

## Systematic Review Title Registration Form

Congratulations on securing funding for your systematic review.

The EPPI-Centre has already agreed to register and offer support for your review with:

Please complete the form below to help us work with you and your team. Where there have been no changes since you submitted a proposal feel free to cut and paste text into this document. Extend the boxes as necessary.

**Funder: DFID SARH**

### Number and title of review originally requested from funder:

What are the different models of non-state justice systems in South Asia? What are different approaches for strengthening complementarity between state and non-state justice delivery and what have been the effects of these interventions?

### Title of review agreed at time of confirmed funding:

What are the different models of non-state justice systems in South Asia? What are different approaches for strengthening complementarity between state and non-state justice delivery and what have been the effects of these interventions?

### Host organisation(s) for review team:

Indian Institute of Technology Madras, Chennai, India

### Review team members

Surname	First name	Email address*	Role
Ali	Feroz	<a href="mailto:fak@iitm.ac.in">fak@iitm.ac.in</a>	Principal Investigator
Mathew	Saji K	<a href="mailto:saji@iitm.ac.in">saji@iitm.ac.in</a>	Co-Investigator
Gopaldaswamy	Arun Kumar	<a href="mailto:garun@iitm.ac.in">garun@iitm.ac.in</a>	Co-Investigator
M	Sureshbabu	<a href="mailto:sureshbabum@iitm.ac.in">sureshbabum@iitm.ac.in</a>	Co-Investigator
Siddique	Osama	<a href="mailto:Dr.osamasiddique@gmail.com">Dr.osamasiddique@gmail.com</a>	Advisor

\* We shall use these email addresses to register each person for accessing the Moodle web space for on-going support and EPPI-Reviewer

### a) Situate the question in the literature, including describing the existing evidence and literature, estimated size and quality of the evidence base and your familiarity with it.

The existing evidence on non-state justice delivery systems shows that they are found to be much more prevalent in developing countries such as India (*panchayati raj* institutions, *khap panchayats*, *lok adalats* or people's courts and *mahila adalats*), Afghanistan (*shuras* and *jirgas*), Pakistan (*Pasthun jirgas*) and Bangladesh, to name a few (Wilfried Scharf, 2005).

*Ambiguities in the effectiveness of the non-state justice delivery systems*

The effectiveness of the non-state justice delivery systems vis-à-vis state justice delivery systems regarding access to justice remains to be determined. Access to justice, cost effectiveness and redressal mechanisms have been advanced as arguments in favour of non-state justice. However, non-state justice delivery systems also raise concerns such as lack of accountability (as there is no higher authority where the decisions given by informal justice systems can be appealed), corruption and lack of compliance with international human rights standards (imposition of inhumane and cruel punishments and gender inequality).

The alternative dispute mechanisms in India include the *Panchayati Raj* institutions. They were created pursuant to Article 40 of the Constitution of India. India's experimentation with the *panchayat* system for providing access to justice and public participation has produced mixed outcomes. *Khap Panchayats* which are a form of local self-governance among the Jat community in north-western India have been particularly criticized for violating basic human rights (Suruchi Thapar-Bjorket and Gurchaten Sanghera, 2014). The *Khap Panchayats* have been known to sanction honour killings of young couples that marry within the same *gotra* (caste).

Although the *Panchayati Raj* institutions were established by the Government to encourage governance at local levels and to empower women (by providing reservation for women to be elected in *panchayats*), the extent to which women have been empowered through the *panchayati* systems is debatable. Women who are elected to the *panchayati* systems often lack knowledge of their rights and responsibilities as the *panchayat* representatives (Bidyut Mohanty and Vandana Mahajan, 2003). Women are often ignored and male family members known as *panch patis* attend meetings of the *panchayat* and take important decisions. Hence, it is not clear whether the objective of women empowerment has been achieved through the *panchayati* institutions.

Women's courts (*mahila mandals* or *mahila adalats*) have recently evolved in India to encourage women to solve their domestic disputes informally rather than going to state justice systems. It is a special form designed to address women's marital problems. However, evidence suggests that the women who preside over *mahila adalats* have a patriarchal mindset which is the same ideology that guides the state courts (Sylvia Vatuk, 2013). This in turn can defeat the objective behind women's courts, thereby having an impact on the effectiveness of these courts. However, the lack of any empirical research done in this area makes it difficult to ascertain whether this is a valid claim. Hence, it is necessary to do a quantitative analysis, taking into account the percentage of *mahila adalats* that are governed by patriarchal ideologies.

Another concern linked to the issue of human rights is that there are not enough checks on the powers of the non-state justice systems. In the state of Samoa, the non-state justice systems such as the village *fonos* have inflicted punishment which included banishment, killing and shaming by ordering people to be "roped to large sticks like pigs" (Miranda Forsythe, 2007). In Afghanistan, concerns have been raised by the Afghan Government, the Supreme Court and the international community about whether the non-state justice systems should be allowed to continue working. These concerns stem from the fear that due to the presence of the non-state justice delivery systems, the resources needed for the functioning of the state justice delivery systems would be diverted (Noah Coburn and John Dempsey, 2010).

*Complementarity between State and Non-state Justice Systems and evidence base*

With more than 30 million cases pending in the Indian courts, the state justice systems are more in need of assistance in disposing the backlog. Non-state justice system can play a critical role in reducing the backlog and in becoming an avenue for resolving new disputes when there is complementarity between the two systems. Further, the manner in which some non-state justice system have worked in abject disregard of human rights also point to the benefits of complementing the two systems. Yet another disadvantage of the non-state dispute settlement mechanism is the perceived lack of binding authority. India experimented with a set of local institutions under the *panchayat* system soon after its independence. The absence of clarity on whether these institutions were to act as the lowest rung of the state or as a local sub-governmental system affected their development (Baxi, 1982). The failure of *panchayat* system is attributed to its procedural rigidity when compared to the opportunities to bargain and mediate in litigation (Meschivitz and Galanter, 1982). For non-state justice systems to work there must linkage with the existing state justice system.

Informal justice delivery system, the ones that exist outside the justice delivery system recognized and run by the state, may derive their authority from religion, tribal or community ties. In so far as the informal systems are regarded as alternative systems that lie outside the authority of the state, an inquiry into the origin of religious norms, tribal and community ties is necessary. Any study into the complementarity between state and non-state justice delivery systems will necessarily entail an analysis of the legal structure of the prevailing justice delivery systems. For the state to recognize an informal system of justice delivery, the legal system should be tuned towards recognizing alternative dispute settlement mechanism. In 2004, the Sindh High Court banned all trial conducted by the Jirga system in Sindh and ordered that any system that violates the order will be charged for contempt of court. The issue of banning Jirgas indicates that the state justice delivery systems will not encourage criminal matters to be judged and decided by the informal system as they can result in human rights and gender rights violations. There is no clarity on how the state systems will resolve conflict between religious and tribal systems. Whether the religious and tribal systems will be subsidiary to the state or if these systems can exist in parallel in an issue that need further exploration.

#### *Familiarity of the team*

The team members have conducted projects and studies sponsored by the Government of India and by the Government of Pakistan. As the Ministry of Human Resources Development Chair Professor, the Principal Investigator is connected with various department and ministries of the Government of India. The Principal Investigator has been engaged in judicial education programmes and has been involved in training programmes for judicial members at the Tamil Nadu State Judicial Academy, Maharashtra Judicial Academy and National Judicial Academy at Bhopal. As a member of the legal community in India, the Principal Investigator forms a part of a larger community of lawyers, advocates and judicial officers. The team members have worked in the past with various NGOs, both nationally and internationally. Apart from the available channels of publication, the team members have access to their alumni and professional network which includes Asian Institute of Technology, Cambridge University, Duke University, Emory University, Harvard University, Oxford University and other leading institutions in India and Pakistan for disseminating their results. Further, the team members have previously conducted several studies including systematic review of literature and have published in reputed academic journals.

**b) Please describe the limitations of the systematic review, including issues of evidence type, issues resulting from different methodological approaches to studies and issues arising from contextual challenges. [Up to 300 words].**

A systemic review of this nature studying the complementarity between state and non-state justice delivery systems must factor the issue of legitimacy of non-state justice delivery system. Non-state justice delivery systems have been employed as an alternative justice delivery mechanism in a variety of situations. These systems have at times been the cause for human rights violation, gender inequalities, corruption and nepotism. Since the focus of this review is to study the complementarity between state and non-state systems, the systemic review will limit itself to studies of non-state systems that are perceived as legitimate system. It is essential to confine the study to those non-state systems that will be recognized as legitimate systems by the state in which it operates.

Since the study covers justice delivery systems in south Asia, the review has to take into account the diversity within the Asian region. The local community plays a significant role in the manner in which the alternative justice delivery systems operation. The diversity in the local communities is seen in levels of economic growth, political structures, religious belief, cultural heritage and demographic parameters. Levels and patterns of alternative justice delivery mechanisms and their linkage between the state systems also vary among countries of Asia, in part as a consequence of the variation in the economic, political, religious and cultural structures noted above. Given this diversity results drawn and policy implications arising out of any synthesis of the available evidence could fall short of doing justice to the full range of issues related to non-state justice delivery systems in Asia.

Methodologically it may be difficult to distinguish between the linkages that exist between state and non-state justice delivery systems in South Asia. In India, there has been a consistent effort to institutionalize the informal justice delivery systems by making it a part of the State (*panchayati raj* institutions, *lok adalats* or people's courts and *mahila adalats*), whereas in Afghanistan, the State has tried to ban the administration of justice in criminal matters by the *jirgas*. Further, the impact of religion on the informal systems also vary between the countries within the South Asian region as the countries within the region. Tailor-made policies to address the needs of each of these groups are therefore necessary, which limits generalisability of broad trends that emerge from systematic review.

Heterogeneity of data and methods: Studies have used many different data sources and have adopted multiple methods for their analysis. This limits the choice of synthesis methods that can be used for the review. Use of quantitative synthesis methods would mean excluding high quality qualitative studies.

**c) Methodology**

*Search strategy*

The review would comprise of published academic articles, reports of government agencies and NGOs, online academic databases, systematic review databases, relevant research abstracts and doctoral theses including both quantitative and qualitative studies. This will also be complemented with discussions with various stake holders. It is proposed to include studies that have been published or completed from the year 1990 onwards, because there has

been limited research on these interventions in the South Asian context. Since the main objective of the review is to strengthen the capacity for evidence informed decision making, it is felt that a synthesis of recent evidence would be more relevant for policy decision making and provide more credence to the review. We will experiment with search terms like (non-state OR non-state justice systems or non-state justice delivery, non-state).and other that may be suggested to us by the advisory panel. These searches will be documented so as to leave a trail to allow others to reconstruct and validate our searches.

#### *Inclusion and exclusion criteria & review processes*

The review will focus on studies in the context of South Asia. The inclusion criteria will be with reference to the various types of non-state justice systems in the countries, the objectives behind their evolution, their powers, the extent to which they have been effective in their functioning, the possible factors which impact their functioning and how these factors affect the complementarity between state and non-state justice systems. The review will focus on academic databases, doctoral research work, surveys and reports prepared by governmental and non-governmental organizations.

**Population:** The review would be confined to the countries in South Asia: India, Pakistan, Bangladesh, Nepal, Afghanistan and Myanmar. In particular we propose to study non-state justice systems that prevail among regional and ethnic subgroups like the Jat community in north-western India, *jirgas* among *pasthun* community in Pakistan and shuras in Afghanistan and subgroups based on gender like the *mahila adalats* (courts for women) in India.

**Intervention:** This study will predominantly collect empirical evidence on the effectiveness of non-state justice systems. In this context certain interventions by the Government will be of particular interest. Indian Government introduced *Panchayati* Raj institutions to encourage governance at local levels and to empower women. We will search for evidence on the effectiveness of these institutions to deliver justice.

**Comparisons:** In our review we would focus on studies that have comparative or control group statistics. These could be before/after comparison or parallel control group with one group having access to some form of non-state justice vis-à-vis the other group with no access to such a system.

**Study designs:** This review will cover all published literature pertaining to non-state justice systems in South Asia, having qualitative or quantitative or mixed methods designs.

#### *Analyses*

We propose to use mixed methods approach in the synthesis of literature. We expect substantial heterogeneity in terms of the type of data, country where studies conducted, outcomes analysed, etc. It is therefore proposed to use mixed methods approaches to synthesize the results.

Where possible we would use statistical techniques such as standardized mean differences and odds ratio (Borenstein et al., 2008) to synthesize the evidences from quantitative studies. We would follow a narrative approach to synthesize the evidence of all the studies included. Textual narrative also makes the context of the study clearer and is more likely to make the heterogeneity between studies transparent (Barnett-Page and Thomas, 2009). Since textual

narration helps to bring out the heterogeneity between studies, this method is suitable to synthesize evidences of the qualitative studies.

We expect that findings from such multiple methods of synthesis would complement each other. Statistical analysis, on the other hand, would involve a more rigorous synthesis of evidence for some of the studies using quantitative tools and techniques. Textual narration would help to understand the causality in greater detail between interventions and outcomes, while helping to deal with heterogeneity.

<b>d) Experience of systematic reviewing</b>	
<b>Name</b>	<b>Experience</b>
<b><i>Feroz Ali</i></b>	<ol style="list-style-type: none"> <li>1. Empirical study of the decisions of the Indian Patent Office in pre-grant opposition procedure, Ministry of Human Resource Development, Government of India, 2015.</li> <li>2. Reviewed the 2014 Special 301 Report of the United States Trade Representative to evaluate the impact on Indian intellectual property law and policy for the Department of Industrial Policy and Promotion (DIPP), Government of India, 2014.</li> <li>3. Reviewed the intellectual property rights policy of Technical Educational Institutions for the All India Council for Technical Education (AICTE) to formulate a scheme for management of Intellectual Property Rights in Technical Educational Institutions, 2014.</li> <li>4. Review of Subsidiarity in Intellectual Property Lawmaking, Harvard Institute of Global Law and Policy, 2013.</li> <li>5. Review of patent linkage laws in India, 2010.</li> </ol>
<b><i>Saji K Mathew</i></b>	<ol style="list-style-type: none"> <li>1. Impact Assessment &amp; Economic Return Evaluation for five interventions of Hand in Hand. Reviewed evaluation methods for social interventions, developed SROI method for SHG based microfinance interventions in India and conducted evaluation study for pan India projects, 2015</li> <li>2. Evaluation study of 30 Citizen Centers in Haveri District, Karnataka. This study analysed the impact of citizen center initiative to provide access of government services to citizens through computers, in turn promoting rural entrepreneurship, Sponsor: Hand in Hand India, Chennai, 2012</li> <li>3. Review on Transaction Risk profiling and Network Processing Infrastructure in India (2012) - Proliferation of the Internet has led to e-commerce, which allows the transfer of electronic payments as well as transactional information via the Internet.</li> <li>4. Risk assessment of offshore outsourcing projects between India and the US, sponsored by Fulbright, based on extensive review of outsourcing literature, 2008</li> <li>5. Impact of Technology on Quality of Services in Technical and Management Libraries in Karnataka. This study reviewed service quality assessment techniques and adapted SERVQUAL for conducting impact assessment, 2009,</li> </ol>

	<a href="http://www.dsr.gov.in/reports/tifp/tapmi/tapmi_report.pdf">http://www.dsr.gov.in/reports/tifp/tapmi/tapmi_report.pdf</a>
<b><i>Arun Kumar Gopaldaswamy</i></b>	<ol style="list-style-type: none"> <li>1. Access and sustainability of rural health care services in India (2008)</li> <li>2. Socio economic analysis of public infrastructure projects to the peri urban population in India (2009)</li> <li>3. Impact of changes in the transparency of infrastructure procurement and delivery on infrastructure access, costs, efficiency, price, and quality</li> <li>4. Review on Transaction Risk profiling and Network Processing Infrastructure in India (2012)</li> <li>5. Review on Dynamic Linkages between Foreign Direct Investment and Domestic Investment: Impact on India post Crisis (2013)</li> </ol>
<b><i>Suresh Babu M</i></b>	<ol style="list-style-type: none"> <li>1. “Micro small and medium enterprises and access to technology: Issues and Options”. This study was conducted for National Commission for Enterprises in the Unorganised Sector, Government of India, 2009.</li> <li>2. “Issues in Global Production Networks: The Case of Indian Auto Industry, ADB-RIS”, 2010</li> <li>3. “Inclusive education: Models and Implementation” This study was conducted for Department of Education, Government of India, 2010</li> <li>4. “Review of Active Learning Methods in Schools in Tamil Nadu”, Government of Tamil Nadu, 2010</li> <li>5. “Education for all: Sarva Siksha Abhayan in Tamil Nadu”, funded by MHRD Government of India, 2011</li> <li>6. “Skill formation and Technological Capability in Indian IT Industry”, ILO and UNCTAD 2013.</li> </ol>
<b><i>Osama Siddique</i></b>	<ol style="list-style-type: none"> <li>1. Approaches to Legal and Judicial Reform in Pakistan: Post Colonial Inertia and the Paucity of Imagination in Times of Turmoil and Change, 2011</li> <li>2. Law in Practice – The Lahore District Courts Litigants Survey (2010-11), 2011</li> <li>3. The Hegemony of Heritage: The ‘Narratives of Colonial Displacement and the Absence of the Past in Pakistani Reform Narratives of the Present, 2010</li> <li>4. Reforming Pakistan’s Justice Sector Reform Discourse, 2010</li> <li>5. The Retrospective Report: Mapping and Assessment of Justice Sector Interventions – Donors and Government, 1998-2010, with Syed Ali Murtaza, The Asia Foundation, 2010.</li> <li>6. Pakistan: Local Court Efficiency Assessment Report, with Syed Ali Murtaza, USAID: 2010.</li> <li>7. Pakistan: Report on Training Needs Assessment for Judges &amp; Court Staff, USAID: 2010.</li> <li>8. The Punjab Crime Perception Survey Report, with Saif Anjum, Asian Development Bank: 2009.</li> </ol>

### e) Communications plan and user engagement

Dissemination plan: The review team would engage in two stage dissemination. In the first stage the dissemination would be aimed at policy makers by circulating the report and soliciting their responses. Subsequently they would be invited to participate in focused group workshops where the findings of the reports from the policy maker's perspective would be discussed. We would also look at publishing salient findings of this review in popular press, newspaper OP-ED's, as well as journals that are targeted at the policy makers.

The second level of dissemination would be to the research fraternity. We would seek to publish the review in a reputed international journal, which will have wide access by the research community. The findings of this research would also be presented in some of the leading conferences and workshops in the area firstly as a mode of knowledge dissemination and secondly to get expert opinions. To enhance the accessibility of the study the research paper would be posted on leading research websites like SSRN and Research Gate. Hard copies of the final report will be sent to the experts, policy makers as well as leading libraries.

Engagement with the community: This report will also be shared with implementing agencies like the *mahila mandals*, *lok adalatas*, *jirgas*, human rights organizations and NGOs who are engaged at the grassroots level. The review team would conduct a workshop for the personnel engaged at the grassroots level of non-state justice delivery systems to disseminate the findings and enhance their performance. The report and the findings will be widely shared with government agencies, legal experts and policy makers in the judiciary and the government.

<b>Timetable</b> (some review methods do not include these stages in this order)		
<b>Stage of review</b>	<b>Start date</b>	<b>End date</b>
Title Registration(allow 2 weeks)	October 10, 2015	October 24, 2015
Preparation of preliminary protocol	October 15, 2015	December 10, 2015
Submission of preliminary protocol coordinated by QAT	December 10, 2015	December 31, 2015
Stage I: Identifying and describing existing research in terms of the focus, design and context of studies	November 1, 2015	January 25, 2016
Presentation of stage I findings to advisory group and finalizing the scope for stage II	February 1, 2016	February 15, 2016
Revising preliminary protocol to prepare final protocol	February 15, 2016	March 10, 2016
Protocol submitted including scoping for peer review/Peer review (allow 1 month)	March 10, 2016	April 10, 2016
Stage II start: Study Search	March 20, 2016	
Assessment of study relevance	April 1, 2016	May 15, 2016
Data Extraction & critical appraisal	March 25, 2016	June 15, 2016
Qualitative Analysis	May 20, 2016	July 15, 2016
Statistical meta-analysis	July 1, 2016	July 25, 2016
Contextualisation of findings to South Asian relevance	July 1, 2016	July 31, 2016
Preparation of draft report, contextualization document and SR summary	July 10, 2016	August 10, 2016
Draft report with contextualization document	August 10, 2016	October 10, 2016



and SR summary submitted for peer review/peer review (allow 2 months)		
Revision of draft report	October 10, 2016	October 30, 2016
Dissemination of draft report/findings	November 1, 2016	November 30, 2016
Submission of Final report		December 10, 2016

**Do you have any particular concerns about preparing this review?**

The team does not have any concern in preparing this review currently.

**Do you have any particular requests for support when preparing this review?**

The team will benefit from training from EPPI-Centre.