



WHAT ARE THE DIFFERENT MODELS OF NON-STATE JUSTICE SYSTEMS IN SOUTH ASIA? WHAT ARE THE DIFFERENT APPROACHES THAT HAVE BEEN ADOPTED FOR STRENGTHENING COMPLEMENTARITY BETWEEN STATE AND NON-STATE JUSTICE DELIVERY AND WHAT HAVE BEEN THE EFFECTS OF THESE INTERVENTIONS?

CONTEXTUALISATION REPORT IMPLICATIONS OF EVIDENCE FOR SOUTH ASIA  
[NOVEMBER, 2017]

**The authors of this report are:**

Dr Feroz Ali (Department of Management Studies, IIT Madras, India)

Dr. Saji K Mathew (Department of Management Studies, IIT Madras, India)

Dr. M. Suresh Babu (Department of Humanities and Social Sciences, IIT Madras, India)

Professor Arun Kumar Gopaldaswamy (Department of Management Studies, IIT Madras)

**Funding**

This is an independent report commissioned by the UK Department for International Development South Asia Research Hub (DFID-SARH), Research and Evidence Division, Government of UK. This material has been funded by DFID-SARH; however, the views expressed do not necessarily reflect the UK Government's official policies.

**Acknowledgments**

We thank our host institution; the EPPI-Centre; our funder, DFID-SARH; our advisors Dr. Osama Siddique and the members of our project advisory group viz. (i) Justice B. N. Krishna, Retired Judge of the Supreme Court of India, (ii) Anand Grover, Senior Advocate of the Supreme Court of India, (iii) Dr. Sudhir Krishnaswamy, Faculty, Azim Premji University and (iv) Dr. Arun Thiruvengadam, Faculty, Azim Premji University and our peer reviewer Dr Mukdarut Bangpan and Mr Jeff Brunton for regular discussions; and our project associates, Mr. Anees Karimulla Khan, Mr M.S. Elayaraja, Ms. Sheweta Mohandoss and Mr. Roshan John.

**Conflicts of interests**

None of the authors has any financial interest in this review topic, nor have they been involved in the development of relevant interventions, primary research, or prior published reviews on the topic.

**Contributions**

The opinions expressed in this publication are not necessarily those of the EPPI-Centre or the funders. Responsibility for the views expressed remains solely with the authors.

**Citation**

Ali F, Mathew SK, Gopaldaswamy AK, and Babu MS, (2017) *What are the different models of non-state justice systems in South Asia? What are the different approaches that have been adopted for strengthening complementarity between state and non-state justice delivery and what have been the effects of these interventions? Implications of evidence for South Asia*. London: EPPI-Centre, Social Science Research Unit, UCL Institute of Education, University College London.

**© Copyright**

The EPPI-Centre owns the copyright for all other material on the website that it has developed, including the contents of the databases, manuals, and key wording and data-extraction systems. The authors give permission for users of the review to display and print the contents of the review for their own non-commercial use, provided that the materials are not modified, copyright and other proprietary notices contained in the materials are retained, and the source of the material is cited clearly, following the citation details provided. Otherwise, users are not permitted to duplicate, reproduce, republish, distribute, or store the review without written permission.

## INTRODUCTION

The non-state justice (NSJ) delivery systems are informal justice mechanisms which co-exist with formal or state administered systems of justice. In rural areas of South-Asia this is customary or traditional methods of alternate dispute resolution which help in providing access to justice. The NSJ systems have a number of forms in South-Asia from the Panchayats in India, to the Jirgas of Pakistan and Afghanistan to the Shalish in Bangladesh. Although these systems differ depending on the prevalent religion and customs of the region, they have many common features. These systems provide access to justice in the rural areas where the formal courts are difficult to access logistically, people do not have the money or because the people find the formal courts too complicated. Hence the NSJ systems are expected to provide accessible, cost effective, and quick delivery of justice.

The earlier studies on NSJ systems have focused on the nature of these systems, the strengths and weaknesses of the informal justice systems (most of which are recognised by the state), and their relationship with the formal justice systems. The findings of such studies are empirical, conceptual or theoretical in nature. The need for a systematic review thus arises in order to ascertain the manner in which challenges faced by the non-state justice systems can be addressed to make them more efficient and accessible to complement the state justice system. The complementarity of the non-state justice delivery systems with the state justice delivery systems is determined with regard to access to justice, time and cost involved in settling disputes and speedy delivery of justice. The main purpose of this systematic review is to develop understanding about the complementarity between state and non-state justice delivery systems in South Asia. The studies for the review were identified based on electronic search, hand search of journals, books, followed by backward and forward tracking of references. The identified studies were screened based on inclusion and exclusion criteria, resulting in 44 studies for review synthesis. The synthesis was based on textual narration of identified recurring themes.

The intervention of NSJ in South Asia is classified based on its effect at the individual level, community/institutional level and at the country level. These interventions cover a broad spectrum of disputes related to civil disputes, criminal disputes, disputes related to women

and minorities, commercial disputes, human rights issues and petty cases. The interventions in each of these disputes yield outcomes on the following aspects, which we considered for the synthesis: (1) Improved access to justice, (2) Efficient justice delivery, (3) Gender justice, (4) Fairness equality and accountability, (5) Restorative justice, (6) Reduction in crime rate and (7) Promotion of human rights.

---

#### NON STATE JUSTICE SYSTEM IN THE CONTEXT OF PAKISTAN

In the context of Pakistan it has been emphasized that the formal courts are inaccessible to large groups of citizens. Further there exists apprehensions on the integrity, competence and independence of the formal civil and criminal courts. This is compounded due to the lack of adequate resources to ensure speedy dispute resolution. Hence, the local courts gain priority as they permit a quick resolution of the dispute. The most renowned dispute resolution mechanism 'ulamas' are respected nationwide not only for their knowledge of the sacred law, but also for addressing citizens everyday problems. 'Ulamas' are a preferred option as they are perceived to be free from the corruption that is prevalent in many state bureaucracies of Afghanistan and Pakistan. In Pakistan the restorative justice was embedded within the NSJ systems of Jirgas. It included problem solving through direct participation and restoring relationships where forgiveness played a central role. Pakistan also has a set of hybrid systems, which apart from Jirgas, comprise of intermediaries like the Muslahathi Committees in providing access to justice at different levels. Muslahathi Committee as a body promoting legal pluralism has the potential to provide efficient justice to communities and individuals, especially women in resolving both criminal and civil disputes.

Although the NSJ system in Pakistan provides access to justice which is cost effective and speedy it is not free from drawbacks. There is some evidence that the prevailing NSJ systems have at times neglected the principles of human rights law, as well indicate some gender bias. These issues could become rampant with the lack of accountability. This essentially indicates that easy access does not imply effectiveness of justice delivery. Therefore, hybrid forms of justice systems have evolved which aim to combine the positive aspects of both NSJ and formal systems.

Similar to Pakistan, in the context of Bangladesh the community justice systems such as Shalish provide accessible and cost effective justice delivery to the people who are mostly in the rural

areas. The Shalish is not governed by any formal procedure and relies on the mechanisms of alternative dispute resolution (ADR) such as mediation and arbitration. The Shalish often creates physical access as sessions take place in the captain's home or in a makeshift office very often with community members present. Despite the concisions effect to include women in the interventions to provide justice, people continue to go to traditional Shalish as community and religious sanctions are very strong. The traditional Shalish has given way to more hybrid forms headed by local elected officials. Further interventions by NGOs have helped to set up parallel Shalish and attempt to draw people towards new structures designed to be more inclusive for women. These NGOs provide effective justice delivery as well as uphold gender justice. In Bangladesh the intervention by the NGOs have helped in providing effective justice delivery through means such as mediation as well as upholding gender justice.

---

#### SOME IMPLICATIONS

The prevalence of the non-state justice system in South Asia brings about a complementarity with the state justice system. Although the NSJ systems are helpful there is a need for legitimising them further as well as making them more effective. It has been seen that in customary and traditional justice systems such as the Jirgas, the Shuras and Shalish there have been cases where human rights and gender justice have not been upheld. This review shows that there exists a need for further complementarity between state and non-state justice actors in assessing interventions in order to enhance their effectiveness.

- NSJ systems need to be located in areas which are in proximity to the community seeking justice in the rural setting as formal justice systems are often perceived as urban centric and expensive. ADRs provide speedy and cost effective justice in a wide range of cases covering civil and criminal disputes, women, minority and human rights. The state justice system must exercise more authority in enforcing the decisions taken by the NSJ for the system to have any binding effect. Record keeping should be strengthened as it is conspicuously absent in most NSJ systems.
- Creation of hybrid institutions incorporating the characteristics of formal justice systems and NSJ systems would serve better in handling special types of disputes. The focus of the NSJ should be to resolve conflicts in a way that is acceptable to the community.

- There exists a need to promote hybrid NSJ systems as they provide confidential space for women to bring out their grievances. Such systems should be women centric systems as they can be accessed and utilised by women, reducing the terms of costs and cultural beliefs.
- NSJs are expected to address the problem of access; it should not be at the cost of human rights. In such circumstances a hybrid systems can benefit from the positives of both the formal and informal systems, addressing human rights concerns. Complementarity between the systems can be achieved when the state justice system recognizes and legitimizes the NSJ, minimizing violations on human rights.