents¹²⁴ in FATA, for the resolution of issues between the government of Pakistan and the masses of FATA. These issues are pertinent to development, law and order situations, etc. *Hokumati Jirgas* are mandatory, and are held under the FCR (Frontier Crime Regulation) in protected areas in the Federally Administered Tribal Areas of Pakistan.
- 4) *Loya Jirga*: Loya Jirga is synonymous to *Qaumi Jirga* in FATA, while in Afghanistan it also stands for the National Assembly of Afghanistan. It is convened at times of disputes between two or more tribes. *Jirga* specialists from other tribes are invited, or a regional council is invited to announce war, to call a ceasefire, or to confront a national emergency or interest of national importance.

Jirga is a customary institution rather than an institution created by enactment, resolution or edict. Due to the egalitarian nature of Pashtun society, the flow of accountability is downwards towards masses contrary to the formal institutions (courts) where accountability flows upward. Its main purpose is dispute or conflict resolution whereby it adjudicates over crime and infringement as a jury, and is involved in establishing both upward and downward linkages to and from the government.¹²⁵ Furthermore, the fact finding, conciliations, mediatory, facilitation and advocacy roles of *Jirga* operate within the framework of principles of freedom of speech, arbitration, transparency, trust or confidence in the community, accountability and restorative justice.

¹²⁴ **Political Agent** is a government official appointed by the government of Pakistan to run the affairs of the government in the tribal areas of Pakistan.

¹²⁵ Interview with a renowned elder and Poet HHUA, September 30, 2015, Bajaur Agency.

Jirga also embodies executive authority. Special forces such as *Lashkar/Tsalwashtees* (civil militias) are responsible for implementation of *Jirga* verdicts.¹²⁶

There are no hierarchal or pyramidal structures within a *Jirga*. Traditionally, all the members and participants of the *Jirga* sit in a circle on the ground. There are no podiums, or official decorum, except the socially embedded respect and regard for *Jirga* members and elders.¹²⁷

In the traditional Pashtun society, *Jirga* is convened in the following stages;

- 1) *Jirga* proceedings may be initiated on a complaint, dispute, or other acts requiring intervention or resolution. Other motivations may include giving effect to government policies or demands, deciding upon a negotiation with government, or the settlement/distribution of benefits, and so on.
- 2) *Jirga* members are nominated either through nomination by parties in conflict or by *Qaum* (locals of the area). In case of *Hokumati Jirga* or official *Jirga* in the Federally Administered Tribal Areas of Pakistan, the Political Agent (government official) nominates the members of the *Jirga*.
- 3) After the *Jirga* is constituted, its members approach the aggrieved party and try to appease them and get them to agree to a *Tigah* (ceasefire), or the suspension of hostilities in case a murder has taken place and shooting is going on.
- 4) The members of the *Jirga* then start framing issues, charges, or even a preliminary charter of demands.
- 5) The *Jirga* then takes *Waak* (authority of decision) from the parties in conflict, which binds them to respect and implement the verdict of the *Jirga*, usually without the right of appeal.
- 6) *Jirga* members after taking *Waak* initiate preliminary inquiry or investigation. The *Jirga* members may interview the parties in conflict, give them a hearing, and examine witnesses to ascertain the facts of the case.
- 7) In-depth discussion or arguments between members regarding the issue is carried out in the light of *Riwaj*. *Jirga* members may also carry out site visit/s if required, or visit both parties and record their statements.
- 8) After in-depth inquiry, the *Jirga* members make every possible endeavor to find an impartial and acceptable solution to the problem. When a decision is reached, the members of the *Jirga* will swear either on *Malga* (salt), *Tura* (sword), or the

¹²⁶ Interview with a renowned elder, expert on Pashtunwali and a renowned expert in Peshawar, DNUJW, October 03, 2015, Peshawar

¹²⁷ Interview with an elder and politician, SJ, October 01, 2015, Bajaur Agency.

Holy Quran. The ceremony is to put hands on the things mentioned above and pledge to carry the decision faithfully.

- 9) Review or appeal in case of the exercise of *Haaq*¹²⁸ (right to appeal against *Jirga* verdict) by any party is provided for. Usually the verdict of *Jirga* is accepted wholeheartedly, however, each party has the right to challenge the decision. In this case, the aggrieved party pleads its case with the help of precedents and rules set in *Narkh*.
- 10) For implementations or executions of the *Jirga* verdict, the *Jirga* constitutes a *lashkar* (civil militia).

Spirituality or the spiritual nature of *Jirga* is one of the binding forces of the *Jirga* decision, and contributes to the effectiveness of its implementation. *Spingrey* (elders) are volunteers who come forward to resolve the issue, bearing all the costs on their own without any outside help. They are considered as the guests of God, and to refuse their decision is considered an invitation to the curse of God.¹²⁹ Another important aspect of *Jirga* is that it is largely based on participatory approaches except for the Government sponsored *Jirga (Hokumati Jirga)*¹³⁰ in the Federally Administered Areas (FATA) of Pakistan. Traditionally, women are not allowed to take part or participate in *Jirga*,¹³¹ however, in recent past women were also given the right to participate in *Loya Jirga* (National Assembly) of Afghanistan. Moreover, a female *Jirga* has recently been set up and is active in resolving issues of marginalized and deprived women in the Swat valley of Pakistan.¹³²

Hujra (Community Center)

Hujra (Community Center) is an important institution of Pashtun society. It is a large assembly hall and operates as a present day community center, usually with many *charpoys* (cots for sitting), water pots, and often a musical performance etc. The local community gathers here for the resolution of issues, general discussion, weddings, funerals, and so on.¹³³ It is a communal sitting area where any member of the village can come and sit. Besides matters of general interest, the participants listen to local

¹²⁸ *Haaq* is the right of appeal that Pashtunwali gives to a member in conflict against the *Jirga* verdict.

¹²⁹ Interview with an elder and politician, SJ, October 01, 2015, Bajaur Agency.

¹³⁰ *Hokumati Jirga* is organized and led by the government appointed official (Political Agent) in the tribal areas of Pakistan.

¹³¹ Interview with an elder and politician, SJ, October 01, 2015, Bajaur Agency.

¹³² Dawn, 2013

¹³³ Atayee, 1979, p. 36

folk music, or discuss daily ventures. It is a vital social institution of Pashtun society, where the young generation can get familiar with the codes of Pashtunwali¹³⁴. For instance, *Hujra Mashars* or *Spingrey* (elders) advice the *Kashar* (youngster) here, who are then bound to listen to them and follow their directions wholeheartedly. The elders not only transfer their precious experiences to the younger generation, but also impart to the youth the stories and wisdom that they themselves learnt from when they were young.¹³⁵

It serves as a club, guesthouse, and a place for rituals and feasts. It is a center for social activities, as well as a Council Hall for the settlement of family and inter-tribal conflicts. It is a guesthouse where *Malma* (guests) are entertained in a Pashtun society. The *Korba* (host) is obliged to provide security to the *Malma* as if he is one of his family members. *Hujra* (community center) is a safe place for offenders entering its area and will be protected at any cost. For instance, even the murderer of *Hujra* owner's son or brother will be spared if he enters, and will be provided security.

Some of the rules that are to be followed in *Hujra* are that the *Kashar* (youngster) will stand on the arrival of an elder irrespective of his social and financial status.¹³⁶ Moreover, *Mashers* and *Malma* will sit by the head of the bed, while the youngster will either sit on the floor or next to the tale of the bed. The elders will be served in the order of seniority by the youngsters, and will not sit until asked by the elders. Usually, the youngsters will keep a cap or sheet of cloth on their heads when they are in front of their elders. If there is a guest, he will be given precedence and will be served before the elders. Community members consider working for a guest an honor. Women are not allowed in *Hujra*, however, in case of urgency an elderly woman can ask any member of the *Hujra* for consultation and sharing of information.¹³⁷

Evolution of Pashtunwali

Since the colossal immigration from Central Asia of *Sakas, Kushans, Huns and Gujjars* in the 5th century A.D, Pashtunwali has indigenously evolved over the process of time.¹³⁸ According to Shaikh Janzada, a tribal elder from Bajaur Agency:

¹³⁴ Interview with a renowned elder and Poet HHUA, September 30, 2015, Bajaur Agency.

¹³⁵ Interview with a renowned elder and Poet HHUA, September 30, 2015, Bajaur Agency.

¹³⁶ Interview with a renowned elder and Poet HHUA, September 30, 2015, Bajaur Agency.

¹³⁷ Interview with an elder and politician, SJ, October 01, 2015, Bajaur Agency.

¹³⁸ Gohar 2005

“Pashtuns have preserved their traditions throughout the years via verbal teachings where the young ones learn from their elders in Hujras (community center,) or at home and adopt them in their daily lives, and the Mashars (elders) or Malaks (a person with good reputation selected by the government of Pakistan and people of FATA together to be a bridge between the community and the government), are the protagonists and executors of Riway (customs and traditions) and adjudicate upon any infringement through their”.¹³⁹

A Pashtun does not separate himself from the tribe. For him deviation from the basic codes of Pashtunwali is not only an act of shame for the individual but also for the whole tribe. As a result, the tribe must face everlasting enmities, or pay the prize through other means like *Swara* (giving away a female child to the victim in marriage as compensation for the offense) and *Kunbaha* (blood money), or other traditional practices of restitutions.¹⁴⁰ The high price involved in breaching the codes of Pashtunwali is the main reason preserving the true spirit of Pashtunwali since centuries.

Prior to the rise of Islam and during its early years, Pashtunwali independently managed social affairs very well. Pashtunwali established local governments in different areas extending from Central Asia to South Asia, and took on a progressive shape which later became the base for establishing the first ever Pashtun state in the 12th century- the *Ghorid Polity*.¹⁴¹ However, the polity was disintegrated by the Mongols around the 13th century.¹⁴² Later, during the 15th and 16th century, Pashtun nationalism revived itself in three different phases. During this era, the Pashtuns with their unique social mentality on the basis of the *Sialy*¹⁴³ (equality) code in particular, did not go into slavery contrary to many other societies; it went straight into feudalism instead. As the society was not acquainted with the ideals of class formation, feudalism was not even common in all Pashtun territories.¹⁴⁴ This transition was accompanied with severe conflicts and clashes. According to this,¹⁴⁵ Pashtunwali emerged in the early 17th century during the third phase of political struggles by Pashtuns under the leadership of Khushal Khan Khattak. Similarly, according to Nichols, Pashtunwali may have become

¹³⁹ Interview with an elder and politician, SJ, October 01, 2015, Bajaur Agency.

¹⁴⁰ Khan, 2008, pp. 70-71

¹⁴¹ ***Ghorid Polity*** was the first Pashtun state established in the 12th century.

¹⁴² Rashid, 2011, pp. 2-6

¹⁴³ ***Silsaly*** is a Pashtun code which means that all Pashtun, irrespective of their financial or social status, are equal.

¹⁴⁴ Coroe, 1958, pp. 123-138

¹⁴⁵ Spain 1962, pp. 47-54

more formalized in the early seventeenth century as an alternative to the mores and culture of the encroaching Mughal Empire.¹⁴⁶

However during the British era, the social structures were threatened through certain structural changes to the existing system under Pashtunwali in Pakistan. According to a British author, following the colonization by the British, Pashtunwali diluted in the settled areas of the Khyber Pakhtunkhwa province of Pakistan due to the introduction of the institution of court, land settlements, revenue administrations, and police. This offered marginal impacts on the social structure in the Federally Administered Tribal Areas of Pakistan.¹⁴⁷ Although these structural changes had significant impacts on the social, administrative, and political spheres, Pashtunwali remained a dominant aspect of Pashtuns dwelling in the settled areas of Khyber Pakhtunkhwa. In the backdrop of these structural changes, a British author provides an interesting contrast between the traits of Pashtuns of tribal areas (Federally Administered Tribal Areas of Pakistan) and those of the settled areas of Khyber Pakhtunkhwa. *Bannuci Pashtuns (Pashtun dwelling in the Bannu district of Khyber Pakhtunkhwa)*¹⁴⁸ are referred to as degraded people, and evil spirits, while on the other hand he shows admirations for their neighbors- the Wazirs (Pashtun tribe living in North and South Waziristan agencies of FATA).¹⁴⁹ Wazirs are portrayed as proud, patriotic and united as a community- austere and simple in their own manners, but hospitable to the strangers.¹⁵⁰

Later, Khan Abdul Gafar Khan also known as Bacha Khan or Khan Baba, the founder of *Khudai Khidmatgar Movement*,¹⁵¹ a non-violence movement against the British, challenged the Pashtun boasting of their own honor by contrasting it with their reality (poverty, foreign occupation etc.) of life in the Frontier (Pashtun inhabited areas). Since the movement was based on the principle of non-violence, as opposed to honor and revenge, *Khan Abdul Gafar Khan* used the concept of freedom, refuge for marginalized groups, and incitement against foreign occupation of Pashtuns, in the mobilization of masses to join the non-violence movement (*Khudai Khidmatgar Movement*) against the British colonizers in Balochistan and the Northern Western Frontier Province (Khyber

¹⁴⁶ Khan, 2008, pp. 71-72

¹⁴⁷ Mohmand, 2006, p. 1

¹⁴⁸ **Bannucci Pathans** are race of Pashtun dwelling in the Bannu city of Khyber Pakhtunkhwa.

¹⁴⁹ **Wazir's** are Pashtun tribes dwelling in the South and North Waziristan Agency of the Federally Administered Tribal Areas of Pakistan.

¹⁵⁰ Khan, 2008, pp. 72-74

¹⁵¹ **Khudai Khidmatgar Movement**, a movement based on the principle of non-violence which was initiated by Khan Abdul Ghafar Khan against the British Colonizers.

Pakhtunkhwa) of Pakistan.¹⁵² This particular movement was significant in changing the outlook of Pashtuns via evolutionary developments, injection of the philosophy of non-violence, and shrinking and closing the traditional outlets of violence in the Pashtun inhabited areas of Khyber Pakhtunkhwa and Balochistan. However, the political movement coined as the '*Jamat-e-Islami*' initiated by *Mawlana Maududi* in 1941, triggered the aggressive impulse among the Pashtun communities. The movement was established as a hierarchically organized revolutionary force which was based on the principle that the state should be taken over by Islamic workers and then used to establish a revived and purified Islam.¹⁵³ The movement later in the 1980s became the base for promoting radical and violent Jihadi movements against foreign occupation in Afghanistan, and a violent upheaval to establish the *Islamic Khilafat* (Islamic State based on Islamic Sharia) in Pashtun inhabited areas, i.e. Swat, Malakand Division of Khyber Pakhtunkhwa, and Federally Administered Areas of Pakistan.

Pashtun culture, traditionally thought to be millennia-old, pre-dating Islam and surviving with its tribal structure essentially intact, could owe its survival to its rigid structure, as well as geographical isolation that supported Pashtun culture despite waves of wars and conquests throughout the centuries.¹⁵⁴ However, the traditional forms of Pashtun society have experienced an abrupt and traumatic realignment after the Soviet invasion along with the emergence of non-state actors (Taliban), and the US invasion of Afghanistan.¹⁵⁵ The deteriorating security situation along with bad governance and rampant corruption in state institutions ultimately created a gap between the state and society both in Pakistan and Afghanistan; consequently, triggering a sense of deprivation and frustration amongst the masses. These feelings among the masses were smartly exploited by the Taliban to capitalize on in Pashtun inhabited areas of Pakistan and Afghanistan. Hence, by arriving on the scene, they create room for themselves while banking on this disconnect and availing the opportunity. The militant Taliban started cutting roots they thought were connecting the state with society, and blocking their way towards consolidating their power on the political stage in Pashtun inhabited areas both in Pakistan and Afghanistan. Hence, their first victim became the *Masher* (elders), the torchbearers of Pashtunwali. For instance, in Federally

¹⁵² Banerjee, 2000, p.145

¹⁵³ Rashid, 2011, pp. 2-5

¹⁵⁴ Interview with academician and expert on Pashtunwali, FA, October 02, 2015, Peshawar.

¹⁵⁵ Ibid.

Administered Tribal Areas of Pakistan, more than three thousand *Mashars* (elders) were killed;¹⁵⁶ thus, disrupting the old tribal order of the society.

After the deterioration of the old tribal order and the rise of the new one, the Taliban have subverted or altered many traditional aspects of Pashtun society, ostensibly in line with their conservative interpretation of Islam. The most well-known of these are the restrictions on the movement and education of girls and women, and the bans on music, CDs, and musical instruments. In addition, the Taliban have replaced or supplanted many traditional tribal institutions with practices deemed more Islamic.¹⁵⁷ For example, according to Shaikh Jahanzada, an elder from the Bajaur Agency, *“the Jirga, the traditional form of Pashtun dispute resolution, in which tribal elders convene to settle disputes over land, family and property, has been replaced in many few areas by Islamic Shuras, councils of clergy, or a Qazi, a judge of Islamic law”*.¹⁵⁸ This replacement is essentially alien to Pashtun culture; the *Jirga* is a roughly egalitarian system, in which each tribal chief has an equal say in the proceedings, whereas the Shura and Qazi systems are strongly hierarchical and antithetical to the spirit of the tribal system.¹⁵⁹ Further, the systems of swift, public, and prescribed corporal and capital punishments are also alien to the Pashtun, where dispute was often previously resolved through payments negotiated by the *Jirga*.¹⁶⁰

Islam and Pashtunwali

Islam plays a vital role in the day-to-day life of Pashtuns, and is a primeval and significant component of their identity. According to Haji HabibUllah Khan Asi, a tribal elder and member of Grand Jirga in Federally Administered Tribal Areas of Pakistan, *“Pashtun accepts religion without any doubts or questions, therefore there is no conflict between Pashtunwali and Islamic teachings and whoever does not perform his religious duties is looked down upon in the society”*.¹⁶¹ The unity of Pashtunwali and Islam is symbolized and expressed in the village social life by the physical union of mosque and the *Hujra*, and by the immersion of the five pillars of Islam in local practices and social

¹⁵⁶ FRC, 2012

¹⁵⁷ FRC, 2014, p. 6

¹⁵⁸ Interview with an elder and politician, SJ, October 01, 2015, Bajaur Agency.

¹⁵⁹ Interview with a renowned elder and Poet, HHUA, September 30, 2015, Bajaur Agency.

¹⁶⁰ FRC, 2012, p. 9

¹⁶¹ Ibid.

structures.¹⁶² Although the values or traits of Pashtunwali are a true reflection of Islam, sometimes Pashtunwali is used in contradiction with Islamic *Sharia law* or even the official law of the country, i.e. in cases of inheritance, *Badal* (revenge), marriage etc.¹⁶³ In comparison to *Sharia* or Islamic law, Pashtunwali is used with greater intensity varying from tribe to tribe and area to area. In northern Pashtun inhabited areas of Pakistan, i.e. Bajaur Agency, Mohmand Agency and few areas of Swat and Kohistan in Khyber Pakhtunkhwa, *Sharia* is preferred over the customary law or Pashtunwali. However, vast majorities of Pashtuns give precedence to Pashtunwali over *Sharia* (Islamic Law). This is further explained through a Pashto proverb that says, “*There is an appeal against a decision under the Sharia but not under Pashtunwali*”. The Islamic doctrine of equality of inheritance of all sons is modified by the recognition of special rights of the eldest son who inherits a slightly greater share of the property. Similarly, according to Pashtunwali, a daughter does not inherit anything, while she does under Islamic *Sharia*. Granting asylum to outlaws, proclaimed offenders and murderers by the tribal on their soil, is not in consonance with the tenets of *Sharia* (Islamic Law) but is held sacrosanct under Pashtunwali.

In Pashtun inhabited areas of Pakistan and Afghanistan, before settling an issue in *Jirga*, both parties have the option to either settle the issue in the light of Pashtunwali or Islamic *Sharia*. For instance, according to Dr. Nasrullah Jan (Director Pashto Academy, Peshawar University), before settling an issue one will ask both parties in the conflict, “*Shall we settle the issue according to Pashtunwali, or the Islamic teachings of Sharia?*”¹⁶⁴ In practice, however, the preference of law (*Sharia* or Pashtunwali) largely depends upon the situation. Majority of them give preference to the law, which is most beneficial in the context of the situation they are in.

Divergence between Pashtunwali and Islamic Sharia

There is often a clash or divergences between the Islamic law and Pashtunwali in issues like inheritance, elopement, attempt adultery etc. These are explained below:

Zina (Illicit Sexual Relation)

In case of illicit sexual intercourse, *Zina*, both male and female should be killed. However, in according to *Riwaj* (Customs and traditions) of *Malakh* and *Tappazid* tribes

¹⁶² Ahmad A., 1980, p. 105

¹⁶³ Interview with a renowned elder, expert on Pashtunwali and a renowned expert in Peshawar, DNUJW, October 03, 2015, Peshawar

¹⁶⁴ Interview with a renowned elder and Poet HHUA, September 30, 2015, Bajaur Agency.

of North Waziristan, where a woman is believed to be the half of a man, the woman is to be killed and the man's foot should be cut off. Or incase if he is killed, half compensation must be paid to the relatives of the person killed.¹⁶⁵ According to the Sharia law, if a married man/woman commit *Zina*, 4 witnesses will be required to prove the offense, and the penalty is death by stoning. However, in case if an unmarried woman commits the above offense, then one hundred whips will be inflicted on the offender.¹⁶⁶

Attempt to Rape

In Pashtunwali, the guardian of the woman should kill the person who attempts to rape his woman, while among the *Turi* tribe of Khyber Agency in Federally Administered Tribal Areas of Pakistan, R.s 85, 000 is paid by the offender as Tawn (blood money or compensation). According to the Islamic law or Sharia, *Tazir* (punishment other than death) is applied¹⁶⁷ i.e. the offender is punished with eighty whips.

Preemption

In Pashtunwali, the right to preemption is accrued to the blood relatives of the owner of the land, and then the person whose land is bordering with the land being preempted, followed by the adjacent *Tappa* (sub tribe), *Khel* (Tribe), village etc.¹⁶⁸ On the other hand, according to Islamic Sharia, preemption is accrued to three persons in a particular order; 1) a person with a common irrigation channel or passage with the owner of the land to be preempted, 2) a person with joint interest in the use of irrigation water- with the first rights giving to the person who suffers most from the selling of the land (incase if more than one person shares the channel), 3) the neighboring land owner adjacent to the land sold or to be sold.¹⁶⁹

Drinking of Wine or Alcohol

In Pashtunwali no specific punishment exists for the offense of drinking wine or alcohol. On the other hand according to *Sharia*, drinking wine or alcohol is forbidden and the offender will be inflicted with 80 whips.¹⁷⁰

¹⁶⁵ Gohar, 2005, p. 127

¹⁶⁶ Mohmand, 2006, p. 88

¹⁶⁷ Mohmand, 2006, p. 88

¹⁶⁸ Gohar, 2005, pp. 100-102

¹⁶⁹ Mohmand, 2006, p. 89

¹⁷⁰ Mohmand, 2006, p. 90

Qisas (Death Penalty)

In Pashtunwali, *Qisas* revolves around the concept of *Badal* (revenge), which is necessary and results in unending animosity at times. The enemy is chased and killed even if the event happened long in the past. In case the murderer escapes or dies, the enmity does not end. As soon as the murderer returns and no compromise is reached, the heirs of the deceased are bound to kill him, and in case if the murderer dies then the revenge will be inflicted on the close relatives/family members of the offenders. However, through *Nanawatai* (compromise) the issue can be resolved peacefully, but it is rarely practiced. On the other hand, according to Islamic law, *Qisas* (*death penalty*) is only applicable if the offender is alive. In case the enemy is dead or has fled, then no revenge is taken from the relatives/family members of the offender. In fact, the close heirs of the man killed intentionally are not allowed to kill the enemy themselves; rather, the *Ul-ul-Amr* (the Government where Islamic Sharia is enforced) will do it on behalf of the victim.

Betrothal (Marriage)

In Pashtunwali, betrothal is allowed at an early stage, and at times right after the birth of the child, and cannot be rescinded. While under the *Sharia law* betrothal prior to attaining a certain age (14-16 age), depending on the Islamic school, can be cancelled on attaining age (14-16 years). Likewise, according to Pashtunwali, once the betrothal takes place, neither the girl nor the boy has the right to annul the contract. Additionally, the boy has the right to divorce his wife after marriage, but the girl does not have the right to divorce. However, according to *Sharia* the girl must be an adult and sensible enough to decide her future and cannot be married against her consent. Moreover, she also has the right to rescind the contract, and to demand a divorce from her husband if need be.¹⁷¹

According to Pashtunwali, the marriage loses its affect should one of the concerned parties, the boy or the girl, die prior to marriage. Then in such cases, the girl remains the asset of the boy's family and is married to the boy's cousin or other family members. If the girl dies prior to marriage then boy with whom she was to be betrothed can marry another girl in his tribe. In contrast, according to the Islamic *Sharia*, the

¹⁷¹ Interview with a renowned elder, expert on Pashtunwali and a renowned expert in Peshawar, DNUJW, October 03, 2015, Peshawar

contract loses authenticity when the boy dies. The girl cannot be considered as the asset of the boy's family, and is free to marry as she pleases.¹⁷²

In Pashtunwali, if a girl runs away with a boy or is kidnapped, then there is no other punishment except to kill the couple. However, in rare cases, a *Nogha* (compromise) can be reached with the help of *Mashars* (elders).¹⁷³ According to Islamic Sharia, if a girl runs away with her lover with her consent, and given that he is not among the *Mahram* (close blood relatives whom marriage is forbidden), and is Muslim- she can marry him in the presence of two witnesses. If the man is a *Mahram*, then the wedlock is illegal and they both may be killed. In case if the girl, who has run away with another boy, is already betrothed to someone, then the girl is to be stoned to death if intercourse is proven.¹⁷⁴

Jhagh (Claiming Girl for Marriage in Public)

According to Pashtunwali, when a boy in a Pashtun community announces in public (*Jhagh*) or makes a fire in front of a girl's house, it connotes that the boy is claiming the girl to be his property and she cannot be betrothed unless her family or someone who wants to marry her offers *Nanawatai* (seeking forgiveness). On the other hand, according to Islamic Sharia, a girl cannot be betrothal by use of coercion.¹⁷⁵

Inheritance

In Pashtunwali, if a person dies, his *Miras* (Inheritance) will be devolved to his sons in equal shares. If his sons are not alive, his brothers will inherit his wealth; if they are dead, then by his brother's sons or male descendants from a common grandfather. If they aren't alive, then his tribe will inherit his wealth. *Shaza* (wife) is not given *Miras*, but is herself a part of it. She must be married to her brother-in-law, or her husband *Tarboor* (cousin). Such a woman is called *Kunda* (widow). A Pashto proverb explains this custom, "*Kunda da kam da*" (the widow belongs to the tribe).¹⁷⁶ According to Islamic Sharia, heirs are those for whom the Holy Book has specified shares in the estate left for them in inheritance. These heirs include the father, mother, husband, wife, daughter, and so on. The share specified for them in Islamic Sharia is 1/2, 1/4, 1/6 and 1/8 depending upon the position and status of the heirs in the inherited property. For

¹⁷² Interview with a renowned elder and Poet HHUA, September 30, 2015, Bajaur Agency.

¹⁷³ Gohar, 2005, p. 127

¹⁷⁴ Mohmand, 2006, p. 89

¹⁷⁵ Khan, 2008, p.85

¹⁷⁶ Interview with a renowned elder and Poet HHUA, September 30, 2015, Bajaur Agency.

instance, if the deceased has left both sons and daughters, his property would be divided in such a manner that the son gets double the share of the daughter. If the deceased has left only one daughter, she would get half of the whole estate and the remaining would be divisible amongst the rest of the heirs. In case there is more than one daughter, each would get 2/3 of the estate while 1/6 would be given to each parent.

Duties and Responsibilities in Pashtunwali

In Pashtun society, every individual (kid, adolescent, male, female and elders) is bound to carry out certain responsibilities at various stages of their life. According to Fazal Azeem, an employee at the Pashto Academy at the Peshawar University, *“the responsibilities and duties varies according to age, the situation etc. Usually in most areas duties are applied on any individual at adolescent age, when he/she can differentiate between good and bad”*.¹⁷⁷ However, it also varies from area to area. According to Shaikh Janzada, a tribal elder from Bajaur Agency, *“in some areas, duties are applied on the individuals only after marriage while in other areas even kids who can differentiate between good and bad are bound to carry out certain duties in their respective localities. In most areas duties are applied with age and intellectual growth of an individual”*.¹⁷⁸

In Pashtunwali, *Mashars* (elders) are the leaders of the community. A *Masher* is elderly, wise, and a credible man whom the whole *Qaum* (tribe) trusts. He is expected to have proved his worth through various actions in the course of his life. He should keep himself aware of the situation of the community and keep his eye on the good and the evil surrounding it. He gives his approval or disapproval of the prevailing pattern of the society, and if he considers it appropriate, he refers the issue to *Jirga* for an intermediary role. *Masher* should show affection towards youngsters. Due to the experience and vast knowledge a *Masher* carries, he is approached by people for purposes of conflict resolution, to ask him about family history, land, traditional customs, stories etc. *Mashers* can be considered “mobile history”, since they narrate stories to youth that enrich their knowledge about history, good and bad events as well as the codes of Pashtunwali. They are the ones to be consulted in each matter primarily, and their advice is followed without any argument. The *Kashar* (youngster)

¹⁷⁷ Interview with academician and expert on Pashtunwali, FA, October 02, 2015, Peshawar.

¹⁷⁸ Interview with an elder and politician, SJ, October 01, 2015, Bajaur Agency.

should show respect towards their elders (*Mashars*) and adopt the teachings of elders in their daily lives, and also asks other kids to abstain from bad deeds, and do good to others.¹⁷⁹ Moreover, the *Kashar* is a volunteer, who looks after guests and elders, provides food, looks after the village, as well as community security. The youngsters and unmarried men of the village sleep in the *Hujra* to guard the village in case of the occurrence of an untoward situation, i.e. blood feuds, robbery etc. They assist elders of the community in making arrangements for weddings, funerals, and celebrating religious and traditional festivals.¹⁸⁰ For instance, in case of a death, youngsters will help elders of their tribe in arranging for the gravesite, *Ghusal* (final bath of the dead body), last prayers etc. Youngsters and elders also look after the poor, disabled, sick and elderly of the community. Physical assistance is carried out by the youth, whereas elders of the community look after financial assistance for treatment, daily food, entertainment etc. Youngsters are bound to follow all rules of Pashtunwali, and any misconduct on their part will be taken as *Sharam* (shame) for the whole community. However, if for the honor of the community the youngster takes an action, it would be fully supported by the community whatever the consequence may be.

In the traditional society of Pashtuns, women are a symbol of *Nang* (honor) for the family and tribe, and are responsible for household management, looking after kids and family members. They are also expected to keep a good relation with the neighbors, and particularly promoting a healthy relationship among close relatives.¹⁸¹ They are bound to live honorable and respectable lives in their respective localities, and are required to observe strict *Purdah* (veil) and spend majority of their time within the four walls of their house. Any misbehavior or sexual improprieties (adultery, abduction, rape) by women are considered as serious violations of the Pashtunwali code, and can be killed by male relatives to preserve the honor of the family.¹⁸² However, Pashtun women dwelling in various cities of Pakistan i.e. Peshawar, Quetta, Mardan etc., are more autonomous, empowered, and take active part in matters of business, politics and other social issues both within and outside the family.

Traditionally, women particularly dwelling in tribal setups were also trained to use a rifle usually for self-defense at times of conflict. Furthermore, the veil restriction is also relaxed during emergency or conflict situations.¹⁸³ A more important role they have

¹⁷⁹ Interview with an elder and politician, SJ, October 01, 2015, Bajaur Agency.

¹⁸⁰ Mohmand, 2006, p. 37

¹⁸¹ Interview with a renowned elder and Poet HHUA, September 30, 2015, Bajaur Agency.

¹⁸² Ibid.

¹⁸³ Gohar, 2005, p. 118

been playing in tribal society is of *Swara*, i.e. the sister, daughter, first or second cousin given as compensation by the offender's side in case of murder in order to resolve the conflict between the two parties.¹⁸⁴ *Swara*, a Pashtun custom, literary means female on horse and camel back. However, it has been largely eradicated from Pashtun society with the help of government pressure. Nevertheless, it is still in practice in a few areas of North Waziristan, South Waziristan, Khyber Agency, Kurram Agency, Bajaur Agency, Orakzai Agency of Federally Administered Tribal Areas of Pakistan and Patkiya, Jalalabad, Nagarhar, Nazyan, Helmand, Kunar provinces, and other Pashtun inhabited areas of Afghanistan.

Males are responsible for providing food, clothing, shelter, and are bound to keep a cordial and affable relation with the opposite sex (wife, mother, daughter, sister, etc.). *Moor* (mother) is only second in the family hierarchy. A mother complaint against her son to *Masher* (elder) is accepted as truth and proved without further investigation. They are held in such high esteem that if a woman throws her veil before a warring faction, the violent conflict stops. Women also play a large role in accessing a man's honor. It is the women's opinion that is often decisive in raising or lowering the position of a man. Their praise or hateful gossip can have a powerful impact on how a man is judged in his community. Men are expected to protect *Namoos* (chastity of women folk). According to Pashtuns, a newborn girl is also a part of *Namoos*. The significance of *Namoos* is embodied in a Pashtun proverb that says, "*mal tar sar jar, sar ta Namooos*", meaning, "sacrifice property to save head, sacrifice head to protect *Namoos*". Men are bound to preserve and seek the positive development of their reputation at all costs. They should be outstanding public speakers, possessing the ability to build political alliances, and should have the courage to defend and take revenge for any insult or attack committed against his family and community.¹⁸⁵ Moreover, they should protect their property from encroachments and should show willingness to sacrifice wealth and life in order to preserve the honor of their families.¹⁸⁶

¹⁸⁴ Khan, 2008, p. 70

¹⁸⁵ Interview with a renowned elder and Poet HHUA, September 30, 2015, Bajaur Agency.

¹⁸⁶ Interview with a renowned elder, expert on Pashtunwali and a renowned expert in Peshawar, DNUJW, October 03, 2015, Peshawar

Taboos in Pashtunwali

Taboos are found in every human society although their degree may vary from culture to culture; the Pashtun society is no exception. Women are considered as symbols of *Nang* (honor) in Pashtun society. Mention of a woman's name in public or in front of an outsider by a man of the tribe is considered a taboo and can result in bloodshed. *Shakanza*, meaning name-calling and abusive language, is a serious offense and the offender of such an offense must pay *Tawan* (payment made by the guilty to his opponent), which differs as to the age and social position of the offended. For instance, *Shakanza* to an unacquainted woman is considered the worst offense. The one accused of this shall send *Nanawatai* (seeking forgiveness) to the man aggrieved.

Marriage against the will of family members (love marriages) is also discharged in Pashtunwali; both victims (boy & girl) are to be killed to preserve the honor of the family. *Mateeza* is any girl who leaves her father's house to search for a husband. In particular, *Mateeza* is a girl who elopes with her fiancé before marriage. *Mateeza* is considered a bad woman, a vagrant. Such a woman is portrayed in the Pashto language as, "*Flankai Sail Di Kawa, Mateeza Larhe*", meaning "Oh' miss so and so, you were around everyone and ran away as *Mateeza*".

Misbehavior or rude attitude in front of elders, singing a song in public, and interaction of men and women on a regular basis is also against Pashtunwali.¹⁸⁷ For instance, *Mashers* (elders) enjoy high esteem in Pashtun communities, and if someone disrespects a *Masher*, he has to pay 1800 Afghani as *Tawan* (payment made to the offended by offender as compensation) according to Essa Narkh. Marriage with *Dama* (women singers and dancers) is also discouraged in Pashtun society. *Dama* is a woman who performs as a dancer and sings songs in marriage functions. *Dama* belongs to either a non-Pashtun race or a lower stratum of the society. Pashtuns are fond of engaging pretty *Damas* in their marriage functions; this is the reason why professional female dancers existed till the recent past, and to some extent even now in Swat, Mardan and Peshawar Districts of Khyber Pakhtunkhwa Pakistan. *Dama* has a low social position, and is the property of *Masher* of the tribe. In Pashtun communities where women are veiled, *Dama* can go around unveiled.

¹⁸⁷ Interview with a renowned elder and Poet HHUA, September 30, 2015, Bajaur Agency.

Pashtun abhor the very idea of *Talaq* (divorce). The word *Zantalaq* (one who divorces his wife) is considered an abuse and is against the Pashtun sense of honor. Such abuse at times results in murders and blood feuds.

Mazaka means land in general, but in particular it means the agricultural plot of a Pashtun. Symbolically, *Mazaka* connotes one's ancestors. If someone sells his *Mazaka*, then the other will say that, "*Da Plar Nikah Haduki-ye-Khars Krhal*", meaning he sold his father's bones. *Mazaka* comes under *Namoos* (chastity of women); therefore, the encroachment on someone's *Mazaka* means an encroachment of someone's *Namoos*. In FATA, *Mazaka* symbolizes *Moor* (mother). *Moor* is respected, and is second only to the father in the family hierarchy. In common usage the word *Moor* connotes elderly woman having children. An insult to an elderly woman is considered as an insult to one's mother. In the Khost Province of Afghanistan, *Mora* means a woman who is in love with someone other than her husband, having a secret love affair, and spending her husband's money on her lover. According to *Narkh* (laws containing punishments and penalties in Pashtunwali), both should be killed, and the one killing his wife for this reason will not be interrogated openly; only the *Mashers* will interrogate him in secret.

Marg means murder. In common usage *Marg* connotes premeditated murder, which carries great *Tawan* (compensation given to the offended by the offender). *Tawan* for *Marg* is not easily forgiven, and those who forgive are called *Be Nanga* (disgraced/coward). The *Tawan* for *Marg* is *Marg*. *Nanawatai* (seeking forgiveness) is not easily accepted in such cases.

Religion is an import aspect of the Pashtun society, and those who do not follow religious obligations are looked down upon.

In the Mahsud area of South Waziristan of FATA, rejection of asylum to someone is also considered as taboo.¹⁸⁸ Moreover, according to Fazal Azeem, employee of Pashto Academy Peshawar University, Pashtun society strongly believes in supernatural creatures. Certain phrases such as '*ka mar shaum ma khun ta gary*' (you shall be

¹⁸⁸ Interview with a renowned elder, expert on Pashtunwali and a renowned expert in Peshawar, DNUJW, October 03, 2015, Peshawar

responsible for my death) are strictly prohibited, along with the mention of genies, spirits, and dead bodies in front of kids as it can cultivate fear in their minds.¹⁸⁹

Merits and Demerits of Pashtunwali

Merits

Pashtunwali promotes peace, love, respect for each other, mutual cohabitation, and so on.¹⁹⁰ Moreover, Pashtunwali institutions like the *Jirga* system are the most effective tools for resolving conflict through mutual consultations and consensus.¹⁹¹ Pashtunwali is a great system where issues are resolved through community involvement. In fact, it is the focal point to manage all social and internal affairs of the community manifested in Pashtunwali codes like *Melmastiya* (hospitality), *Nang* (honor), *Nanawatai* (seeking forgiveness), *Ghairat* (dignity) etc., while social institutions i.e. *Jirga* represent democratic structure.

Demerits

Pashtunwali as a code of conduct has its share of demerits. Since it is not available in written form it runs the risk of being used and exploited by individuals for personal gains. For instance, codes like *Melmastiya*, *Ghairat*, Bravery, are largely exploited to promote militancy and extremism in Pashtun inhabited areas. In traditional and patriarchal societies like FATA (Federally Administered Tribal Areas), and Afghanistan, some of its components like *Swara*¹⁹², *Toor*¹⁹³, *Jhagh*¹⁹⁴, obstruct women from enjoying their basic rights such as freedom of choice, speech, education, health etc.

¹⁸⁹ Interview with academician and expert on Pashtunwali, FA, October 02, 2015, Peshawar.

¹⁹⁰ Ibid

¹⁹¹ Interview with a renowned elder and Poet, HHUA, September 30, 2015, Bajaur Agency.

¹⁹² The sister, daughter, first or second cousins given as compensation by the offender's side in case of murder to resolve the conflict between the two parties.

¹⁹³ When a woman is found guilty of an illicit sexual relationship.

¹⁹⁴ Claiming girl for marriage in public

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