



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?

SYSTEMATIC REVIEW [DECEMBER 2017]

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EXECUTIVE SUMMARY

INTRODUCTION

During the last few decades, there has been a need to study the complementarity between state and non-state justice systems, especially in the context of South Asia, as instances of non-state justice systems, such as jirgas, shuras, shalish, panchayat etc. have emerged as popular forms of dispute resolution as a result of the perceived failure or inaction by the state justice delivery systems.

Non-state justice (NSJ) systems can be defined as informal (often based on traditional systems), social sanction based justice delivery mechanisms rendered by the participation of the community through interested intermediaries employing predominantly alternative dispute resolution (ADR) methods to render restorative justice.

Studying the complementarity between the systems is vital as it offers insight into how the existing informal systems can be improved to make them more compliant with rule of law and international norms as well as to see how the formal system can be assisted in reducing and clearing the chronic backlog of cases in courts which have plagued the justice delivery systems in South Asia.

This study has looked at the different models of non-state justice systems in South Asia and has identified the different approaches for strengthening complementarity between the state and non-state justice delivery systems. The effects of the interventions have been positive. Non-state justice delivery systems raise issues of legitimacy (their conformity to the rule of law administered by the formal state justice system), lack of accountability, corruption and lack of compliance with gender justice and international human rights norms.

The study followed the systematic review process. The review was conducted in three stages; first the identification (search) of studies followed by mapping of the studies and in-depth review of the identified studies. The search was based on identified key terms and their combinations in electronic databases followed by manual search for relevant journals. This led to the identification of a large number of studies that was filtered based on their relevance. Based on the screening we identified studies qualifying for the 'full text screening' which are to be included for the in-depth review. The synthesis of the finally identified studies formed the second stage of the review. A total of 44 studies were identified for synthesis.

The intervention types are classified based on their 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.

On review of the studies, we were able to compile our conclusions which are stated below under their respective outcomes.

SYSTEMATIC REVIEW APPROACH

Study Sources: The search for the studies was based on identified key terms and their combinations in electronic databases followed by manually searching for relevant journals. This led to the identification of a large number of studies that were filtered based on their relevance. The studies were screened on the basis of title and abstract. The inclusion/exclusion criteria (Appendix 3) formed the basis for the screening. Based on the screening we identified studies qualifying for the ‘full text screening’ and to be included for the in-depth review.

In-depth review: The process of identifying studies was followed, as discussed in section 2.2. Electronic search, hand search of journals, books, followed by backward and forward tracking of references, yielded a total of 26347 studies. The first step beyond this was to eliminate duplication of studies and we eliminated 793 studies resulting in 25554 studies for further screening. Based on the title screening of all the identified studies, 4512 studies qualified for abstract screening. After the abstract screening, we had about 1350 studies shortlisted for stage one of full-paper screening. All the studies were further scrutinized based on the quality assessment tool developed, which resulted in 44 studies for the synthesis.

Synthesis method: Our attempt was to synthesize the qualitative evidence pertaining to the review questions. An initial scanning of the literature pointed to the predominance of qualitative studies. Therefore, we restricted our SR to qualitative synthesis. Since the studies were qualitative in nature, we adopted a narrative approach which was more suitable to synthesize the outcome and impact evidences from qualitative studies.

To assess the impact of interventions from the available evidence, we examined a variety of indicators and classified them in terms of individual outcomes, country level outcomes and community level outcomes.

FINDINGS OF THE REVIEW

NSJs are sought after by the people especially in the rural areas due to its physical proximity as compared to the formal justice systems. Further there is the expectation that resorting to NSJs would reduce costs. However, the ADR mechanisms, though a practical alternative to the formal state justice system, lack enforcement power that necessitates efforts to integrate and complement the formal state systems. For complementarity to work between the non-state justice system and state justice systems, NSJ should be perceived as a legitimate system. In this context hybrid systems that take the positives of both the systems have been effective in settling disputes. We find that Interventions towards improving the access and utilization of NSJs by women have opened up new spaces for women to vent their grievances. However, there exists a need to promote NSJs, which provide confidential space for women to bring out their grievances. Such systems should be women centric systems and women should be made to participate in the process of justice delivery. While NSJs solved the problem of access, at times they did it at the cost of human rights. Hybrid systems like ADR based systems in countries like Bangladesh and Afghanistan can address such violation of human rights while delivering justice. We synthesise the evidence based on the type of interventions, and outcomes accrued at the individual and country level.

RESULTS ON THE BASIS OF OUTCOMES AND TYPE OF INTERVENTIONS

In order to assess the effects of non-state justice systems and its complementarity to state judicial systems, the outcomes were broadly classified into individual, community/institution level and country level outcomes. The outcome indicators included: access to justice, decrease in crime rate, gender justice and compliance with human rights, reduction of costs and expenditures. Such a system of categorising was developed to identify and characterise the different areas where the outcomes of the non-state judiciary could be observed. This was done by analysing the effects both at the micro and macro level, from a single individual to the country at large.

At the community/institutional level the impact of NSJ had 7 outcomes: Access to Justice; Efficiency; Gender justice; Fairness, Equality & Accountability; Restorative Justice; Reduction in Crime Rate; and Promotion of Human Rights. At the country level the key outcome parameters were experiences in improved access to justice; speed in justice delivery; gender justice; efficient justice delivery; restorative justice; reduction in crime rate and promotion of human rights. At the individual level, studies addressing fairness, equality and accountability of justice delivery were not identified. At the individual level the outcomes of Improved Access to Justice, Efficiency in Justice Delivery System and Gender Justice were examined.

KEY FINDINGS

- NSJ systems are sought after by people in rural areas due to its physical proximity as compared to the formal justice systems. In addition this system is also expected to reduce cost incurred by the litigant both in the formal and informal channel. Seeking resolutions from NSJ helps in speedy resolution of the cases and is perceived to be trustworthy as it is set in the local context. Most NSJ systems are community based systems, therefore the people involved would have a better understanding of the situation, culture and customs.
- Third-party intervention such as interventions by NGOs, religious bodies, international developmental agencies and political parties have attempted to reduce both physical and economic barriers. Their facilitation and training of personnel are expected to improve the access to NSJs. In Bangladesh, the NGOs helped in providing better access to justice for the women and the oppressed.
- ADR mechanisms, though a practical alternative to the formal state justice system, lack enforcement power. The absence of maintenance of records and the lack of accountability also emerged as issues with the NSJ systems. The state justice system must exercise more authority in enforcing the decisions taken by the NSJ for the system to have any binding effect.
- The formal system should make efforts to integrate the NSJ systems like Jirgas in Afghanistan. Complementarity with the formal state systems would ensure that the decisions of the NSJ, with the existing norms of the state justice systems, can be enforced.
- Hybrid systems that take the positives of both systems have been effective in settling disputes. Combining traditional justice delivery systems in coordination with NGOs can create hybrid systems. NSJs bring legitimacy by combining customary and religious laws. Hybrid systems can also emerge from government initiatives like the Mediation Boards in Sri Lanka.

- Interventions specifically directed towards improving the access and utilization of justice by women have opened up new spaces for them to vent their grievances and at times earn their rightful place in family and society. Though the traditional NSJ are male-dominated institutions where the voice of women is not heard, the hybrid NSJs which provide a confidential space for women to bring out their grievances, need to be promoted. The dispute resolution systems should be sensitive to gender issues. Women should be made to participate in the process of justice delivery. Peer-led mediation centres have been effective in some cases.
- For complementarity to work between the non-state justice system and state justice systems, NSJ should be perceived as a legitimate system. Legitimacy is a pre-condition for people to voluntarily comply with laws and legal authorities and can be achieved by following certain procedures that are viewed as fair and just.
- NSJs resolve disputes by adopting less time consuming methods like mediation and conciliation which are faster, less-expensive and better suited for the community. They also provide low-cost justice to people in remote areas and help by conducting proceedings in the local language.
- Most NSJs resort to the principle of restorative justice in settling disputes between parties. Restorative principles of justice are employed to reform and integrate the offenders into the community. Social sanctions are imposed on the offenders by way of social shaming and social ostracism.
- Though NSJs solved the problem of access, at times they did it at the cost of human rights. Jirgas in Afghanistan were notorious for violating human rights norms. Hybrid systems like ADR based systems in countries like Bangladesh and Afghanistan can address such gross violation of human rights while delivering justice.

IMPLICATIONS

This review provides pointers and further directions for research and policy. The prevalence of non-state justice systems in South Asia brings about a complementarity with the state justice system. The NSJ systems help in providing access to justice, efficient justice delivery and gender justice to name a few. 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. Hence the current interventions need to look into some other factors such as human rights, gender justice and legitimacy in order to make the system more effective. 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.

IMPLICATIONS FOR PRACTICE AND POLICY

Based on the review, we have the following policy suggestions:

- NSJs 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.

Complementarity between the NSJ and the formal system can be improved by aligning the NSJ as an ally to the state justice system.

- NSJ can be promoted by encouraging ADRs as it provides speedy and cost effective justice in a wide range of cases covering civil and criminal disputes, women, minority and human rights. In addition, the formal systems should make efforts to integrate ADRs as they lack enforcement. The state justice system must exercise more authority in enforcing the decisions taken by the NSJ for the system to have any binding effect.
- NSJs could also be designed for handling special types of disputes such as commercial disputes as these require speedy settlements. Further, the creation of hybrid institutions incorporating the characteristics of formal justice systems and NSJs would be better in handling special types of disputes.
- The state justice systems and NSJ should be synchronised to resolve criminal disputes where both the systems act independently in delivering justice. The focus of the NSJ should be to resolve conflicts in a way acceptable to the community. Further, for NSJ to be synchronised to work with a formal system the former should be perceived as a legitimate system.
- There exists a need to promote hybrid NSJs as they provide a 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, addressing their issues in terms of costs and cultural beliefs. In addition, women should be made to participate in the process of justice delivery.
- Training the mediators and conciliators who man the NSJs is required for the system to dispense justice effectively. The reorientation can be done locally by trained government officials and NGOs.
- Record keeping should be strengthened as it is conspicuously absent in most NSJs. Due to this lacuna NSJs at times replicate the procedure followed by the state justice system to bring in a sense of legitimacy.
- NSJ system need to focus on conciliation as there exists a need for them to keep the social fabric of the community intact. In some cases the absence of retribution could lead to the guilty not being punished, as per the formal state justice principles, which could lead to legal issues.
- NSJs are expected to address the problem of access, as it should not be at the cost of human rights. In such circumstances a hybrid system 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.

IMPLICATIONS FOR RESEARCH

Based on the review, we have the following suggestions for research:

- There is a dearth of empirical evidence on the outcomes of NSJ interventions. Most of the studies covered the perception of the users of the system. Empirical studies should target successful NSJ systems to explore possibilities of replication in other regions.

- Geographical location of NSJs is found to have a positive impact on the access to justice especially in Bangladesh, Nepal and Afghanistan. However there are also other region specific factors that influence effectiveness of NSJs, which need further empirical exploration.
- Though studies have compared the merits and demerits of various aspects of NSJs, it is generally believed that a one-size fits all approach in terms of provisioning of NSJs has not been effective. Therefore, research should be set in the context of the prevailing NSJ interventions at the regional level or at the local community level to aid policy formulation.

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1. BACKGROUND

1.1 AIMS AND RATIONALE FOR CURRENT REVIEW

The Panchayat system in India was created as a mechanism of alternative dispute resolution.

The litigants in Himachal Pradesh in India noted a positive response regarding the role of the non-state justice systems.

The Panchayat system in India is similar to the Jirgas in Afghanistan (informal justice systems used to settle disputes among the Pashtun people in Afghanistan and tribal areas of Pakistan).

Complementarity between state and non-state justices systems will help the disposal of the backlog of more than 30 million cases pending in the Indian courts.

*-Jayant, Kavadi, Shirish, Girach, Khupkar, Kokal, Sen, Shukla, Pandey
Harvard Human Rights Journal, 2014*

The complementarity between the state justice systems and the non-state justice (NSJ) systems in the South Asian region is well-documented (Ahmed, 2007; Xavier, 2006; Galanter and Krishnan, 2004; Goresh, 2009). An example would be of the Panchayat system (a mechanism for alternate dispute resolution) prevalent in India, which was restructured by the Government to encourage governance at local levels. The restructuring of the Panchayat system was necessitated due to the overwhelming number of suits pending before the civil and criminal courts (the state justice systems). The non-state justice systems are complementary in their function with the state justice systems as they are a means of alternative justice delivery systems: they reduce the backlog of cases in the courts and provide a speedier and inexpensive mechanism of justice delivery those living in rural areas who lack access to the courts. In this way a complementarity is created between the state and non-state justice systems. Thus, the Panchayat system was recognized by the Government of India and was created in pursuant to Article 40 of the Constitution of India. The Panchayat system has its similarities to other systems prevalent in other parts of the world; a classic example would be of the Jirgas (informal justice

systems used to settle disputes among the Pashtun people in Afghanistan and tribal areas of Pakistan), which complement the formal courts in these regions.

However, the main issue is whether non-state justice systems such as the Panchayats or Jirgas enhance or undermine people's access to justice. A study conducted with litigants in Himachal Pradesh in India noted a positive response regarding the role of the non-state justice systems. Krishnan (2014) noted that "the elected representatives (elected panchayat leaders) of our village are very cooperative. They do help us to resolve our problems and guide us in court matters too". The participants in a similar study conducted in Maharashtra, India however noted that while the panchayats are supposed to be the most accessible representative body, socio-economically disadvantaged groups reported that their concerns are routinely ignored. Other factors for preferring non-state justice delivery systems over the state justice delivery systems include accessibility, cost-effectiveness, speed and efficient redressal mechanisms (DFID, 2004).

The primary drawback of the non-state justice delivery systems is that they raises concern such as legitimacy, lack of accountability, corruption and lack of compliance with international human rights

standards. This is due to the fact that these systems are informal and unlike state justice systems are not answerable to any authority for their actions.

One of the objectives of the restructured Panchayat system in India is to empower women (by providing reservation for women to be elected in panchayats) for gender equality in justice delivery systems. Though this effectiveness is debatable, women representatives who are elected to the Panchayat often lack knowledge of their rights and responsibilities (Mohanty and Mahajan, 2003). In a system deeply rooted in patriarchy, women are often ignored and male family members known as “panch patis” (husbands of elected women representatives) attend meetings of the panchayat, taking important decisions which essentially does not serve the purpose of representation of gender in justice delivery systems.

Women’s courts (mahila mandals or mahila adalats) have recently evolved in India to encourage women to solve their domestic and marital disputes informally rather than resorting to the court. One study noted that the patriarchal mindset in the women who presided over mahila adalats is similar to the ideology that guides the state courts (Vatuk, 2013). This in turn can defeat the objective behind women’s courts, thereby having an impact on the effectiveness of these courts.

Studies on Khap Panchayats, a form of local self-governance within the Jat community in north-western India, have reported instances of misuse of non-state justice systems (Bjorket and Sanghera, 2014). These Panchayats have faced severe criticism for violating basic human rights such as sanctioning honour killings of young couples who marry within the same gotra (clan).

Another concern that arises with respect to NSJ systems is the issue of human rights violations in the absence of checks on the powers of the system. An example of such absence can be noted in the Khap Panchayats. Similarly in the state of Samoa (in the South Pacific), the NSJ systems such as the village fonos (Village Councils that dealt with the affairs of the village including traditions, customs and land disputes) have inflicted punishment which included banishment, killing and shaming by ordering people to be “roped like pigs to large sticks” (Forsythe, 2007). In Afghanistan, concerns have been raised by the Afghan Government, the Supreme Court and the international community about the continuation of the NSJ systems. These concerns arise from the fear that the state justice delivery systems would lose their resources which would be diverted to the non-state systems (Coburn and Dempsey, 2010). It has been found however, that people prefer to have their disputes resolved outside the courts by Jirgas or Shuras who are seen as ‘more accessible, more trusted, in accord with accepted local norms, more effective, relatively lesser number of corrupt personnel, and more prompt in the resolution of disputes than state courts’ than the Afghan state judicial systems (Wardak, 2011).

With more than 30 million cases pending in the Indian courts alone, the courts are in need of assistance in reducing the backlog. This is where the NSJ systems could play a crucial role in reducing the backlog as well as becoming a channel to resolve new disputes that arise. This can be achieved when there is a complementarity between the two systems. The state and non-state systems are being piloted in a hybrid model in efforts to create a meaningful synergy within a coherent framework could provide effective, cost-effective, accessible and restorative justice to the Afghan population (Wardak, 2011).

The informal nature of NSJ systems brings up the issue of legitimacy. The lack of binding authority is seen as a disadvantage in the effectiveness of the non-state dispute settlement systems. Soon after independence, India experimented with NSJ systems by setting up local institutions under the panchayat system. Baxi (1982) noted that 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. The failure of the panchayat system is attributed to its rigid procedures, which unlike mediation or litigation did not provide ample opportunities to bargain (Meschievitz and Galanter, 1982). For NSJ systems to work they should be linked with the existing state justice system to address the issue of legitimacy.

DEFINITIONS AND CONCEPTUAL ISSUES

In a study on informal justice systems conducted by UNDP, UNICEF and UN Women, it was stated that it is difficult to define NSJ systems in a manner that covers the wide range of informal justice delivery mechanisms. NSJ systems were described as systems “encompassing the resolution of disputes and the regulation of conduct by adjudication or the assistance of a neutral third party that is not a part of the judiciary as established by law and/or whose substantive, procedural or structural foundation is not primarily based on statutory law” (UNDP and UN Women, 2012, page 8). Due to the difficulty in defining and classifying NSJ systems, for this study we rely on the definition of its opposite, the state justice system, in clarifying the elements that make the system. The essential features of a formal justice system are as follows:

Universality - The state justice systems usually follow a uniform code of procedure. For example in India, the courts follow the Civil Procedure Code, 1908 and the Code of Criminal Procedure, 1973. In Bangladesh, the Code of Criminal Procedure, 1898 is followed.

Presence of formal rules and structures - Since the state justice systems follow a uniform code, they have formal rules in place.

Enforcement mechanism - The state justice systems such as the courts pass a decree or judgment to ensure that the orders and the decisions of the courts are complied with and enforced. Non-compliance leads to penalty, usually resorting to the retributive justice principles.

Procedure for elimination of arbitrariness - There are checks on any bias on the part of adjudicators. If an adjudicator personally knows the parties at dispute, he/she would need to recuse herself/himself from the case. A litigating party can also appeal against the decision of the formal justice system.

State recognition - Formal justice systems are usually backed by the State. They are created, recognized and enforced by the State.

By identifying the main features of formal justice systems, we were able to use those features indirectly to define informal justice systems. Hence, those systems that lack any or all of the defining features of the formal justice systems may be considered as informal justice systems or non-state justice systems. We can identify the following features as common to most NSJ systems, features that are opposite to the state justice system:

Informal system – The system is informal and does not follow any predetermined procedures. Rather than legal code, community norms and customary practices are applied in resolving disputes. Forms

of mediation and conciliation are commonly used to find solution to the disputes. They are not a part of the state justice delivery mechanism and the formal courts do not exercise supervisory jurisdiction over these systems.

Community participation – Justice is rendered by the community, which plays the leading role in resolving the dispute. Village or community elders, as opposed to independent and trained judges, run the system.

Restorative principles of justice – The NSJ is usually used for settling civil matters and in some cases it may extend to minor criminal matters. The focus is on restorative justice, i.e., attuned towards rehabilitating the offender rather than retributive justice.

Social sanctions – The chief mode of enforcement is through social sanction, which includes social boycott and social shaming as opposed to incarceration and fines that characterise the state justice system.

Interested intermediaries – The representatives who run the system often know the parties closely and are able to resolve the disputes at a personal level.

From the above categories, we can venture to define NSJ systems as informal (often based on traditional systems), social-sanction based justice delivery mechanisms rendered by the participation of the community through interested intermediaries employing predominantly alternative dispute resolution (ADR) methods to render restorative justice. However, some justice systems cannot be defined or categorised as either formal justice systems or as informal justice systems. These systems may be regarded as hybrid models of customary, religious and state-run ‘para-judicial’ systems (UNDP and UN Women, 2012).

1.2 POLICY AND PRACTICE BACKGROUND

In developing countries, with their increasing populations and the paucity of access to justice, the non-state justice systems are generally looked upon as a way to make the local people self-sufficient and to improve access to justice by providing them with cheaper means of dispute settlement. South Asian countries such as India, Pakistan and Afghanistan have had a long-standing tradition of resolving disputes through village or community mediation, and this mode of dispute resolution is ingrained in their culture. In general, traditions and customary law play an important role in settling disputes in developing countries.

The Constitution of India provided for the establishment of Panchayati Raj institutions as a means of local self-governance in the villages. Further, since there are a large number of cases pending in the courts in India and due to the paucity of resources (lack of judges to decide cases), Lok Adalats (People’s Courts) in India were established to lessen the burden of the Judiciary. The Panchayats also performed the function of settling disputes using inexpensive and amicable mechanisms such as conciliation and mediation (a recently held Lok Adalat settled as many as 1.25 core cases in a day). To streamline the process of dispute resolution through Lok Adalats, regulations for their conduct have also been framed under Section 28 of the Legal Services Authority Act 1987. Although the Lok Adalats were designed to bring about peaceful settlement through alternative dispute resolution mechanisms such as conciliation, they have started assuming adjudicatory functions. This in turn defeated the

initial purpose for which the Lok Adalats were created, and made them resemble the formal justice system of the courts.

The non-state justice systems have also been criticised due to their ineffectiveness in justice delivery as well as due to the fact that it drains the resources of the State. The legitimacy of these institutions has been questioned by scholars, and they have debated whether a system of non-state justice should exist with the prevalent state justice systems.

For the purpose of policy-making, it is important to see that the decisions of these systems are enforced in an effective manner and that they do not violate the standards of international human rights law.

1.3 RESEARCH BACKGROUND

The earlier research on non-state justice systems (most of which are recognised by the state) has focused on the nature of these systems, their strengths and weaknesses as well as the way they complement the state-justice system. In the absence of a prior systematic review on non-state justice systems, the findings of this review are based on published research in the form of empirical, conceptual or theoretical studies. A study conducted under the support of the International Institute for Democracy and Electoral Assistance (2008) has identified gender inequality as a weakness of the non-state justice systems. The study looked at the institution of *bashingantahe* (men entrusted with the responsibility of dispute settlement) in the African country of Burundi and concluded that traditionally, the institution did not give powers to women to voice opinions and there was no provision for women to perform the function of *bashingantahe*. The study identified the deep-rooted cultural notion of male domination and a conservative social climate as possible reasons for inequality.

Forsyth (2009) studied the role of women in the institution of *kastom* (traditional justice system administered by non-state leaders known as chiefs) in the Republic of Vanuatu and found that in a large number of communities, the participation of women in *kastom* meetings is restricted or non-existent. Moreover, in a few places, women are prohibited from speaking in the meetings. Women were also given more severe punishments than the male members of the community. However in the cases of sexual abuse or domestic violence, there seemed to be mixed evidence where at times the chiefs took the side of the women and at other times they didn't.

On examining the relationship between the *kastom* and the state justice systems in the country, it was observed that there is evidence to suggest that the state was phasing out its support to the *kastom* system. One of the respondents in the study (Forsyth, 2009) stated that "the system of chiefs is weak and we are afraid it will break". The lack of consensus as to the "traditional" way to resolve disputes also acted as a deterrent to maintaining order. The study also identified the diminishing authority of the *kastom* chiefs due to the proliferation of chiefs; disputes over the title of chief (person responsible for settling disputes) have caused the system to stop functioning in certain places. The study observed that almost all the chiefs interviewed mentioned that people have lost respect for the *kastom*, they seldom attend the *kastom* meetings and do not obey the decisions passed by the *kastom*.

In South Asia, studies have been undertaken to examine the role of khap panchayats (a system of local self-governance consisting of village elders in the Indian states of Haryana, Rajasthan and Uttar Pradesh) in justice delivery. An empirical study conducted at Jamia Millia Islamia University highlighted instances of discrimination against women by khap panchayats (Rajpurohit and Prakash, 2015). This was also seen in the *shalishi adalats* in West Bengal, Rajasthan, Haryana and western parts of Uttar Pradesh in India. The study noted the use of social sanctions by the khap panchayats. These social sanctions went against the formal justice system. Khap panchayats, which are governed with a patriarchal mindset, showed little respect for the individual identity and liberty of a woman. The study concluded that the decisions of khap panchayats are illegal and act as a hindrance to sound governance and development (Rajpurohit and Prakash, 2015).

On the other hand, in places like Afghanistan and Baluchistan, the informal justice systems are strong and women refrain from resorting to the formal courts as it would be viewed as diminishing the honour of the family (Mehdi, 2002). *Shalish* (village-based dispute resolution), the informal justice delivery mechanism in Bangladesh, is not governed by any formal procedure. It relies on arbitration by the *shalish* panel or mediation where the *shalishkars* help the parties arrive at a mutual agreement. Stephen Golub (2003) classifies *Shalish* into three forms: traditional *shalish*, government-facilitated *shalish* and NGO-facilitated *shalish*.

It was found in a study conducted by the UNDP and UN Women (2012) that the people of Bangladesh considered the District Courts to be more impartial and just than the *shalish*. Apart from the customary legal system, the religious courts form another type of non-state justice systems like the *sharia* courts in Nigeria (Oba, 2004). Golub (2003) identified the *Sharia* courts as “all those courts administering Islamic law in Nigeria, whether exclusively or concurrently with jurisdiction in common law and customary law matters”. Other examples of religion-based justice system include *adat* courts and Islamic courts prevalent in Western Sumatra.

The non-state justice systems are found all over the world in various forms, some being apparently effective while others are ineffective and unhelpful. Although we have found studies addressing the efficacy of the different non-state justice system practices, there is still a lack of comprehensive review of the existing literature. This review addresses that gap in the literature.

1.4 COMPLEMENTARITY BETWEEN THE STATE JUSTICE SYSTEMS (SJS) AND THE NON-STATE JUSTICE SYSTEMS (NSJS)

Complementarity between the state justice systems (SJS) and the non-state justice systems (NSJS) is achieved when the two systems collaborate with each other in mutually beneficial manner. The NSJS helps to reduce the burden on the SJS whereas the SJS acts as a check on the NSJS in cases involving arbitrariness and bias. The non-state systems are also accountable to the state-justice system. Complementarity between the SJS and the NSJS is witnessed in three different ways. Firstly, complementarity may exist between state and non-state justice systems where decisions rendered by the NSJS are open to the scrutiny and judicial review of the state justice system. This judicial review ensures a check on any arbitrariness or bias in the non-state system and brings about accountability.

Secondly, complementarity may exist between state and non-state justice systems when NSJS are organised and supported by the State. When a NSJS is supported by the State, it leads to efficient justice delivery mechanisms, cost-effectiveness, sharing of workload of SJS and access to justice. Thirdly, complementarity may exist between state and non-state justice systems where there is a provision that allows for the transfer of cases pending in the state systems to the non-state systems, ensuring reduction in the workload on the state system and speedy justice as well as better access to justice. Complementarity between state and non-state justice systems is expected to result in better economy, lesser conflict in societies, better access to justice, respect for rule of law and quick redressal of claims.

1.5 PURPOSE OF THE SYSTEMATIC REVIEW

The main purpose of this review is to document the complementarity between state and non-state justice delivery systems in South Asia. As the countries in this region have prevailing non-state justice systems this study analyses the legal structure of these systems and the role of religious norms, tribal and community ties in the region. This review examines the role of religious systems (so far as they pertain to the settlement of civil disputes and not disputes relating to application of religious laws) and tribal systems which could be subsidiary to the state or existing and operating in parallel. The scope of this review is limited to South Asia and to those non-state systems that are legitimised by the State in which they prevail.

1.6 ADDITIONS TO THE REVIEW QUESTION

The main research questions which will be addressed in this review are the following:

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

Sub-questions

- a) Do non-state justice systems enhance or undermine people's access to justice?
- b) Are non-state justice systems speedy and cost-effective?
- c) Do non-state justice systems lack accountability?
- d) Have the non-state justice systems been successful in their objective of gender justice?
- e) What are the challenges that are being faced by the non-state justice systems (threat to survival, lack of support by the State, corruption, non-enforcement of decisions, etc.)?
- f) Are the non-state justice systems upholding the norms of international human rights laws in their decisions?

1.7 AUTHORS, FUNDERS AND OTHER USERS OF THE REVIEW

This review is conducted by Feroz Ali (Department of Management Studies, IIT Madras), Saji Mathew (Department of Management Studies, IIT Madras), Arun Kumar Gopaldaswamy (Department of Management Studies, IIT Madras) and Suresh Babu (Department of Humanities and Social Sciences, IIT Madras).

This project is funded by the Research and Evidence Division in the Department for International Development and supported by the DFI, PWC and EPPI-Centre.

User summaries will be circulated among the researchers and policymakers after the completion of the review. These summaries will be published on popular press, disseminated at conferences and through the communication networks of the different constituencies.

1.8 OUTLINE OF THE REPORT

The report begins with an executive summary giving a brief overview on the systematic review. The complete report comprises of five chapters excluding the executive summary and appendices. The current chapter gives a background to the report. Chapter 2 presents the detailed description of the methods and search strategies adopted. Chapter 3 gives a detailed description of the identified studies in terms of their methodologies and outcome. Chapter 4 presents a qualitative synthesis of the studies. Chapter 5 contains the summary and conclusions.

2 METHODS

2.1 EXPERT INPUTS TO THE REVIEW

For this review we enlisted the services of experts from related fields such as judges, practicing lawyers, researchers and academic experts involved in state and non-state justice systems. In particular, we have taken inputs from our project advisor Dr. Osama Siddique. In addition, we also took inputs from quality experts of DFID from time to time.

2.2 SYSTEMATIC REVIEW PROCESS

We followed the process described in the subsequent sections to ensure quality and reliability of the findings.

The review was conducted in three stages; first the identification (search) of studies followed by mapping of the studies and in-depth review of the identified studies. The search was based on identified key terms and their combinations in electronic databases, followed by manually searching for relevant journals. This led to the identification of a large number of studies that were filtered based on their relevance. The studies were screened on the basis of title and abstract. The inclusion/exclusion criteria (Appendix 3) formed the basis for the screening. Based on the screening we identified studies qualifying for the 'full text screening' and to be included for the in-depth review. The synthesis of the identified studies forms the second stage of the review.

At the mapping stage, we created an initial, broad bibliography using the search strategy. The emphasis was to identify studies to ascertain the varied non-state justice models (practices), the difference in approaches either for the same model based on expected outcome or location of intervention. Additionally, we emphasized identifying the factors that contribute to NSJ complementing the state justice systems. We focused on interventions made by both governmental organizations (such as the Panchayat system introduced by the Government of India and Community Mediation Boards Programme in Sri Lanka) and village or community mediation schemes, similar to that carried out by the Gerry Roxas Foundation in the Philippines and the implementation of restorative justice projects. With regard to the religious non-state justice systems, we have included only those systems based on evidence, and excluded others based on religious belief. We included studies on non-state justice systems that identified phenomena or outcome such as efficiency in justice delivery, improved access to justice, gender justice, promotion of fairness and equality, speedy delivery of justice, decrease in crime rate, lack of neutrality and fairness in procedure, non-compliance with human rights, non-enforcement of decisions, lack of accountability and threat to survival of non-state justice systems. The studies which fail to identify the socio-economic impact of non-state justice systems were excluded.

We also defined inclusion and exclusion criteria for studies in order to ensure that we do not miss any relevant study in this SR. The review focused on studies in the context of South Asia.

The inclusion/exclusion criteria were applied in the country context, intervention, study design, outcomes, type of publication, year and language. Further, a quick characterization was carried out based on the type of intervention, participants and outcomes. The Population (Participants), Intervention (or Exposure), Comparator and Outcomes (PICO) components defined in the study

specified much of the eligibility criteria for screening the studies. The final shortlisted papers were used for synthesis.

SCREENING STUDIES USING INCLUSION/EXCLUSION CRITERIA

Inclusion and exclusion criteria for screening, as detailed in Appendix 3, were applied on identified studies successively to: (i) titles and abstracts and (ii) full reports. Full reports were obtained for those studies that appeared to meet the initial criteria and those that have insufficient information were again screened to ensure that they met all the listed criteria. For the initial search no geographic limits were placed, even though the SR specifically focused on South Asia. For the purpose of this review, South Asia included the following countries: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

The SR focused on qualitative and mixed method studies. Studies with no explicitly stated qualitative approach but which report on qualitative data were also included in the review. In order to include the best available evidence in the full systematic review, studies that did not state or adequately describe their approach to the qualitative analysis of data were excluded. The suitability of the studies for the review was further judged based on the following criteria, which are also depicted in figure 2.1:

1. Whether they examined people's experiences of receiving or delivering non-state justice system.
2. Whether they examined people's experiences of such interventions.
3. Whether they reported qualitative methods of data collection and analysis on people's experiences.
4. Whether the studies qualitatively investigated people's experiences of their involvement in the receipt of justice through non-state programmes in terms of positive benefits/negative consequences.
5. Whether the studies qualitatively investigated people's motivations to participate/not participate/drop out of non-state justice programmes.
6. Whether the studies qualitatively investigated other household or community members' beliefs and attitudes toward people who participated in non-state justice programmes.

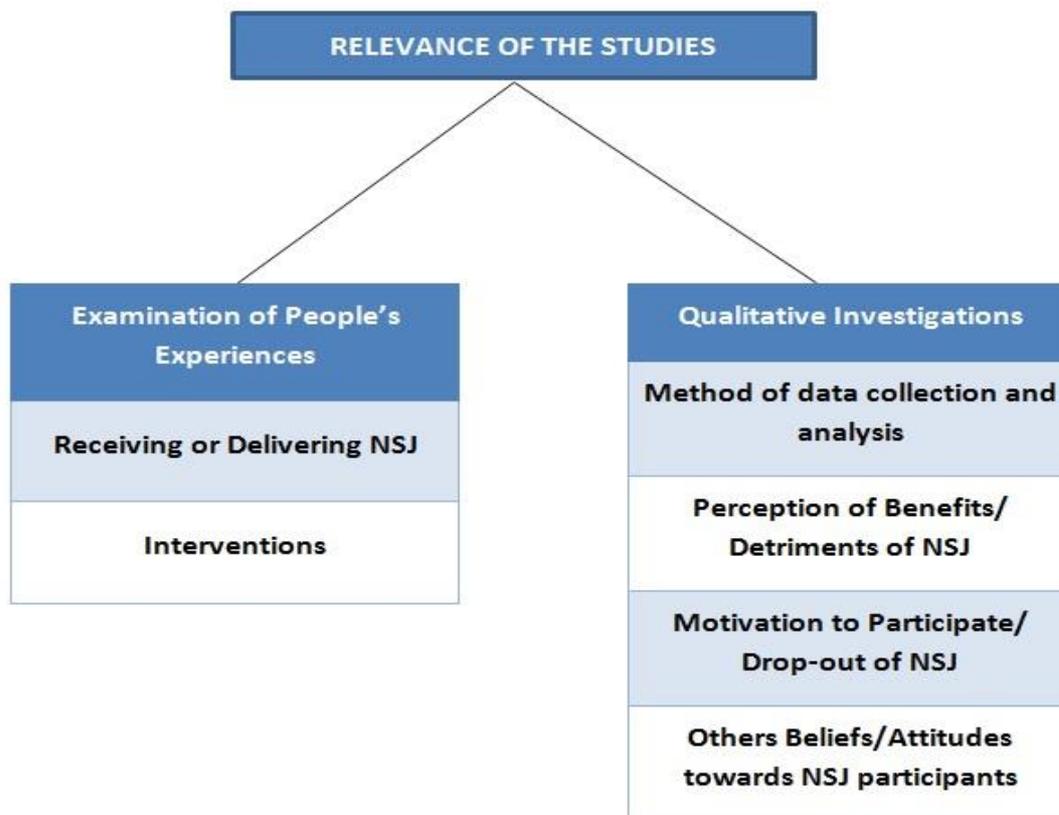


Figure 2.1: Criteria for judging included studies

CHARACTERISING INCLUDED STUDIES

We have included studies that were published from 1990 onwards in the review. This is because in South Asia we witnessed a change towards the promotion of NSJS since 1990, for example in the Indian context the Panchayat Raj Act with the 73rd constitutional amendment in 1992 aimed at imparting more powers to the local bodies. The PICO components formed much of the eligibility criteria for the initial screening of the studies. The acronym PICO stands for Population (Participants), Intervention (or Exposure), Comparison and Outcomes.

Population (Indicates the population and sub-groups that the study focused in this review): As indicated this review was confined to South Asia. In particular we focused on interventions in NSJS that prevail among regional, religious and ethnic subgroups like the *Jat* community in north-western India, *jirgas* among *pasthun* community in Pakistan and *shuras* in Afghanistan, *bhoras* in India and subgroups based on gender like the *mahila adalats* (courts for women) in India.

Intervention (Indicates the nature of the Intervention for which evidence was gathered): The predominant objective here was to identify the differences in interventions of NSJS and the differences in intervention in relation to expected outcomes. In addition, we also included the difference in interventions and outcomes in terms of region and gender. The identification of complementarity factors in non-state justice systems based on the intervention type were also analyzed.

Comparison (Indicates what comparison interventions were included in the review): Since it is hard for this review question to use quantitative evidence for synthesis we compared the different NSJ models that worked across South Asia as they were largely dependent on prevailing regional differences and locally accepted practices and beliefs. We also attempted to focus on the differences in the effectiveness of state sponsored non-state justice systems vis-à-vis non-state sponsored NSJ systems, which basically emanate from religious practices or regional culture. The differences in cost, the target population in terms of gender, accessibility and accountability of such systems based on intervention type, region and sponsoring agency (state vs non-state) were compared.

Outcome(s) (Indicates which intermediate and endpoint outcomes were included in this review, giving due consideration to any adverse or unintended consequences that occurred along the causal chain): The aim of this systematic review is to identify the factors contributing to the functioning of the non-state justice systems. The desirable outcomes would include better access to justice through cost-effective and speedy justice delivery mechanisms (research sub-questions 1 and 2), quick redressal of claims (sub-question 2), respect for rule of law by bringing in accountability and checking arbitrariness or bias in the justice delivery systems (sub-question 3), promotion of gender justice and equality (sub-question 4), recognition of challenges faced by non-state justice systems (sub-question 5), respect for and promotion of international human rights (sub-question 6), reduction in workload of state justice systems, better economy and less conflict in societies. Our synthesis of relevant literature aided in identifying factors either positively or negatively affecting the complementarity of non-state justice systems to the state sponsored justice systems. The outcome was also factored in mapping the successful approaches adopted by non-state justice systems for complementarity.

Apart from PICO, additional criteria included study design, the background of the participants, types of disputes, characterization of intervention and outcome. Studies included from the scoping exercise were initially evaluated and characterised according to type(s) of non-state justice intervention(s). The provider of the non-state justice intervention(s) and the beneficiaries were described, as well as the country or region in which the intervention was offered and the setting (i.e., South Asian country or country/context relevant to South Asia, in an urban or rural environment). Each study was then characterised according to its design. The phenomena of interest assessed were described in relation to the context of the participants, their experiences and views of receiving or delivering non-state justice interventions, and other impacts on the NSJ service users, wherever available.

CONTEXTUALISATION

In order to maximise the relevance of the review findings to specific South Asian region/countries, we organised the review on the basis of themes and country cases. These studies were chosen to reflect the complex mix of constitutional governance and community factors in the region. Country experiences of protracted conflict (Afghanistan) and the sustained interest of global policy advisors in such regions were examined closely. The review laid emphasis on the efforts of reconstruction of conflict torn economies and the attempts to manage access to justice amongst local communities.

Existing linkage between state and non-state justice systems was also accorded priority. Regions and communities that have traditionally relied on informal justice delivery systems, like Afghanistan and Pakistan, were identified for closer scrutiny. Certain NSJS such as *jirgas* (an assembly of leaders that

decides disputes according to the teachings of Islam), which are popular in Afghanistan, are also found in Pakistan. Since certain religious and cultural traditions are present in both the countries, the findings of the study of *jirgas* in Afghanistan could be reasonably applied to those in Pakistan. The same would be done for other countries sharing similar characteristics of NSJS.

The review also addressed the legitimacy of existing informal systems which have been recognised and complemented by the state justice delivery systems. In this context, we also documented some of the best practices prevailing in the region so that they could be replicated to other regions which suffered from issues relating to access to justice.

IDENTIFYING AND DESCRIBING STUDIES: QUALITY ASSURANCE PROCESS

The searches were initially carried out to identify relevant publications and reports with potentially relevant text and data. Each citation was then piloted independently by the two lead reviewers using inclusion criteria stated in Appendix 3. Reports or websites with potentially relevant text and data, which were assessed independently in duplicate by the two lead reviewers (Feroz Ali & Saji Mathew) used the initial mapping criteria for the review.

Characterization of included studies in the systematic map (including all publications/reports etc.) was carried out by Suresh Babu and then validated by Arun Kumar to create a final study dataset.

There was no disagreement between the lead reviewers and as such, we did not have to refer to a third reviewer (Dr. Osama Siddique) or one of the advisors for their views and comments for a final decision.

2.3 SEARCH FOR POTENTIAL STUDIES

The list of databases included in our search strategy for publications is presented in Appendix 7. In addition, we identified a list of hand search journals (see Appendix 8) for consideration in the review. Further, we identified potential key words and their combinations (see Appendix 6). We used these key words for search in different databases and journals. A limited search was first conducted followed by analysis of words in the title and abstracts. This was followed by a search of all the databases and index terms using the keywords identified. Lastly, all the references were carefully scrutinized to identify additional studies. Titles and abstracts were imported into EPPI Reviewer 4, which was used to keep track of the studies. It was decided to include studies that were published or completed from the year 1990 onwards. Since the main objective of the review is to strengthen the capacity for evidence based on informed decision making, it was felt that a synthesis of recent evidence would be more relevant for policy decision making and would provide more credence to the review.

2.4 IN-DEPTH REVIEW

After the initial screening and selection of appropriate research papers and articles for review as described in the previous sections, the next step was to conduct a detailed appraisal of the papers based on the quality of these studies. A specific population group, set of interventions and outcomes were selected as the foci of interest. The studies included for the in-depth review were checked to

meet the listed outcomes in inclusion criteria. This appraisal of studies was conducted based on delivery and adequacy, reliability and validity of outcome measures and other factors affecting heterogeneity of outcomes. The overview of the complete review process is presented in figure 2.2.

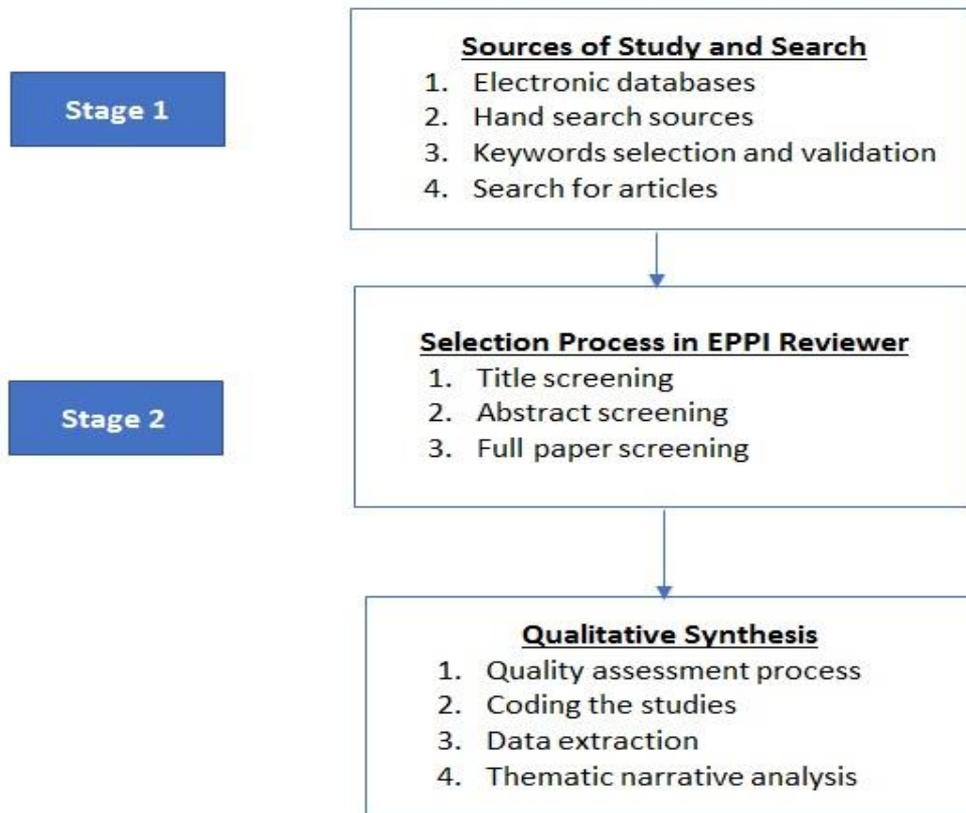


Figure 2.2: An overview of Review Process in two stages

2.5 SYNTHESIS PROCESS

The synthesis is based on outcomes identified. The outcome data for synthesis were generated by considering studies encompassing benefits of NSJS including, but not limited to the speedy disposal of cases, cost-effectiveness, gender justice, etc. Other possible drawbacks of NSJS such as the inability to decide cases, non-compliance with human rights, non-enforcement of decisions, lack of accountability, unfair and partisan procedure, etc. were considered as the outcomes of interest. The synthesis followed a clear pathway of intervention, outcome and impact. The synthesis led to the identification of a model that would be effective depending on the purpose for which such a NSJS is created and the region in which it is operating.

Our attempt was to synthesize the qualitative evidence pertaining to the review questions. An initial scanning of the literature pointed to the predominance of qualitative studies. Therefore, we restricted our SR to qualitative synthesis. Since the studies were qualitative in nature, we adopted a narrative approach which was more suitable to synthesize the outcome and impact evidences from qualitative studies. The 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 (with respect to outcomes) between studies, this method is most suitable for qualitative synthesis of evidences. Furthermore, textual narration would help to understand the causality in greater detail between interventions and outcomes, while helping to deal with heterogeneity.

RATIONALE FOR THE CHOICE OF QUALITATIVE SYNTHESIS

An initial scanning of the literature pointed to the predominance of qualitative studies. The review process of NSJ research made it very explicit to us that there was a dominance of qualitative research methods in the domain. Of the 44 papers we identified for synthesis, 39 studies followed qualitative research methods and the remaining five followed mixed and quantitative methods. Given the relatively small number of quantitative studies, it was not feasible to do meta-analysis using statistical techniques. Furthermore, a qualitative approach was more appropriate to synthesize qualitative studies. Therefore, we restricted our SR to qualitative synthesis. Since the studies were qualitative in nature, we adopted a narrative approach which was more suitable to synthesizing the outcome and impact of evidence from qualitative studies. The 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 (with respect to outcomes) between studies, this method is most suitable for qualitative synthesis of evidences. Furthermore, textual narration would help to understand the causality in greater detail between interventions and outcomes, while helping to deal with heterogeneity.

2.6 CRITERIA FOR IDENTIFYING IMPORTANT REVIEW RESULTS

The approach for identifying the results of the review was on the basis of validity (legitimacy of the non-state justice system) as well as the well-rounded nature of the results arising from the studies conducted using systematic research. The identification of studies is based on a two-stage process of mapping and in-depth review, which assessed the complementarity between the state justice systems and the non-state justice systems, particularly the impact on providing access to justice in the context of South Asian countries. We particularly identified the factors that contribute to NSJ complementing the state justice systems. We focused on interventions made by both governmental organizations and village or community mediation schemes. Special emphasis was made on outcomes that encouraged and have resulted in speedy justice, gender justice, fairness, neutrality, non-compliance with human rights, non-enforcement of decisions, lack of accountability and threat to survival of non-state justice systems, to name a few. The role of non-state justice systems, inter alia, depends on the country, culture, religion, demographics as well as the role played by the state judiciary. In the South Asian region, the state justice systems have been complemented by the non-state systems. We analysed both the positive as well as negative outcomes of the non-state judicial system, with special emphasis on its complementarity to the state judicial system. We focused on the results of studies which were well-interpreted, analytical and involved studies on cases and systems where disputes were settled out-of-court. Studies which projected the complementarity between state and non-state justice system, studies projecting the acceptance, recognition and legitimacy of non-state justice systems in South Asia and studies which projected the benefits of non-state justice systems like cost-saving, easy accessibility and time saving were identified and considered.

2.7 CHARACTERISATION OF OUTCOMES

In order to assess the effects of non-state justice systems and their complementarity to state judicial systems, the outcomes were broadly classified into individual, community/institution level and country level outcomes. The outcome indicators included: access to justice, a decrease in crime rate, gender justice and compliance with human rights, reduction of costs and expenditures. Such a system of categorising was developed to identify and characterise the different areas where the outcomes of the non-state judiciary could be observed. This was done by analysing the effects both at the micro and macro level, from a single individual to the country at large. With reference to the body of literature available we were able to note that the outcomes resulted in (i) enhancing individual benefits such as better access to justice and reduction of expenditure and (ii) enhancing benefits at the institutional/community level by reducing the conflicts within the society. The third set was at the macro level stating the effects on the country at large; effects such as the enhancement of governance and the increase in transparency. A broad characterisation of these outcomes and its resultant effects are depicted in Figure 2.3.

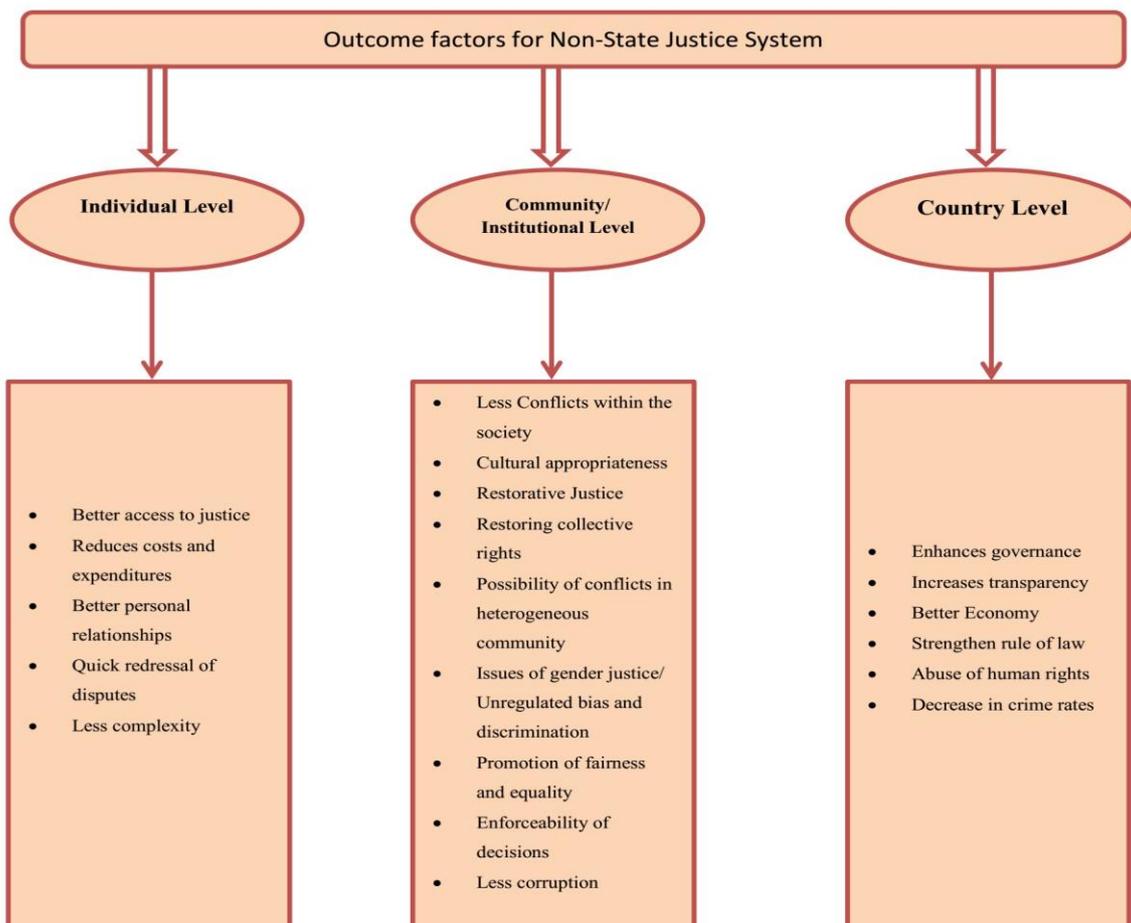


Figure 2.3: Characterization of outcomes

3. IDENTIFYING AND DESCRIBING STUDIES: RESULTS

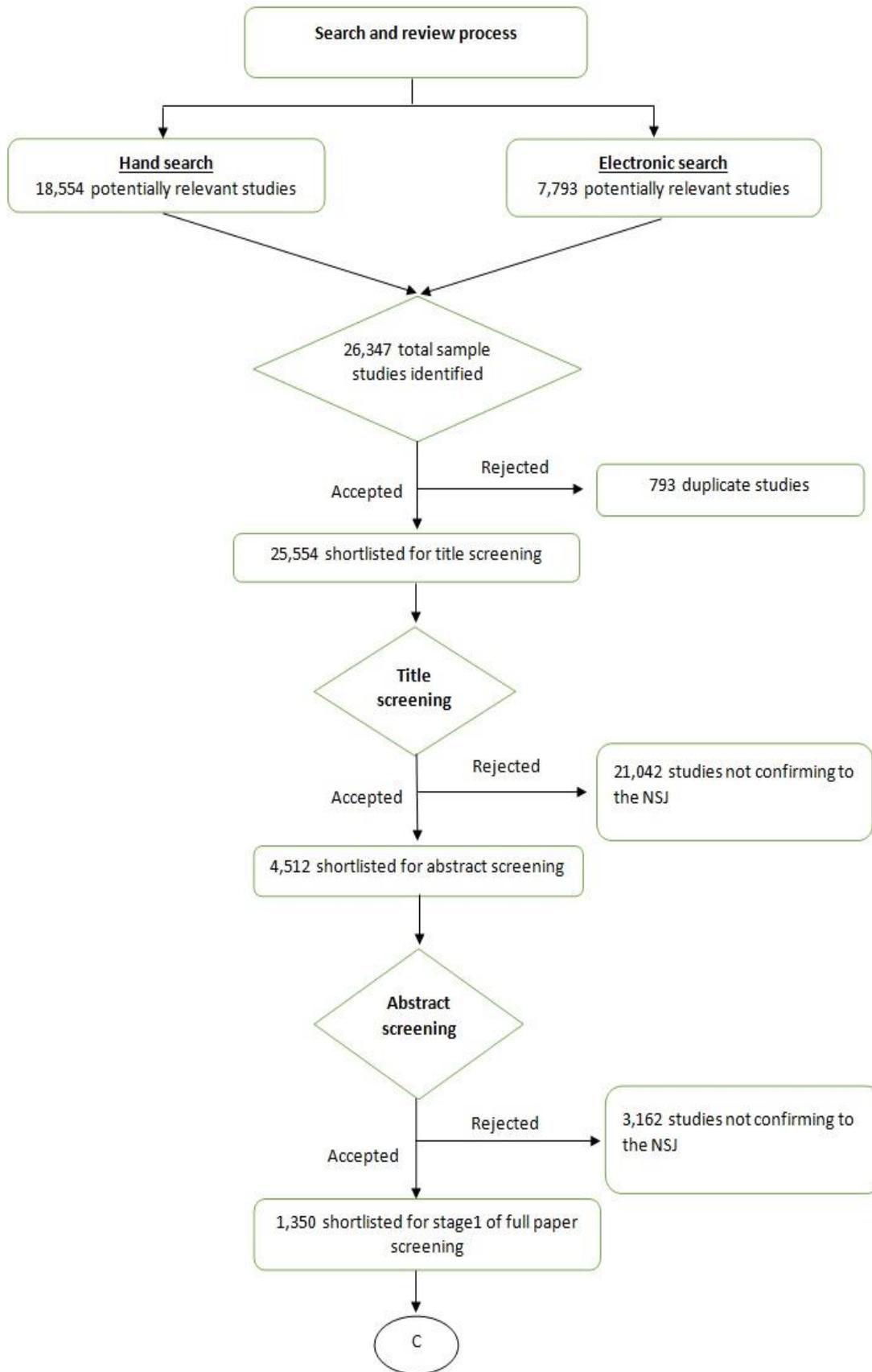
3.1 AIM OR PURPOSE

In this chapter, a description on the categorisation of the studies is presented. Based on the inclusion and exclusion criteria we arrived at a total of 44 studies for the synthesis. We describe these studies in terms of the country context, publication types, methods used for analysis, the predominant types of interventions and effects on outcome. Studies reporting on any intermediate or final outcomes along the casual chain have been characterised.

3.2 OVERVIEW

The process of identifying studies was followed, as discussed in section 2.2. Electronic search, hand search of journals, books, followed by backward and forward tracking of references, yielded a total of 26,347 studies. The first step beyond this was to eliminate duplication of studies and we eliminated 793 studies, resulting in 25,554 studies for further screening. Based on the title screening of all the identified studies, 4512 studies qualified for abstract screening. After the abstract screening, we had about 1350 studies shortlisted for stage one of full-paper screening.

At the end of the first stage of full paper screening, we eliminated 1209 studies which did not conform to the study question. The rejection criteria were (a) non-South Asian countries; (b) intervention not conforming to our inclusion criteria, and (c) policy and review studies. This resulted in 141 studies which qualified for further scrutiny. The 141 studies which were the result of stage 1 full paper screening were further scrutinized and studies which did not have direct linkage with the non state justice systems in South Asian countries were rejected, with 27 studies qualifying for stage 2 full paper screening. Quality assessment tools were applied to these studies and studies which were in the form of newspaper articles, low quality notes and comments which were not relevant were rejected and 18 studies qualified for the systematic review. Additional search from websites and legal data bases like LexisNexis were conducted and 26 studies were finalized for systematic review using the inclusion/exclusion criteria. All the studies at this stage were further scrutinized based on the quality assessment tool developed, which resulted in 44 studies for the synthesis. The entire process is depicted in figure 3.1.



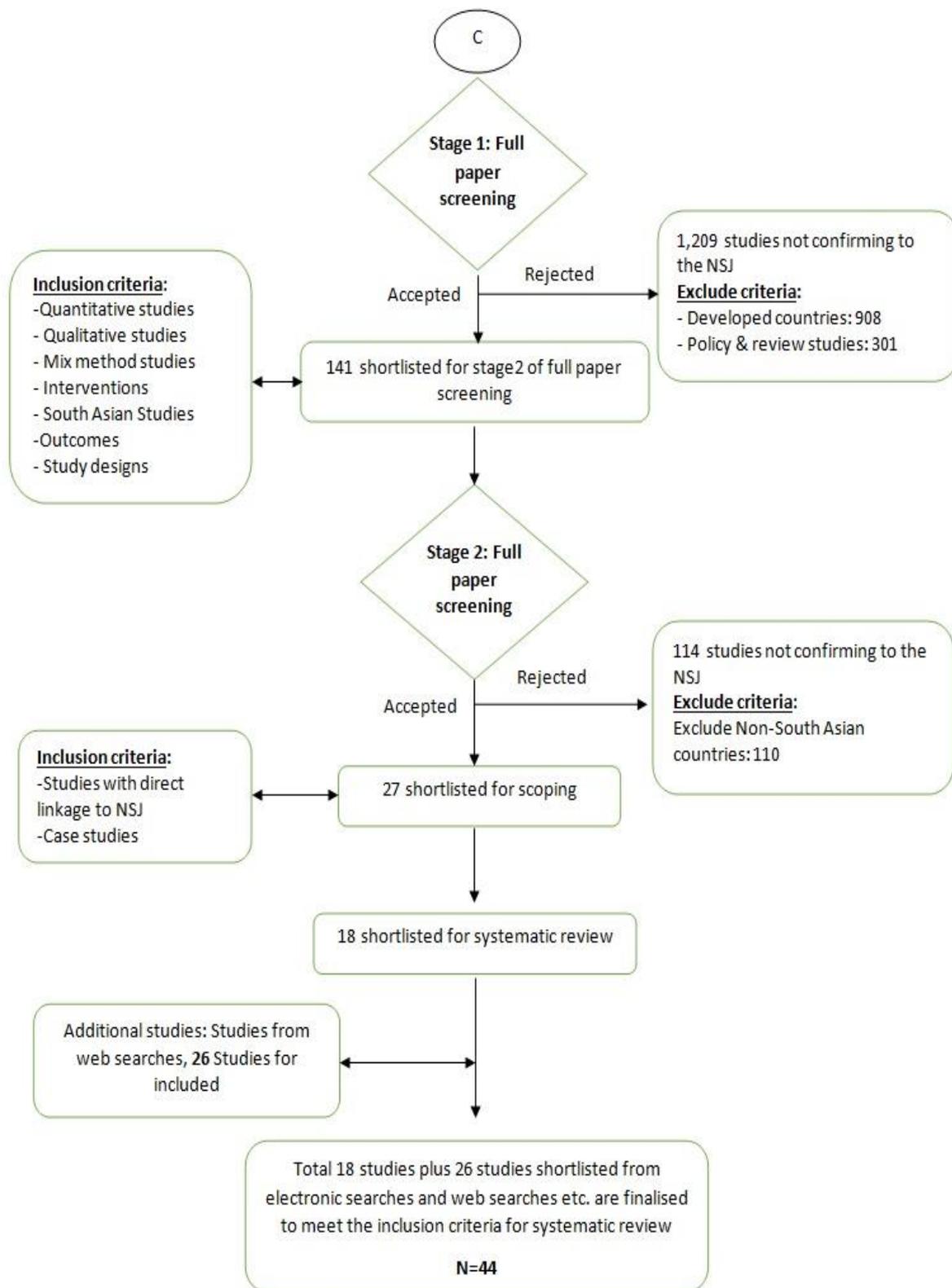


Figure 3.1: Schematic overview of study identification

3.3 DESCRIPTION OF INCLUDED STUDIES

Of the 44 shortlisted studies that met the criteria to be included in the synthesis, 17 (39%) are from the context of India followed by one study in the context of Nepal and 8 in the context of Bangladesh and 12 in the context of Afghanistan. There was one study each in the context of Pakistan and Bhutan and three studies in multiple country contexts. The country context of the studies is presented in table 3.1.

Table 3.1 Country context of studies

Country	No of studies
India	17
Nepal	1
Bangladesh	8
Sri Lanka	1
Afghanistan	12
Pakistan	1
Bhutan	1
Multiple	3
TOTAL	44

Given the fact that the pace of economic and social transformation gathered momentum since the mid-1990s in South Asia due to changes in the economic policy framework and demographic changes, the need for and benefits of interventions for non-state justice systems have been assessed predominantly in the subsequent decade. From figure 3.2 it can be observed that 50% of the studies identified are very recent studies published during the period 2010 to 2016. Only five studies were published prior to the year 2000.

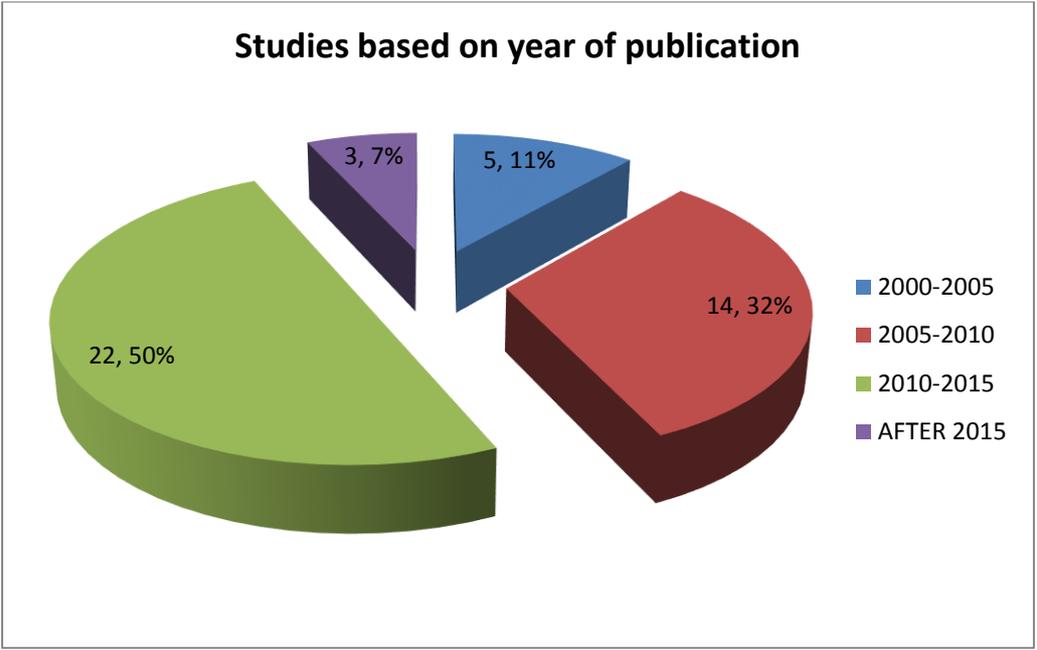


Figure 3.2: Study classification in terms of year of study

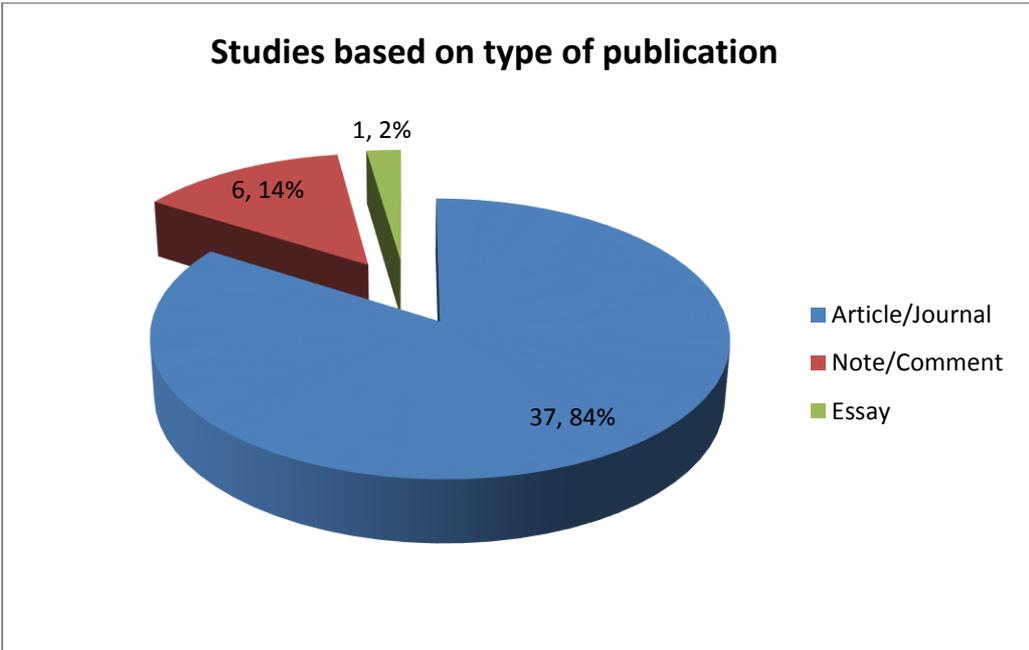


Figure 3.3: Study classification based on publication type

Further, it can be observed that of the 44 studies, 37 are journal articles, followed by six notes and comments and one essay. The details of the classification based on the type of publication are presented in figure 3.3.

Table 3.2: Studies classified by data type

Study type	No. of studies
Quantitative and mixed method	5
Qualitative	39
TOTAL	44

Studies have used different research methods namely, qualitative and mixed methods approach (table 3.2). 89% of the identified studies have used qualitative for analysing the effects of interventions while 11% use quantitative and mixed methods approach. Of the studies that have used qualitative methods the bulk of them have relied on doctrinal research design to analyse the effects. 34 of the studies have used doctrinal research design while six studies used non-doctrinal research design and four studies used a mix of methods. The details of the analysis used are depicted in figure 3.4.

As can be seen from figure 3.5 studies were predominately in the context of both rural and urban context of justice delivery (84% of the studies) followed by 11% in the rural context and 5% in the urban context. The predominance of rural-urban studies could be explained by the need to compare with the state justice system, which is concentrated in the urban areas.

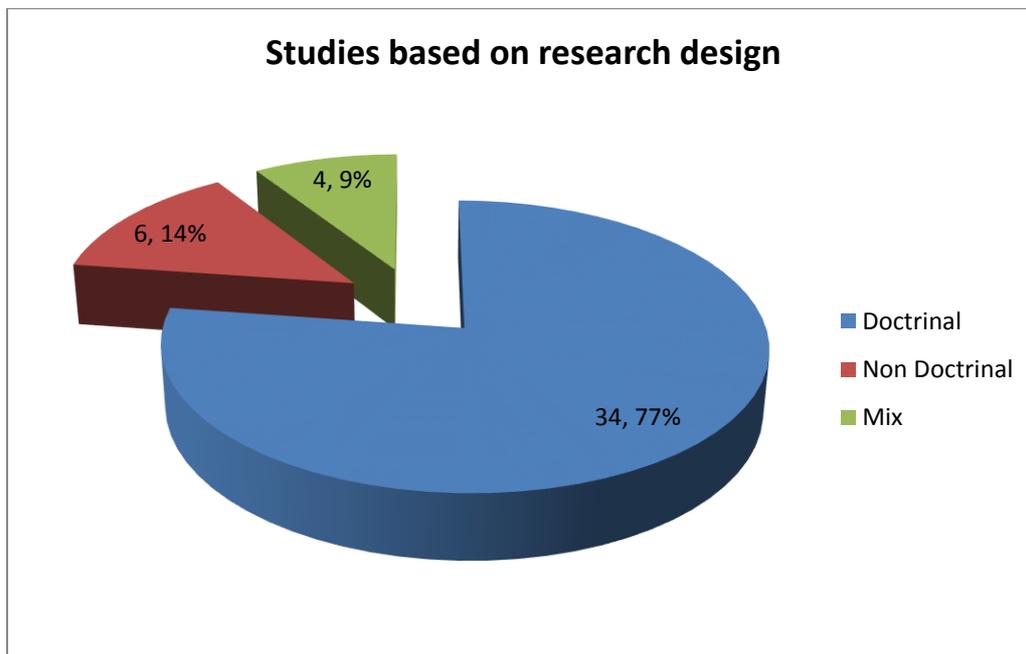


Figure 3.4: Type of research design

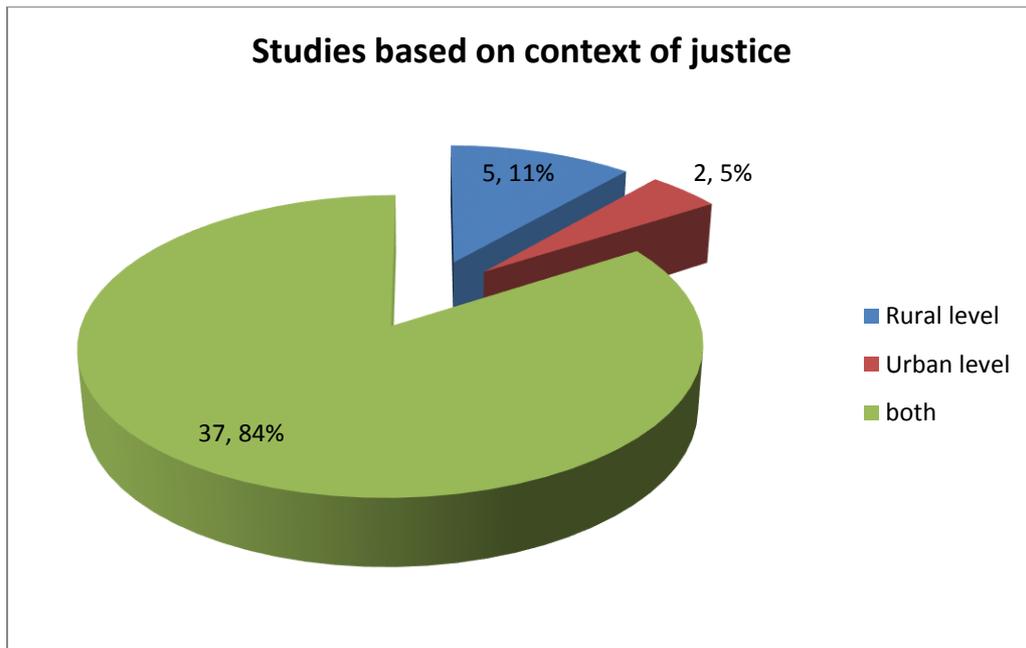


Figure 3.5: Characterisation based on context of Justice

Though a strict classification of the studies based on the subject matter of dispute may not be appropriate as there were studies which covered different subject matters, we found that of the 44 studies shortlisted 27% of studies on interventions investigated the effects of the intervention on civil disputes. 22% of studies focused on the effects of interventions on criminal disputes. It is also interesting to note that 21% focused on human rights issues. Separating issues related to women and minorities from human rights issues, we find 7% of the studies examining this followed by commercial disputes and petty cases. The details of the types of subject of dispute are presented in figure 3.6.

Given the preponderance of studies on civil disputes, we observed that 45% were of family disputes, followed by 37% on property disputes and 17% on common issues. The details are presented in figure 3.7.

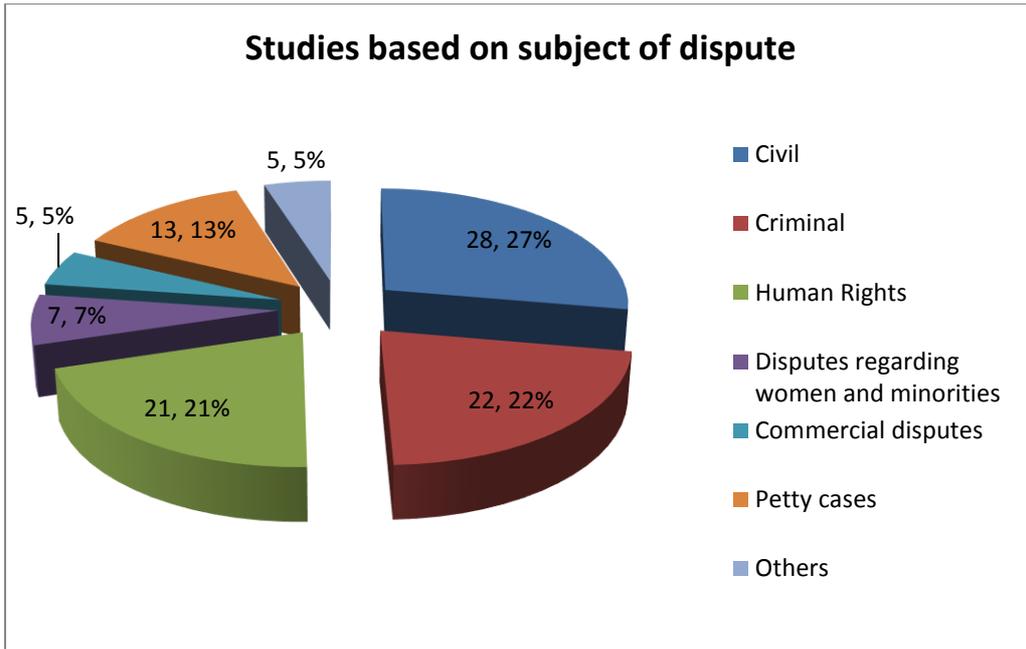


Figure 3.6: Characterisation based on subject of dispute

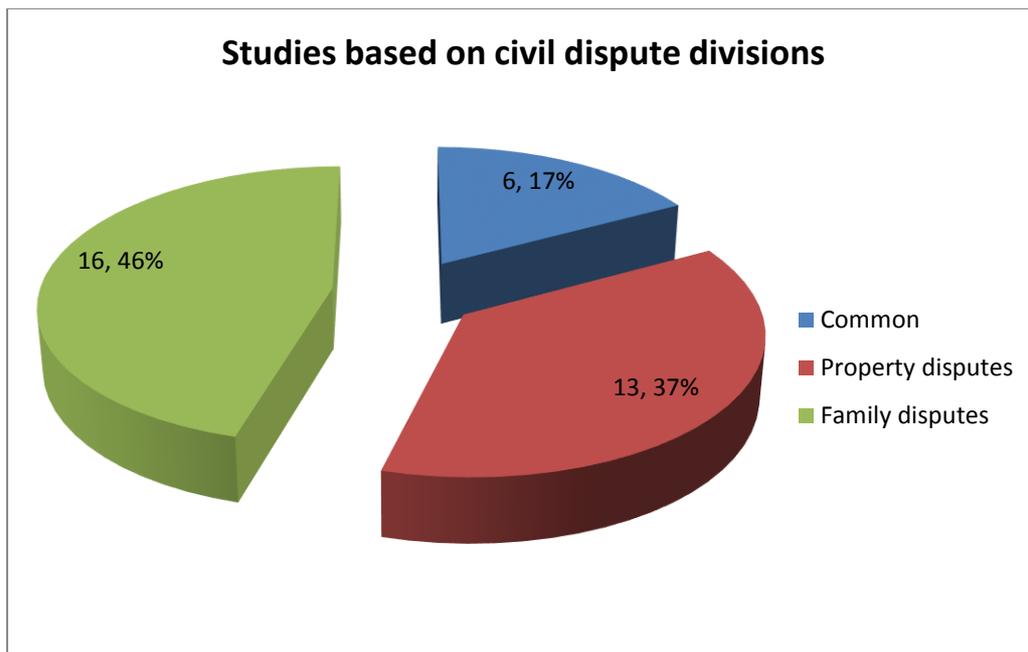


Figure 3.7: Division of civil disputes

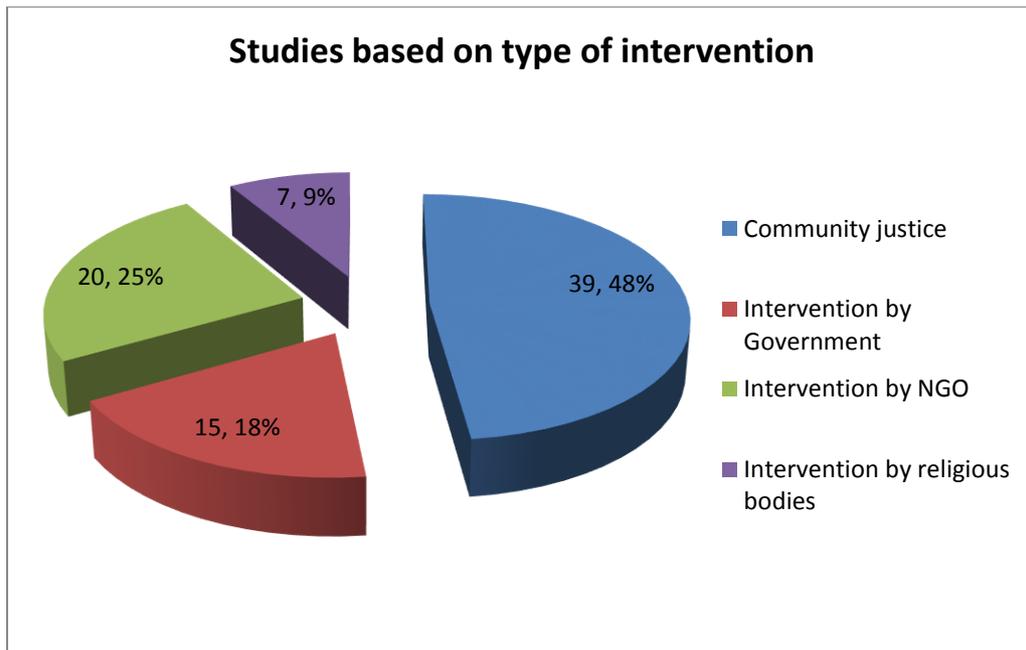


Figure 3.8: Characterisation based on the type of intervention

Based on the screening of studies a method of describing the types of interventions was developed. At a broad level, the interventions were classified into four major types; interventions driven by community justice systems, by the government but outside the state justice system, interventions driven by the non-government organizations and interventions by the religious bodies. As is evident from figure 3.8, 39 interventions highlighted in the 39 studies were on community justice followed by interventions by NGO (20), interventions by the government (15) and religious bodies (7).

NOTE: There are multiple interventions analysed by each study, therefore, studies are counted more than once as equal to the number of studies analysed in a study. Therefore the total studies will not sum up to 44 in the context of intervention.

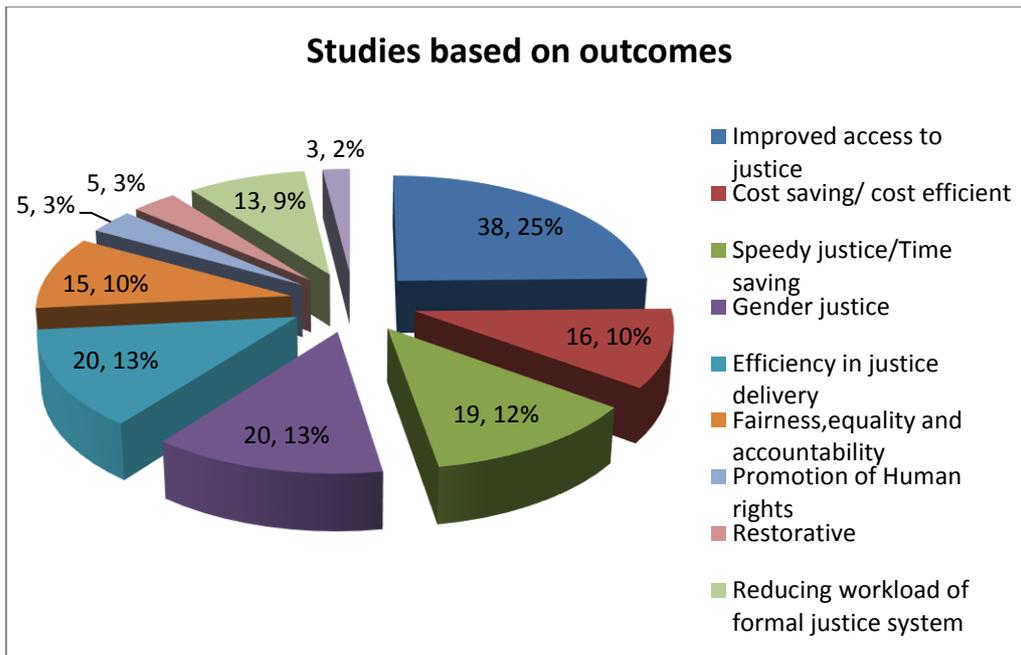


Figure 3.9: Classification based on outcomes

In terms of the outcomes, as can be noted from figure 3.9, 25% of interventions resulted in improved access to justice. This is followed by efficiency in justice delivery and gender justice, 13%. Speeding justice/time saving was the outcome in 12% of the interventions, followed by cost savings and fairness and accountability 10%. We also find that outcomes such as restorative, reducing the workload of formal justice system and reduction in crime rate are also results of interventions.

Note: The entry 38, 25 means that there were 38 studies constituting 25 percentage or weightage among the total studies. The total count of the number of studies would be exceeding 44 due to overlapping of outcomes in studies as each study contains more than one outcome.

3.4 QUALITY ASSESSMENT PROCESS

Studies that were selected for the synthesis on the basis of the inclusion criteria were assessed for quality using a quality appraisal tool. Two members of the review team, working independently, appraised all the studies to determine the overall quality (see appendix 11 for a detailed description of the qualitative study quality assessment tool and the categorisation process). A total of 15 parameters used was rated on a Likert-type scale with scores ranging between 3 (high) and 0 (low). Studies that scored high on more than 10 out of 15 parameters were considered to be high-quality studies (scoring 31 out of 45); studies that scored between 16 and 30 were considered of medium quality, and the rest of low quality. None of the included studies fall in the low quality category.

It can be observed from table 3.3, below, 70% of studies (n=31) fall in the high quality category, followed by 30% of the studies (n=13) in medium categories.

Table 3.3: Summary of quality-appraisal scores of included studies

Study quality	No. of studies	%
High	31	70%
Medium	13	30%
Total	44	100%

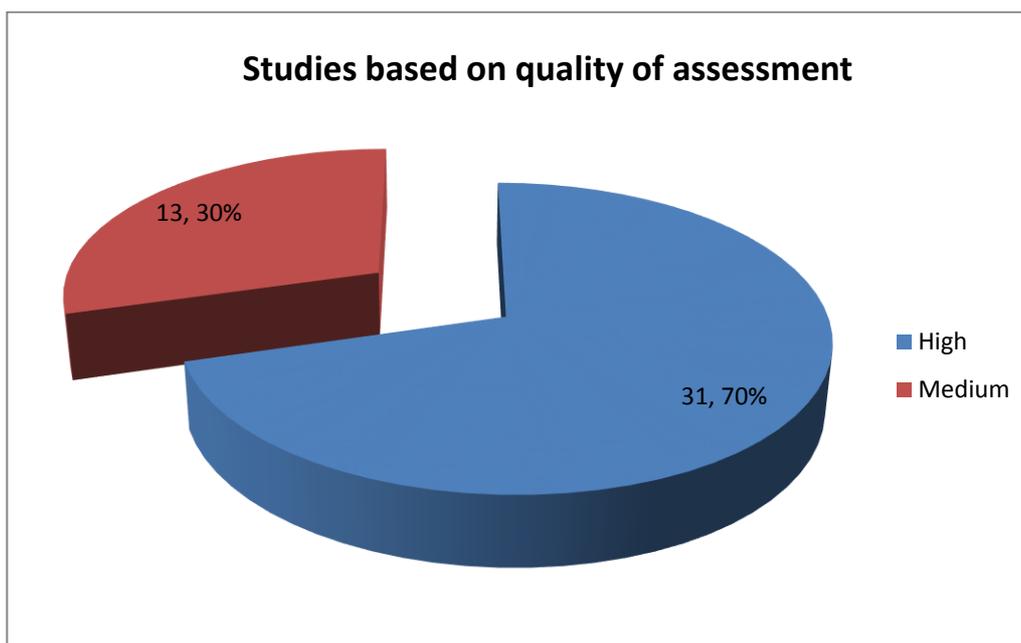


Figure 3.10: Overall study quality assessment

3.5 INTERVENTION TYPES

The intervention types are classified based on 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. Settlement or addressing this set of disputes can result in benefits accruing at multiple levels, for example an NSJ intervention for a civil dispute can result in significant effects either at the individual level or community/institute level or at the country level or in any combination of the three. The interventions in each of these disputes yield outcomes on the following aspects, which we considered for the synthesis.

- Improved access to justice
- Efficient justice delivery
- Gender justice

- Fairness, equality and accountability
- Restorative
- Reduction in crime rate
- Promotion of human rights

Though all interventions might not lead to multiple outcomes there are quite a few which have multiple outcomes based on a single intervention. Further interventions in the same dispute class could result in outcomes at the individual level and/or community and/or country level. Thus the three-way classification depicted in figure 3.11 provides us with a comprehensive characterisation of interventions and outcomes. Predominantly disputes relating to land and property, disputes of maintenance and marital disputes are classified as civil disputes. Disputes relating to murder, burglary, abduction and other disputes with a motive of crime or mens rea¹ are classified as criminal disputes. Disputes relating to women and minorities pertain to cases of domestic violence and persecution of minorities. Disputes relating to business, debts and other financial disputes are classified as commercial disputes. Cases involving child labour, racial discrimination and wage inequality are classified as human rights violations. NSJS also hear petty cases such as theft and other miscellaneous cases.

It can be observed from figure 3.11 that NSJ resolves civil disputes, criminal disputes, disputes regarding women and minorities, petty cases, human rights related and other disputes leading to significant effects at the community or institutional level. At the community/institution level the effects that accrue relate to improved access for seeking justice, efficient justice delivery, gender equality in justice, fairness, equality and accountability, restoration (recovery and rehabilitation), reduction in crime rate, and promotion of human rights. It can also be observed that the maximum benefits of NSJ interventions are at the community/institution level.

The benefits of NSJ interventions at the country level accrue from civil, criminal, disputes regarding women and minorities, commercial, others and human rights issues. Resolution of petty cases does not have any effect at the country level. Providing improved access to justice, gender equality in justice, restoration (recovery and rehabilitation), reduction in crime rate and promotion of human rights are some of the benefits that accrue at the country level. Effects resulting in fairness, equality and accountability are surprisingly not yielding benefits at the country level.

NSJ intervention in resolving civil disputes, criminal disputes, disputes relating to women and minorities, commercial disputes, cases involving human rights violations and petty cases significantly

¹ mens rea - the intention or knowledge of wrongdoing that constitutes part of a crime, as opposed to the action or conduct of the accused

yield benefits at the individual level. The predominant benefits at the individual level are in terms of improved access to justice delivery, efficiency in justice delivery and gender equality in justice.

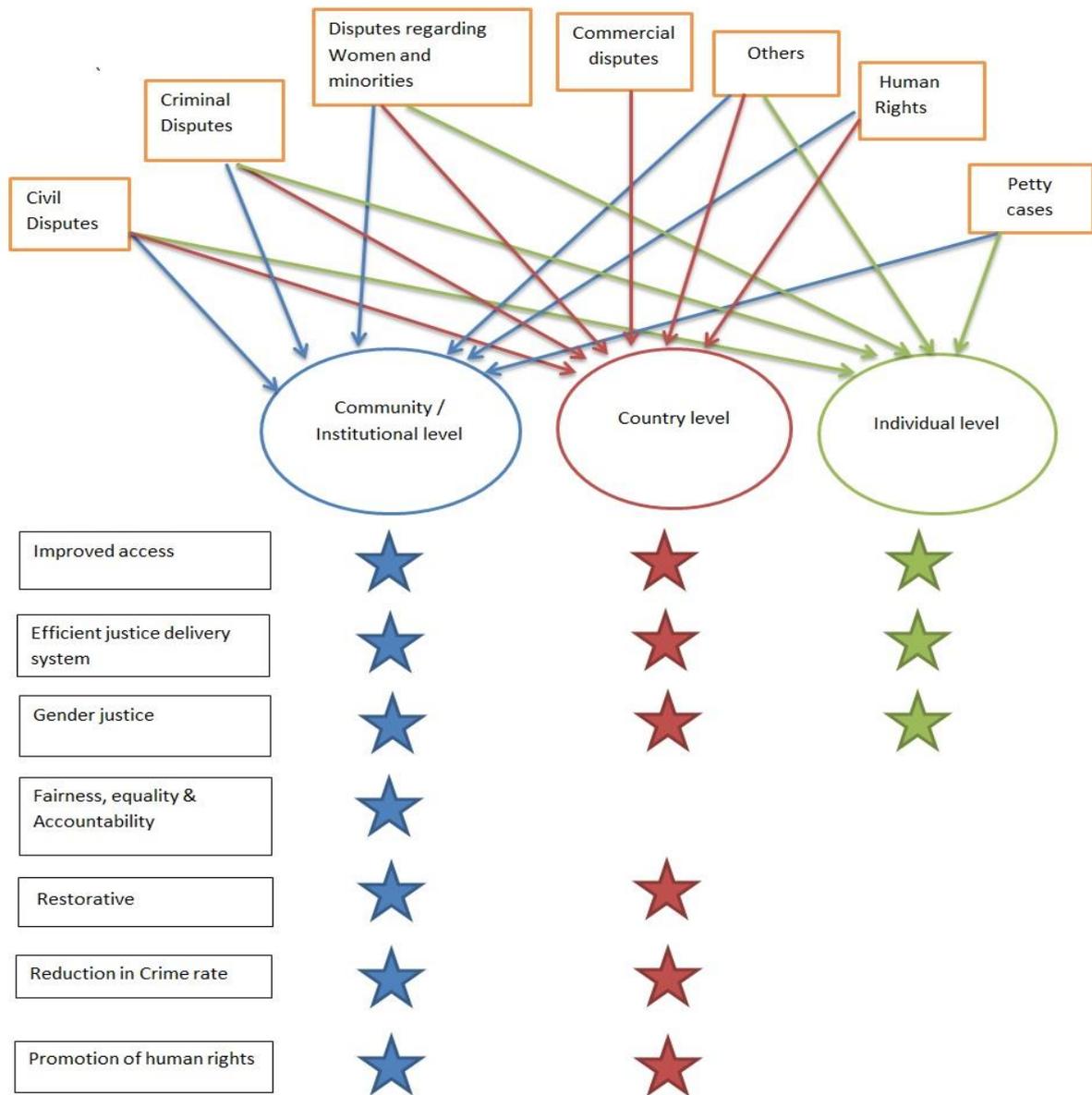


Figure 3.11: Comprehensive characterisation based on outcome and intervention

3.6 SUMMARY

In this chapter, we have provided a detailed description of the process used for identifying the studies. This was followed by describing the studies in terms of the type of publication, data, the methodology

used and the country context. Characterization of interventions in terms of regions, disputes and outcomes followed by the accruing benefits are discussed.

4. QUALITATIVE SYNTHESIS

4.1 INTRODUCTION

Forty-four studies of low to high quality investigating the outcomes of interventions related to non-state justice delivery systems have collected qualitative data on the impact on beneficiaries. These studies bring out the experiences, perceived benefits, actual realised benefits and negative consequences of NSJ interventions. Such interventions are in the realm of civil disputes, criminal disputes, disputes regarding women and minorities, commercial disputes, human rights disputes, petty cases and other unclassified disputes. The findings are categorised as outcomes at the individual level, community/institution level and at the country level. Qualitative analysis of the findings of each study resulted in seven phenomena of interest.

- a) Experiences in improved access to justice
- b) Gender justice
- c) Efficiency in justice delivery
- d) Fairness, equality and accountability
- e) Restorative justice
- f) Reduction in crime rate
- g) Promotion of human rights

This section describes the positive and negative experiences of delivering justice through NSJ for each of the eight phenomena of interest.

4.2 BENEFITS ACCRUING AT THE INDIVIDUAL LEVEL

In this subsection experiences of NSJ on individual level outcomes are discussed in the context of each of the phenomena of interest. At the individual level four phenomena, i.e., improved access, speedy justice, gender justice and efficient justice delivery figured prominently from the themes and categories that we examined. Ten studies contained qualitative data on the experiences of the benefits and lacunas that have accrued in NSJ.

Of the ten studies eight studies [Vatuk (2013); Tschalaer (2010); Aashrafun and Saavala (2014); Jensen (2011); Eckert (2004); Lugo and Searing (2014); Goresh (2009); Cohen (2006)], focused on outcomes of improved access. Out of these eight studies, seven were of high quality and one was of medium quality. Further eight studies [Roy (2004); Goresh (2009); Eckert (2004); Aashrafun and Saavala (2014); Tschalaer (2010); Manganaro and Poland (2012); Vatuk (2013); Lugo and Searing (2014)] emphasised the outcomes on gender justice at the individual level. Out of these studies, seven were of high quality and one was of medium quality. Seven studies [Tschalaer (2010); Aashrafun and Saavala (2014); Goresh (2009); Lugo and Searing (2014); Eckert (2004); Jensen (2011); Cohen (2006)] reported outcomes on efficient justice delivery system with predominant emphasis on cost savings through NSJ interventions. Of these studies, six were of high quality and one was of medium quality.

CUSTOMARY AND TRADITIONAL LAW

The difficulty in accessing state justice systems due to the cultural, practical and physical obstacles in rural Afghanistan is one of the reasons for the increased use of non-state justice measures. While the state justice system has a monopoly in urban regions, it faces competition in villages and rural areas where crimes and disputes are traditionally handled under the tribal or customary law. It should be noted customary law in Afghanistan is not based on retributive justice in the way that western legal systems are, instead it is based on restorative justice. A major challenge faced by the justice system is the lack of qualified judicial personnel as judicial training programs lacks cohesiveness. Further access to state justice system is often limited as there exists a deep distrust of state institutions in rural areas of Afghanistan. Improving access, according to Jensen (2011), needs to be in terms of dismantling the obstacles and rebuilding Afghanistan's justice system, which is characterised as disorganised, inefficient, counterproductive and focused on urban centres. However, access to justice remains a challenge in rural areas due to physical and practical obstacles where interventions are administered by powerful warlords and politicians (Christensen, 2011). This necessitates a need for a stronger state justice system, which needs to be complemented by NSJS to enable the rule of law.

In Bangladesh, the legal structure includes both state system as well as local religious or political leaders, most commonly the village Shalish, which is traditionally a local committee of officials that is exclusively made in the traditional form which provides disputes resolution separately from the state. To enhance access to justice, active NGOs have also set up their Shalishs as the fairer workaround for local Shalish. Interestingly they note that citizens seek assistance from multiple institutions. Shalish often creates physical access as sessions take place in the captain's home or a makeshift office with community members often present. The question of access seems to be answered partly by these NSJS as is evident from below.

WOMEN

The availability of non-state justice systems in villages helps in providing access to justice to women who otherwise would not have been able to go to the courts. Vatuk (2013) provides the background and rationale behind the development of all-women courts and other dispute resolution venues that have been designed to give women relief from domestic violence and conflicts in the context of India. The women's court is a fairly recent and increasing phenomenon in contemporary India. There exist many reasons why women facing problems rarely turn to the state for relief. One reason is financial, which includes a series of fees that is imposed at each stage of the court proceedings. Another factor is that legal cases tend to drag out interminably. In this context, women's courts are characterised within the broad framework of legal pluralism or alternative dispute resolution (ADR). These courts can be characterised as a broad and diverse category of dispute resolution bodies specifically to deal with women's marital and family problems by counselling and mediation. These bodies are attempts operated by official government bodies or by voluntary organisations under the guidance of government agencies or set up and run independently by women-led non-governmental organisations.

In terms of access to justice two structural unique aspects help in enabling access to women: (a) all mediators are females and (b) ideally they come from the same locality / belong to the same class or cultural background. Vatuk (2013) emphasises the improved access to justice due to the above stated unique structural aspect.

Access to justice is enabled because all-women courts are designed primarily to serve the poor and the cases are overseen by one of the many NGOs active in the region. Further *“all women courts typically meet on a regular basis on a fixed day and time every week, at a convenient location within the neighbourhood they serve”* Vatuk (2013) 89.

In India, an empirical research in south Rajasthan, India explored the possibilities and constraints that tribal women face in their quest for justice. The study shows that there exists a variety of non-state institutions that are available to women indicating improved access for seeking justice. However, the existence of strongly hierarchal power and gender prejudice often limit their access to four different institutions of dispute settlement, namely family gathering, the panchayat, state courts and the social reform committee. The panchayat is the forum for non-state dispute processing, in which disputes and quarrels are settled by negotiations between the disputants. The access to state justice is limited to tribal women as is evident from the quote:

“The state courts are, according to a lawyer of a family court in Udaipur and legal advisor for Astha, not interested in solving the cases of poor and especially not poor tribal” Tschalaer (2010) 50.

Therefore the tribal women prefer to use panchayat for resolving their problems. However panchayats are also expensive as large sums of money are spent on feeding caste members. Thus in 1998, an alternate intervention came up in terms of the social reform committee which was not only similar in some ways to the caste panchayat but equally different to it in other ways. This provided much wider access – between 1998 and 2006, 60 cases out of 80 were settled and 20 are still pending. This relatively small number of cases derives from the fact that the scope and influence of the social reform committee are confined to the activities of tribal women’s awareness of society Tschalaer (2010) 53.

The social reform committee created an important space for the tribal women to openly challenge and renegotiate their rights and demands in a complex social setting. Despite the significant benefits in terms of enhanced access these interventions did not engage in the localisation of rights and enabling of access to universal legal ideas, which had to be locally ensured.

ADR

The ADR process has been used by women as well as minorities in parts of South-East Asia. Aashrafun and Saavala’s (2014) study examined how women in socially vulnerable groups make use of ADR process in a collaborative project between judicial body and a third sector agent in Bangladesh. The qualitative data examined in the study showed that even if access was provided, ADR does not appear to work to further the interest of underprivileged women due to the problems related to mediation, shortcomings of the judicial system and limited resources. However, as the legal system presented mediation as the only real opportunity to reach a solution for poor women, intervention by NGOs enabled underprivileged women an opportunity to voice their grievances.

Despite providing access, the NGO could often provide limited services as the facilitators were not always well trained as lawyers and lacked training in human psychology to understand the legal aid requirements.

In Nepal, it emerged that the state legal system had not been able to penetrate and regulate villages of rural Nepal and there is an increasing inability of the informal structures based on kinships to address social conflicts. This has resulted in a significant increase in the role of international donor agencies and NGOs in dispute resolution forums and community justice. The question of access has been addressed by these NGOs by housing mediation meetings and office space within village administration offices. Cohen (2006) argued that while there exist studies on the analysis of dispute resolution in Nepal, analysis by ADR scholars themselves on the implications of development for design and structure of dispute resolution projects are less.

NGO

The NGOs also play an important role in providing access, for example in India the interventions to enable easy access are carried out by women's Lok Adalats, all women's court operated by NGOs, Mahila Sanghs panchayat and Nari Adalat operated by women's confederations. A positive feature of these courts is their approach, as its advocates see that the peer mediators are able to suggest solutions based on realities, taking into account the social and cultural context in which they live. As these courts use knowledge of local practices and social networks to gather evidence and negotiate agreements they have a better reach to offer justice to women who appear before them. Even though these ADRs provide access at times without state backed authority to enforce or even to formally recognise agreements these courts fall short of complementing the formal justice system. Thus their success in this regard is more likely to be uneven as they depend on social pressures.

With reference to a study of the "Sakhas" (local party offices) of Shiv Sena, a political party in India, Eckert (2004) examined the processes that characterise the evolution of various institutions of governance. The study notes that intervention by a regional political party through its various sub-units and the NGOs with whom they collaborate opened up spaces for addressing disputes relating to everyday living in the city such as quarrels over water taps, neighbourly tensions, family matters, contracts and deaths, and harassment and violence, which were hitherto not easily accessible for the litigants in a formal legal setting in an urban location. These Sakhas helped in settling local disputes. It is also observed that courts were presented as accessible and therefore more participatory and close to the people, in addition to being presented as representing the common man's sense of justice. Further, it created a sense imparting the sort of justice available to 'common man', the sessions were short and the disputes were resolved in one sitting, Eckert (2004). However, as stated in the study:

"Sakha ruling do not necessarily aim at recreating a statuesque and repairing the social relations possible impaired by a dispute." Eckert (2004) 37; Further it draws *"a militant line between those who rightfully belong and those who are deemed outsiders, who are thus illegitimate participants"*, Eckert (2004) 40.

In Bangladesh, Goresh (2009) documents the reliance of Bangladeshi NGOs on community mediation by adopting Shalish for dispute settlement. Several NGO facilitated ADR models through which community residence engage in modified versions of traditional village dispute resolution procedures

have been analysed. It emerges that besides helping individuals gain access to legal systems, conferences and events that are organised by ADR-minded NGOs have exposed legal professionals to new ways of thinking. Improvements on Shalish by NGOs further enhanced access, as is evident below *“Bangladeshi NGOs are increasingly involving women in mediation process, while Shalish continues to be a male dominated procedure” Goresh (2009) 24.*

However, drawbacks do exist for such systems as the NGOs do not have formal power to bind parties to agreements made during arbitration. Therefore access to justice is addressed at two levels (a) the question of physical access and (b) the question of dismantling social and economic barriers to access. While the formal justice systems are successful in providing physical access, often high economic costs erect barriers for the less privileged to access the state provided formal system. Further rural areas, especially in Afghanistan and Nepal, lack sheer physical access as a formal system caters to the urban localities. Interventions by NGOs religious bodies, international developmental agencies and political parties have attempted to reduce both physical and economic barriers as is evident from the above discussions. These interventions have attempted to provide justice regarding civil and criminal disputes, women, minority and human rights related disputes and minor cases. However the dispute settlements of such interventions often lack the binding provisions provided by the formal state delivered systems. Hence, to improve access, there exists a need to provide more authority to the dispute settling intervening bodies.

GENDER JUSTICE

Various forms of alternative dispute resolution forum have emerged recently in South Asia specifically designed to address women’s marital and related family problems. The aim of such forums is to provide a safe and unthreatening environment where women can air their grievances and work out satisfactory settlements. This has encouraged women to resolve disputes using an alternative mechanism to a state’s judicatory institutions. Thus it can be stated that there exists a prevalence of interventions aimed at addressing women’s issues in South Asia, both in the urban and rural contexts.

In Bangladesh, studies with respect to gender justice have different views on this topic. One study states that there exists an integration of the traditional court system into reformed state courts as many litigants regard the role of these institutions as useful and important in the current context. However, there exists a conflict of personal loss especially with regard to women litigants *“in most cases the women seem to adopt the personal law, customs and traditions of her husband” Roy (2004) 29.* In this context some indigenous people feel that the formal and direct recognition of customary law rather than a total replacement may be most appropriate. Interventions related to traditional indigenous courts suffer from drawbacks too: *“testimony is almost always oral, and only in very rare cases does an exchange of written pieces of evidence takes place. The proceedings of the cases are not usually recorded unless they involve complicated matters. ...in vast majority of cases there are no records at all or merely a record of the judgment and decree... it is not obligatory for the headman to maintain written records” Roy (2004) 20.* This brings up the major challenge within these institutions of accommodating the differing and sometimes conflicting needs of gender.

The Shalish in Bangladesh has always been used by people to seek justice as it is argued that the formal legal system is inundated with corruption, delays, complicated procedures, exorbitant costs, class bias and gender bias which favours men over women. As a result of which cases frequently exacerbate

already adverse conditions of female litigants. Shalish emerges here as an alternate dispute resolution forum. However, the village Shalish is traditionally a local official or committee and it is exclusively male. 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 to try and draw people away towards new structures designed to be more inclusive for the women. Despite the concision effect to include women in the interventions to provide justice, people continue to go to traditional Shalish as the community and religious sanctions are strong (Lugo and Searing (2014)).

The Shalish, despite significant improvements, often exposed the women to the same gender biases and community pressures as the formal courts, showing that the Shalish did more harm than good for the female party. (Goresh (2009)) 26.

The same study argued that donor funded NGOs help in connecting bar associations to create easier access to the legal system, especially in the context of violence against women. Another intervention (Banchte Shekha) initiated a paralegal program run entirely by women to train village women in Muslim family law, teaching them about issues such as dowry, marriage, divorce and inheritance so that they can assist members in the village without the need for hiring a lawyer. These volunteer paralegals help in the participation of Shalish process and have greatly improved the position of women in Shalish who were not able to have any representation even in high-risk situations.

“Banchte Shekha uses integrated ADR strategies combining mediation, legal counselling, literacy training, microenterprise development, group formation and other work in a comprehensive empowerment strategy that substantially changes the balance of gender power in the communities in which it operates it challenges established social norms which traditionally relegate women to an inferior status within the community. The societal changes which have resulted have affected the male-female balance, women have gained a sense of empowerment.”

The village panchayats, which provide fewer opportunities for young women to be heard, are not a good option for women in dispute within the family and cases of domestic violence in Bangladesh. Aashrafun and Saavala (2014-196) argue that the battered women seeking mediation were both rural and urban, less educated and economically disadvantaged. *“Although some legal avenues are available to battered women economic and cultural constraints can impede women’s access to them.”*

It is noted that although the traditional and customary systems provide easy access to justice they may not provide equal justice. There is a need for offering alternatives to modern and expensive state courts as well as the *“traditional, corrupt male dominated caste counsels” Tschalaer (2010) 42*. This underscores the need for plurality which should provide legal space, especially for women of a disadvantaged group, such as tribal. *“The caste panchayat was and is in most villages still primarily a men’s assembly where women are not allowed to participate although the decisions involve them in an important way” Tschalaer (2010) 50*. The study also finds that tribal women felt the need for the establishment of an innovative legal tribal women’s forum, as concepts of women’s rights and gender justice as proclaimed by the state, and women’s claim for respect and recognition within and outside the family and community need to be ensured. Even interventions by modern institutions have been limited and expose the limitations of the implementation and realisation of gender equality and justice.

This was reiterated by Manganaro and Poland (2012) in their study, stating that in Afghanistan context informal systems predispose community level systems against women's interest and are a traditional adult male only institution.

“Regardless of geographic necessity and cultural proclivities that perpetuate these informal bodies, the system is inherently biased against women. There are no trained judges, no lawyers to represent either party or no jury composed of one's peers (women are excluded), which would inject a modicum of fairness and gender equity” Manganaro and Poland (2012) 4.

Their findings show that women have more confidence in the formal system than their male counterparts whereas the opposite is true for the informal system. Women rate the formal system higher in court performance, perceive the state as less corrupt and have more confidence in the police. This necessitates the need for more inclusionary expansion of the formal system by the government.

There has been an emergence of women's courts in India, for the reason that an abused woman needs a safe and non-threatening space to air her grievances and would prefer to have people of her sex who share her cultural values and beliefs. Further, if the informal efforts prove unsuccessful, then only women take her complaint to local non-state dispute resolution bodies. In some cases, women facing marital problems prefer not to turn to the state for relief (Vatuk, 2013). Women's courts provide an alternative where women were given importance and was something that was accessible to women.

These all women courts provide certain benefits to women who have little access to any other form of recourse. They offer at best a congenial space not available anywhere else, where they can speak out freely without shame about their suffering and are able to hear what measures others think could be taken to relieve it. However, one cannot equate the solutions that these courts offer with the kind of justice that the law is designed to dispense. Finally, the ADR process facilitated by NGOs, even though it provides avenues for disadvantaged women, often does not have a sufficiently trained staff to counsel victims and only helps by providing legal advice. Thus the ADR does not appear to work to further the interests of underprivileged women due to the use of mediation as a method, shortcomings of the judicial system and the limited resources available for NGOs to facilitate the process. A better functioning ADR process then would require that the local community be more actively engaged in the proceedings.

It is not always that the non-state dispute resolution bodies provide enough avenues for women, at times these bodies may turn out to be insensitive to a woman's needs, as seen in the case of Shalish in Bangladesh. As observed by Vatuk they rarely have any female members and do not even admit female complaints to their own case hearings but insist they be represented by a male relative. Even if a woman is allowed to narrate in person, her testimony is frequently ignored or its veracity questioned. (Vatuk, 2013) 82.

In the context of urban political intermediation in India Eckert (2004) found that the method is 'common sense' judgement in family disputes, using a model which lies firmly within the patriarchal fold, in which women and men have duties and rights according to their roles in the family. Women's rights are one of the favourite subjects of the 'Shakas' through which the intervention is carried out. Protecting women's rights often turns into a way of protecting Hindu culture, thus the issue of women's rights is transformed from one of gender relations to one of the struggle between communities.

In summary, interventions aimed at enhancing gender justice reveal the following:

- There exists a need for more women centric systems which can easily be accessed and utilised by women. This is because formal systems often pose barriers in terms of costs and cultural beliefs. Interventions spearheaded by NGOs in this realm have been a welcome step.
- The revamping and restructuring of some the existing systems such as Shalish in Bangladesh do provide more space for women to voice their grievances. However, such innovations are often plagued by the lack of training for people involved in mediations.
- Interventions, though providing access to women, are rooted in the local cultural and political milieu, posing limitations for the effective enactment of settlements.
- Women have more confidence in the formal system than in the informal systems which call for strengthening and widening of the formal systems.

EFFICIENCY IN JUSTICE DELIVERY

The NSJ systems provide efficient justice delivery, accessibility and reduction of costs are one of the main reasons for this. In the context of Bangladesh, the coexistence of multiple justice leads to a number of benefits, especially reduction of transaction costs, both financial and time. The Shalish in both traditional and innovative forms have been able to bring low cost justice to people, especially in rural areas with enhanced efficiency as the proceedings are conducted in the local language using familiar procedures. Further, the Shalish also provides several public and social insurance goods in addition to justice and it competes with state and NGOs in this area (Lugo and Searing, 2014).

The villagers also perceive informal negotiations as less socially disruptive than using formal legal systems. It was also noted “the most tangible gain from mediation services is the lesser cost in disposing disputes, benefitting individual disputants immensely as most are extremely poor. The quicker timeline for resolution of the dispute in mediation is a further advantage over traditional litigation. This, in turn, benefits the courts by actually reducing the caseloads which are already overburdened with law suits. Truly the community as a whole benefit from mediation services”, Goresh (2009) 13.

Even though Shalish system is easier and cheaper to use it has its own share of problems, such as its attempts to preserve relational ties and positions of power and desires to preserve the status quo, even if victims do not need to pay bribes or fees to access it (Lugo and Searing, 2014).

Manganaro and Poland (2012), while exploring the perceptions of the formal and informal justice system in Afghanistan, provide an assessment of perceptions on court performance, defined in terms of accessibility, fairness and trust, following local norms and values, effectiveness in delivering justice and timely and prompt resolution. Each item measured on a four point Likert scale reveals that formal systems had higher scores compared to the informal justice systems in terms of effectiveness at delivering justice and resolving cases timely and promptly. They, however, argue that informal systems could supplement the formal system

“in fact some suggest that the informal system could buttress the overall strength and legitimacy of the formal system if it could be cured of those idiosyncrasy and become more professional and uniform” Manganaro and Poland (2012) 23.

Jensen (2011), in his study noted that there exists a deep distrust of state institutions in rural Afghanistan since corruption prevails in the judiciary. This has led to a situation where rural Afghans are *“content with their own dispute resolution methods and see attempts at state control as unnecessary, corrupt and oppressive,”* Jensen (2011) 943.

In Nepal ADRs, while providing increased access to justice for the poor, could also serve the interests of legal elites by filtering ‘garbage cases out of the courts.’ However mediation often emerges out of the failure of the state legal system to address social and other conflicts. Further, although mediation does not produce seemingly equitable outcomes, mediators are trained to bring concepts of international human rights, social pressure and influence. However, there exists less evidence on the possibilities, variations, costs and benefits mediation is producing (Cohen, 2006).

It can also be found that as the success of ADR programs increases in rural areas, government and justice officials are pushing to institutionalise dispute resolution within villages which would result in local courts and would create a formal link between mediation services delivered by NGOs and the official justice system. Thus there exists a need to integrate informal ADR systems into the formal court system because ADR is successfully curbing corruption within courts and also helping to alleviate the backlog.

The belief that the courts are corrupt and inefficient is one of the reasons why mediation is looked upon as a system to settling disputes, especially for the poor women. This is because courts are potentially corrupt, inefficient and take years to reach a verdict. According to the study, the idea underlying the use of mediation is that such violence is not punishable under criminal law in the same way as other forms of personal violence, but should instead be mediated or reconciled (Aashrafun and Saavala, 2014). However a drawback of this system was that the importance of securing funding from foreign donors as well as the allocation of quotas might be at the expense of the people seeking recourse (Aashrafun and Saavala, 2014) 200.

In India, there has been an emergence of a new form of legal pluralism: the Shiv Sena; an organisation which extends its control from regional public offices to a tightly knit network of local office (Shakhas). These Shakhas are seen by many people as providers who get things done. The efficiency of Shivsena courts is stated to be that it helps avoid the payment of lawyers’ fees and the endless wait for judgments (Eckert, 2004) 38.

The Sena courts are looked upon as alternatives due to the alleged inefficiency and inaccessibility of state procedures. Moreover, state courts and legal systems often pose a threat of consuming the immense amount of litigants’ time. However, in minor cases someone who wishes to approach the state court against the ruling by a Shakha court or sue for a Shakha’s activities is faced with serious obstacles as these Shakhas have efficient and violent ways of imposing their rulings.

It emerges from the synthesis that non-state justice system is often resorted to due to the inaccessibility of the state justice system and the high costs involved in seeking justice. There exist clear advantages of NSJ interventions in reducing delays and delivering justice in shorter periods of time with lesser costs. Further, the process of mediation, especially in civil disputes and disputes regarding women often reinforces the social fabric. The NSJ intervention mechanism can be further strengthened by a formal recognition by the state and by providing a structured direction and

resources, both human and financial, to the intervening agencies. This assumes relevance as most of the problems in the NSJ system are in the implementation of the rulings or the mediation outcomes.

CONCLUSION – INDIVIDUAL

Assessment of the interventions in NSJ at the individual level provides the following conclusions:

- There exists a dire need for interventions in rural areas as the formal justice system is often limited to urban locations which are regularly out of reach for the rural population.
- Interventions in NSJs greatly enhance access to justice as the process of mediation is often in a location that is closer to the litigants.
- We find that interventions specifically directed towards improving the access and utilisation of justice by women have opened up new spaces for women to air their complaints and at times earn their rightful place in family and society.
- Despite the innovations in the informal justice delivery system they are often plagued by the dominant views of either the males, or are based on caste, religious or social ethos.
- There exists a preference towards institutions in NSJ as formal systems consume financial resources and often have undue delays. This is due to the heavy backlog of cases that have been handled by the formal justice delivery mechanisms. In this context, NSJs play a vital role in reducing the backlog of cases and delivering speedy justice to litigants.
- Even though access is improved to NSJs and it is cost effective compared to state justice systems, enforcing the outcomes is a challenge as these systems lack the power and capacity to do so.

4.3 BENEFITS ACCRUING AT THE COUNTRY LEVEL

Among the 44 qualitative studies that were identified as providing insights about non-state justice systems in our systematic review, 22 were conducted at the country level. These studies dealt with one more of the key dimensions of NSJ: civil disputes, criminal disputes, disputes regarding women and minorities, commercial disputes, human rights disputes, petty cases and other unclassified disputes. Although these dimensions are dispersed throughout most of the studies, Hakimi (2016) dealt only with commercial disputes while analysing community justice - Shura, Jirga and arbitration in Afghanistan.

We review benefits and challenges of NSJ interventions at country level along the key outcome parameters of (a) experiences in improved access to justice (b) speed in justice delivery (c) gender justice (d) efficient justice delivery (e) restorative justice (f) reduction in crime rate and (g) promotion of human rights. At the country level, studies addressing fairness, equality and accountability of justice delivery were not identified. Of the 22 studies, 17 studies mostly focused on improved access (Ahmed, 2007; Xavier, 2006; Parashar, 2013; Natarajan, 2005; Chopra, 2012; Braithwaite and Gohar, 2014; Wardak, 2011; De Lauri, 2013; Stich, 2014; Farid, 2013; Galanter and Krishnan, 2004; Christensen, 2011; Sivakumar, 2003; Zainulbhai, 2011; Nupur et al., 2014; Lam, 2006; Akers, 2016), Of these 13 were high quality studies and four were medium quality studies. Sixteen studies (Ahmed, 2007; Shariff, 2008; Hakimi, 2016; Simoni and Whitecross, 2007; Xavier, 2006; Natarajan, 2005; Braithwaite and

Gohar, 2014; Stich, 2014; Farid, 2013; Galanter and Krishnan, 2004; Christensen, 2011; Sivakumar, 2003; Zainulbhai, 2011; Jayant et al., 2014; Akers, 2016; Niriella, 2013) predominantly focused on efficiency in justice delivery with a special focus on time saving/speedy justice and cost efficiency. Of these, 12 were high quality and four were medium quality studies. Ten studies focused mainly on gender justice (Ahmed, 2007; Shariff, 2008; Natarajan, 2005; Chopra, 2012; Braithwaite and Gohar, 2014; Wardak, 2011; Pfeiffer, 2011; Christensen, 2011; Nupur et al., 2014; Lam, 2006). Of these, eight were high quality and two were of medium quality.

ACCESS TO JUSTICE

The law exists within the lived practices of one's community and the approval to find legal remedies within that system opens the access to justice within the community.

PERSONAL AND CUSTOMARY LAW

Improved access to justice emerged as a very important outcome in country level studies. In the Indian context the acceptance of religious laws by the formal system has provided access to justice within the cultural context of the given religious communities. For example, for a Hindu, the law exists within the lived practices of one's community and the approval to find legal remedies within that system opens the access to justice within the community (Parashar, 2013).

In the context of Pakistan it has been emphasized that the formal courts are inaccessible to large groups of citizens, the integrity, competence and independence of the formal civil and criminal court are not adequate and there is a lack of resources that make it inconvenient to resolve disputes in formal courts. Hence, the local courts gain priority as they permit a quick resolution of the dispute. Stating that the most renowned 'ulamas' were respected nationwide *"not only for their knowledge of the sacred law, but also for listening and responding to ordinary men and women's everyday problems, as well as not suffering from the corruption that has plagues many state bureaucracies in Afghanistan and Pakistan"* (Ahmed, 2007) 42.

Stich, in the Afghanistan context, focused on the customary justice system to differentiate it from the western systems of formal state justice system. The customary justice systems (CJS) are considered to be more legitimate compared to the formal justice systems. CJS are more accessible and less costly than the formal system. They also complement the formal system and are procedurally simple (Stich, 2014).

In another study Akers stated that the CJS is less intimidating and more accessible than formal process; they require no special training or skills to access and are procedurally simple (Akers, 2016).

The need for a complementarity between state and non-state justice system has been seen as a common thread in the studies. Christensen (2011) elaborated the need for a connection between traditional justice and the state justice system; with about 90% of Afghans relying on the traditional justice system. The study examined the drawbacks of the traditional system such as biases against women and children as well as the lack of a way to determine the power of religious leaders who run them. It stated also those systems prevailed because of the physical absence of the state and partly due to the low capacity of the state institutions (Christensen, 2011).

NGO

The Non-Governmental Organizations (NGO) play a significant role in providing access to non-state justice to women and minorities. In Bangladesh, the legal aid NGO helped create alternative means of dispute resolution and policy advocacy in an attempt to address the grave access to justice concerns. The legal aid NGOs follow a mediation role in the community. Mediation provides a systematic and alternative approach to accessing justice for local clients through a trained team of staff lawyers. They operate for both rural and urban poor, and assist with criminal, civil, land and constitutional law matters. They provide improved access to local people and communities, while maintaining links with regional, national and international networks (Farid, 2013).

Partnering with government aided agencies such as USAID the NGOs help rural villages transition from traditional social norms to statutory law and also help improve traditional dispute resolution by providing an alternate form of dispute resolution. With 77 per cent of the population in the rural areas, the recourse to courts is geographically inaccessible and the cost of travel is another impediment (Lam, 2006) 121.

IMPROVEMENT OF JUSTICE FOR WOMEN

The non-state justice systems provide access to justice to women especially in criminal cases and family disputes. A study in the state of Tamil Nadu in Southern India showed how a Government intervention in 1992 of setting up All-Women Police Units (AWPU) helped improve the status of women. The purpose was to address family disputes and violence against women arising out of the practice of dowry, thus addressing criminal justice and justice pertaining to women. Two alternative mechanisms existed prior to the implementation of AWPU: panchayat level Alternate Dispute Resolution (ADR) and family courts. Women from villages were particularly at a disadvantage in availing justice from both the systems. Panchayat level ADRS were run mostly by men who usually advised women 'to adjust to men'. On the other hand, family courts, while focussed on family disputes, required women to follow court procedures which were slow and costly (Natarajan, 2005). AWPU were female staffed and as such proved more approachable to women. Natarajan (2005) reported positive results with respect to access to justice. Furthermore, affected women expressed satisfaction on the justice received from AWPU. The study found that low income and less educated families got better access to justice through AWPU; upper classes would be more likely to seek redresses through courts. On the whole AWPU as a government intervention have shown results in providing access to justice to women, particularly in criminal cases.

INFORMAL JUSTICE SYSTEMS

Informal justice systems such as the Jirgas or Shuras in Afghanistan act as a means to aid in providing access though studies have criticised them for the incidence of human rights violations. These provide restorative justice but it must be noted that they do not "*contravene international standards of rule of law and human rights*" (Chopra, 2012) 2. *The lack of trust in the formal systems is another reason why the informal system prevails* (Chopra 2012, De Lauri, 2013). *De Lauri's study highlighted the lack of trust in formal judicial systems owing to rampant corruption among courts, prosecutors' offices and policemen and difficulties in accessing the courts by poor people. Jirgas or Shuras (used by non-Pashtun people) have been reported as the most widely accessible community driven justice system*

in Afghanistan. Despite the accessibility of Jirgas and the police, it is generally not advisable in Afghanistan to reveal a family problem to a stranger, as people feared to talk about their family problems. The study also reports that although people go to Jirgas for justice, the decisions by these bodies often do not respect human rights.

With 75 per cent of the cases in Afghanistan handled by non-state actors (Pfeiffer, 2011), there are a few reasons for this prevalence. The access to formal systems, the lack of judicial institutions, as well as illiteracy especially among women (90 per cent), are the reasons for the prevalence of non-state judiciary (Pfeiffer, 2011).

Although the informal justice systems are criticised for their violation of human rights in Afghanistan, they can still be used to create the rule of law. They are more widely available for access, especially by the poor. They are more popular amongst the poor because of the use of familiar procedures and the local language, easy accessibility, cheaper dispute settlement, faster case settlement and localized knowledge amongst dispute settlers. They provide equal access to the vulnerable and indigenous groups whereas formal courts are viewed as corrupt and of use to the elite. These systems are also widely preferred as they have ease of use and incorporate the various cultural norms, thereby being familiar to the citizens.

Recognizing the potential of non-state justice systems, the formal system has now made efforts to integrate NSJs like Jirgas into the formal system.

HYBRID MODELS

The hybrid systems in Pakistan comprise of non-state justice systems like the Jirgas, formal justice systems like the courts and 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. Muslahathi Committee has also been reported as resolving both criminal and civil disputes. An example of which was a fight that broke out between two tribes over land that was being *“used by a famous public school. There was a fight over who were the true owners. Ten to 15 people were injured in the battle with six suffering bullet wounds...The Committee successfully resolved the conflict. The violence between the two tribes ended and the school had certainty in its planning.”* (Braithwaite and Cohar, 2014) 23.

In Afghanistan, a hybrid model called the Alternative Dispute Resolution unit (ADR) was created that would be responsible for selecting appropriate mechanisms to settle disputes outside the courtroom. This not only includes the Jirgas and Shuras but also civil society organizations such as Community Development Councils (CDC). This hybrid model integrates the Afghan cultural and moral values as well as contemporary criminology and criminal justice and thereby provides a coherent framework for speedy, accessible and cost effective justice to the Afghan people. This would also bring about a complementarity between the NSJ and formal justice system (Wardak, 2011).

Notwithstanding the potential of hybrid bodies like Muslahathi Committee for establishing complementarity, there have been some drawbacks in Pakistan. Muslahathi Committee uses police force to enforce its judgment, especially that involving the protection of human rights. Further,

Muslahathi Committee keeps away from interfering in rural areas because of the strong Pukhtoon code and fear of falling into enmity with the parties (Braithwaite and Cohar, (2014).

LOK ADALATS

“Lok Adalats, which are ADR forums that are either permanently established or convened to resolve hundreds or thousands of pending general or specialized civil cases within a short time frame, can play a critical role in providing speedy access to justice, their resolutions are final and cannot be appealed.”

Krishnan et al. (2014) 11-12. The other semi-formal body in India intended to provide access to justice: Nyaya panchayats; although moribund, was conceptualized as an indigenous body for justice commended as accessible, inexpensive and expeditious. Nyaya panchayats, like panchayats, encountered difficulties in keeping independence from parties, enforcing their decrees, and acting expeditiously. A local court could transfer a case to a Lok Adalat for mediation, thus reducing the workload of the regular court. Lok Adalats have dealt with wide range of cases including civil disputes, family disputes, petty cases and minor criminal cases. Although Lok Adalats provide an alternative mechanism for access to justice, they lack enforcement power. Lok Adalats in India are an innovative experiment to provide access to justice as an alternative dispute resolution initiative by the Indian Government. A study reports the declaration of a village in Thrissur district of Kerala state in Southern India as litigation free as a result of the legal aid activity carried out by a non-governmental organization (Sivakumar, 2003). Various forms of ADR were also used to settle tribal disputes in India, as these systems did not seek to replace the judicial system but to further improve the process by preventing petty cases and cases that are resolvable at the local level from escalating to the formal courts (Xavier, 2006)

The Legal Services Authority Act (1987) promoted the resurgence of Lok Adalat to provide litigants with the means to resolve their disputes in a fast and affordable manner (Xavier, 2006) 277. Informal court systems are important in India as they provide quick and easy access to the justice system, especially for civil disputes and petty cases. However, due to lack of resources, fewer informal court sessions were held, despite being popular with the people (Zainulbhai, 2011).

To summarise, NSJs such as Jirgas and Shuras in Afghanistan, Jirgas in Pakistan, Nyaya panchayats in India have provided local and quick access to justice amidst formal systems, which are often corrupt and lack in resources. However, easy access does not necessarily imply effectiveness of justice delivery, as many of them suffer from gender bias, violation of human rights and reliable practices in the processes followed. Therefore, hybrid forms of justice systems have evolved, which aim to combine the positive aspects of both the systems.

EFFICIENCY IN JUSTICE DELIVERY

Speedy justice emerged as another important benefit from non-state justice systems at the community level. The state run judicial systems and courts in the South Asian context were overloaded, lacked both human and infrastructural resources and cases were even deliberately delayed for want of bribes. NSJS in this context not only provided ease of access, but also quick resolutions due to their local scope and lesser procedural nuances.

From the studies, it is seen that the rural areas are more likely to use the informal justice systems due to their ease of use. Additionally, most cases are civil and criminal in nature and the informal systems possess greater knowledge for resolution of such issues. In an example at Nanghar one study shows the rationale for NSJS, as the rural people's expectation from the state (Akers, 2016)

"...limited cost of dispute settlement procedures, shorter duration of case resolution, localized knowledge among dispute settlers...." Akers (2016) 122.

"State legal systems can be viewed as corrupt, prohibitively more expensive, a tool of the elite, and dominated by conflicting ethnic or religious subgroups." Akers (2016) 122

In Pakistan, Afghanistan, Bangladesh and India, NSJ has been commended for its cost efficiency. In Pakistan it was observed that intermediaries like the Muslahathi Committees have the potential to provide efficient justice to communities and individuals, especially women. Muslahathi Committee has also been reported as resolving cases very efficiently. An example was the case with respect to a land dispute which had been in the court for 60 years and was resolved in one month by the *Muslahathi Committee* (Braithwaite and Cohar, 2014).

De Lauri (2013), in the context of Afghanistan, and Farid (2013), in the context of Bangladesh, provided evidence of lower cost for justice delivery mediated through informal systems, as formal systems often have high costs. In the case of Bangladesh, it is often observed that the NGOs are actively involved in dispute settlements.

A review of justice systems in Sri Lanka reported the role of the police force in reaching amicable settlements for minor (criminal and civil) disputes. This initiative arises from the "Mediation Boards" model instituted by the Government of Sri Lanka with *"the objective of providing the people in the country an opportunity to follow a less cost, effective mechanism to settle their minor disputes with the agreement of both the parties."* (Niriella, 2013) 241.

With respect to the tribal areas the Village Legal Order (VLO) provides an efficient form of justice offered at low cost and without much delay, thereby saving time. Even in civil cases, the VLOs were preferred. It has also been noted that costs involved in accessing state level order (SLO) are greater than that of VLO and any type of cost acts as a barrier to accessing SLOs (Shariff, 2008).

Apart from the cost efficiency the NSJ system increases the efficiency of justice as well as delivering speedy justice. In India, the quasi-formal Lok Adalat arrangement in India settles cases much faster than the formal court, according to the report by Galanter and Krishnan (2004). The study highlights a case in point for speedy delivery of justice pertaining to the settlement of motor accidents as follows:

"Assume, for example, a motor accident claimant who would secure Rs. 50,000 compensation and accumulated interest from the date of filing after an expensive ten year struggle in the courts. Imagine that the same claimant might be able to get half that amount at a Lok Adalat in just a few months. This is clearly a preferable outcome for the claimant, given the legal costs avoided and given the appropriate discount for the futurity and uncertainty of the court recovery." (Galanter and Krishnan, 2004) 21.

The study also discussed the benefits of Lok Adalats in ensuring efficient delivery of justice in India. The study observes that these ADR bodies deliver justice in a more timely manner, although they may be less effective or of lower quality than district and sub-district courts. The study also highlights the reduction in costs brought about by ADRs as compared to courts, particularly for the daily wage earning citizens. "We earn 3,000 INR [US\$ 60] in a month, and our initial court date costs between 500 to 1000 INR", noted a litigant. The litigants do not have to pay a fee and therefore the courts are available to people within limited financial resources. But the power of the Lok Adalat is most often limited to civil and petty cases. It has been observed that Lok Adalats have disposed a large number of disputes effectively and affordably and are therefore considered an important dispute resolution tool. *The Legal Services Authority Act (1987) promoted the resurgence of Lok Adalat to provide litigants with the means to resolve their disputes early and affordably.* (Xavier, 2006) 277

Another system in India is the Nyaya Panchayats, which resolved disputes through informal tribunals that were headed by village elders. This led to efficient and speedy justice as the village elders knew the disputants and traditions of the village. The village elders were considered well informed and so their decision was highly respected. These Lok Adalats were convenient and provided speedy and efficient justice. People also preferred the Lok Adalats because the time and cost involved with the formal system were high. These are preferred as the courts might take ten years to even hear a case (Zainulbhai, 2011) 259.

Chopra (2012) studied the informal justice systems in Afghanistan and how justice was achieved through the service of community paralegals, especially with regard to gender justice involving women and reported efficiency of justice delivery system. Non-state justice systems in Afghanistan play a critical role especially when formal justice systems are expensive as well as slow (Pfeiffer, 2011).

In Afghanistan the Customary Justice system (CJS) may be unable to handle cases that do not pertain to the local area. Hence they may not always be efficient. These systems are not very efficient for the fact that rapid changes in the community or society will make it difficult for the system to adapt to the changes. However, they are more accessible than formal courts, require no special training or skills and are less expensive. These factors favour CJS and hence they provide efficient justice as compared to the formal courts (Stich, 2014). Another reason why the traditional justice system was preferred over the courts was that it is a mix of customary and Islamic law that is respected and trusted by the people and maintains a certain level of legitimacy and the rule of law in the community. This shows that these informal systems are considered more efficient (Christensen, 2011). Most bodies, including businesses in Afghanistan, continue to prefer using these traditional systems as they solve the dispute in a cooperative manner. This satisfaction with such systems has resulted in the continued employment of such traditional systems for dispute resolution (Hakimi, 2016). Though the informal systems are unable to handle large scale crimes and conflict related cases in the absence of a formal system, they are obliged to take up cases which are beyond their competence (Christensen, 2011).

Ahmed (2007), in his study of the Islamic Jurisprudence in Pakistan and Afghanistan, elucidates on their efficiency of justice delivery. They most often deal with civil and criminal cases of villages. Further, they are not corrupt and do not generally succumb to bribery or biases. They also receive support from the government and therefore are recognized at a national level. This proves that these

systems are perceived to be more efficient and less expensive. On the contrary, the formal courts are corrupt and are less efficient and difficult to approach.

In Bhutan, the dispute resolution is handled by a non-bureaucratic resolution system that engages the services of respectable people, village headmen and local representatives. This enables the disputants to keep a low profile within the community and reinforce consensus.

Forms of NSJ such as Chimi, Gup, Chipon, Barmi and Mangmi have been identified and accepted during the regulation of the judicial system of Bhutan and strengthening of the courts and staff. This highlights that people will continue to have access to cost effective, speedy and efficient justice even under the formal system of justice, due to the complementarity between state systems and NSJ (Simoni and Whitecross, 2007). The study by the Asia Foundation confirms that people prefer the traditional system. Again, a hybrid model that combines the formal and traditional justice system is proposed as it is believed to be better and provides speedy justice. It is a coherent framework that is cost effective as well as restorative in nature. Hence a justice system that strikes a synergy between the state and the informal justice system will be efficient, just, time saving and cost-effective (Wardak, 2011). It emerges that NSJs substantially reduce cost of justice delivery by virtue of their proximity to the petitioners with higher efficiency of these courts as they do not follow formal processes, limited number of cases they handle etc. Formal courts are often overloaded with cases, and introduce inordinate delays due to rampant corruption, lack of resources and infrastructure. Hybrid systems such as ADRs provide a middle ground and they follow formal processes at the same time much more efficiently than formal courts.

GENDER JUSTICE

Justice for women in patriarchal societies remains a complex and difficult issue to deal with. Although non-state justice systems significantly improve access to justice and efficiency of justice delivery, there have been huge challenges reported in addressing gender related issues, particularly pertaining to women.

It has been observed that Customary Justice Systems (CSJ) are usually found in male dominated societies which place women in a position of disadvantage. Due to this discriminatory nature of CSJs, conversations regarding women's roles in dispute resolution are encouraged. Although women's participation varies greatly across Afghanistan, it is hoped that such conversations will encourage gender equality (Stich, 2004).

Similarly, Christensen (2011) mentions that although a large number of people approach the traditional justice system, these systems are not easy to approach and use especially in the case of women's and children's rights in Afghanistan. Women do not have a platform through which they can have their issues addressed as the traditional justice system is male dominated and the formal courts do not have female judges. Even if they did, it was found that it could be dangerous to tell others about a family problem, as there was a chance that it could cause violent reactions. Women necessarily have to pass through the stages of family and Jirga to receive justice, it is not a choice to them (De Lauri, 2013).

The main reasons for this were that the women had no income of their own, making it impossible for them to seek the recourse of the court. Furthermore, women were not allowed to leave their house

without their family's permission. It is also considered inappropriate for Afghan women to file a complaint in the court. In these cases the traditional justice system was the only means available for the women (Pfeiffer, 2011). It was observed that women's involvement in the Jirgahs and Shuras is minimal in Afghanistan.

This highlights that women are excluded from Afghan justice system to a large extent, which has serious implications for the actual delivery of justice to women at the local level. However, it is interesting to observe that even with all these issues, when a hybrid model was proposed to create a sustainable justice system in Afghanistan, there was opposition from some Afghan women. This shows that even with all the drawbacks of NSJ, women still perceive these systems to be better than the formal systems (Wardak, 2011).

The failure to protect women's rights in customary decisions was not a flaw of the customary system per se, but rather a consequence of prevailing roles and relations in Afghanistan's societies. In such a context in Afghanistan the formal system does not ensure justice to women (Chopra, 2012).

In Pakistan, although the formal courts offer a better form of justice and conflict resolution, women have to cross a great number of hurdles to get to the court and have their case heard (Ahmed, 2007).

The difference between NSJS like Jirgas and quasi-formal institutions like Muslahathi Committees is that the former does not have direct voices of the weak (women and vulnerable, in particular). One study reports the traditional Pukhtoon Jirgas frequently give a woman as a compensation and as a bridge to peace between warring families or clans (Braithwaite and Cohar, 2014)

In India the All-Women Police Units (AWPU) in the State of Tamil Nadu are aimed at redressing family disputes and violence against women arising out of the practice of dowry, thus addressing criminal justice and justice pertaining to women. Although AWPU's mainly dealt with crimes against women, such as violence related to dowry, it also provides justice to women affected by family disputes, marital problems, false promises of marriage, sexual assaults and rape (Natarajan, 2005)

In Afghanistan, the failure to protect women's rights in customary decisions was not a flaw of the customary system per se, but rather a consequence of prevailing roles and relations in Afghanistan's societies. In such a context in Afghanistan the formal system does not ensure justice to women (Chopra, 2012).

In the absence of proper recourse from state justice, NGOs aim to empower women, reduce widespread violence against them and encourage them to participate in dispute resolution. However, these efforts are only able to improve alternative dispute resolution for women at a local level over issues of family and property and minor disputes. This is because women are yet to be educated about their constitutional rights and how to enforce them when implicated in dispute. Lam (2006) notes that although NGOs are enforcing a legal reform that will enable better access to the justice system for the Bangladeshi people, their efforts are largely focused on women and religious minorities. Despite their success, the major question remains as to when the government will take such efforts to enforce such reforms at national and local levels.

Bangladesh's judicial system does not offer protection to women, religious minorities and children. The legal system, although including women's rights, is primarily governed by the religious or

community legal body. These communities are male dominated and this makes it even more difficult to incorporate women's rights or account for the crimes committed against them.

NGOs are aiming to empower women, reduce widespread violence against them and encourage them to participate in dispute resolution. However, these efforts are only able to improve alternative dispute resolution for women at a local level over issues of family and property and minor disputes. This is because women are yet to be educated about their constitutional rights and how to enforce them when implicated in a dispute.

The Family Legal Order (FLO) is moved in cases of domestic violence against women. However, these FLOs have been found to be biased and are in favour of the male member because a woman is dependent on a male member of the family throughout her life (Shariff, 2008).

It was observed that while the informal justice systems are patriarchal and male dominated, the rights based approach to the Rule of Law model focuses on gender equality and access to justice for the vulnerable and indigenous groups (Akers, 2016). Gender justice emerged as the highest compromise encountered while drawing the benefits of efficiency and proximity provided by non-state justice systems. Jirgas in Pakistan do not have the representation of women and as such suffer from gender bias. Patriarchal character of the societies is also reflected in the nature of justice delivery processes of Jirgas and Shuras.

RESTORATIVE JUSTICE

Restorative justice systems such as Jirgas and Shuras in Afghanistan provide reconciliation among disputants. They restore peace and dignity among the disputants, victims, offenders and community. The NSJS also integrate the offenders back into the community, thereby providing them with a chance to redeem themselves and to account for their wrongdoing in a fair way. This also acts as an alternative form of dispute resolution (ADR) and reduces strain on the state justice system. As Wardak (2011) stated:

"Jirgas and Shuras place a strong emphasis on reconciliation and making peace among disputants. Thus, unlike the state justice system, which creates winners and losers, Jirgas and Shuras reach community-led decisions that promote restorative justice." Wardak (2011) 418.

The restorative justice system in Afghanistan is in essence more accessible and less expensive as compared to the state systems that are expensive, corrupt and dominated by conflicting religious or ethnic subgroups. However, even if a person chooses to use the state justice system, they may often be discouraged from doing so as they undergo the fear of being reprised or socially ostracized. This puts them under pressure to use the informal justice systems (Akers, 2016).

The Jirga members try to maintain harmony with the main aim of settling disputes. Pfeiffer (2011) highlights the merits of Jirgas in Afghanistan as a non-state justice system. In particular, the restorative justice practiced by Jirgas has been given special attention:

"Instead of defining the guilty party, the Jirga members try to maintain harmony within the community and an ultimate settlement of the dispute." Pfeiffer (2011) 88.

In Pakistan, restorative justice was embedded within the non-state justice systems of Jirgas. It included problem-solving through direct participation and restoring relationships where forgiveness played a central role (Braithwaite and Cohar, 2014). In the case of Sri Lanka, restorative justice is conducted through community-oriented policing, where the general public works proactively in preventing crime (Niriella, 2013).

Evidence of restorative justice followed by NSJS at the community level can be found in Afghanistan and Pakistan. The restorative justice as practiced by Jirgas in these countries refers to the pre-Islamic restorative justice institution, practiced by Muslims, Jews, and Christians in Palestine and across the Middle East. These systems are less expensive and believe in the values of the community. Restoration and forgiveness are an integral part of the justice system they follow.

REDUCTION IN CRIME RATE

Although not many studies address the reduction in crime rates directly, several initiatives other than formal courts were reported to address the problem of crime in a few studies pertaining to non-state justice systems.

In Sri Lanka, Niriella (2013) reported the intervention by the Government in establishing Mediation Boards in order to address crimes. The police are involved in the amicable settlement of minor (criminal and civil disputes). The Mediation Boards are empowered by the Government to resolve criminal and other cases by the process of mediation. Cases are referred to it by disputing parties as well as by the formal courts. Mediation Boards handle a large number of cases involving criminal offences like criminal force, criminal trespass and criminal intimidation.

Based on available sources our review on crime rates did not report any quantifiable information on reduction in crime rates following any intervention.

PROMOTION OF HUMAN RIGHTS

Promotion of human rights has been among the main themes addressed. Some studies state that the NSJ systems promote human rights while some disagree.

Among the studies that state that NSJ promotes human rights is Braithwaite and Cohar (2014), who in the context of Pakistan argued that the hybridity between state and non-state justice can be designed to cover the human rights weaknesses of one with the strengths of the other. Their study contrasts Jirgas of Pakistan with those of Afghanistan to show that Afghan Jirgas have evolved to represent and support human rights, particularly women's rights to justice more effectively.

The remaining studies observed that the non-state justice system in Afghanistan did not promote human rights. Although the people distrusted the formal system, there was no assurance that their decisions would respect human rights De Lauri (2013).

When it came to the rights of women the NSJS in Afghanistan and Pakistan were prone to the violation of human rights. The practice of *exchanging of girls is still common among some tribes, especially in terms of serious cases like murder. The marriage between the victim's and the offender's family shall link the two families together, support the reconciliation process and thus settle the dispute. In this*

regard, the informal system privileges wealthier families, who can refuse to give a girl as compensation but pay the bride price for another marriage instead, whereas poorer families do not have such an option (Pfeiffer, 2011) 88-89.

Another violation of human rights is the exclusion of women in decision making. These violations occur because the citizens may be unaware of their human rights, judges are not educated on human rights standards, criminal procedures are not subjected to a process of justice and redressal standards, practices derived from localized norms etc. conflict with international standards. The rights based approach mentioned provides equal access to justice to both women and minorities (Akers, 2016).

It was suggested that there is a need to strengthen the rule of law in Afghanistan. The process of codification makes the law predictable, diminishes the power of corrupt judges and protects the legal system from the tribal decision making of elders and mullahs. The code will also maintain a standard and include the fundamental rights of people. This, in turn, prevents atrocious acts of justice and most importantly, protection of women and children's rights.

The hybrid model in Wardak (2011) synergized the non-state justice systems and customary law and included the creation of an Alternative Dispute Resolution system (ADR) and Human Rights Units. This Human Rights Unit will be staffed by people from the Afghan Independent Human Rights Commission (AIHRC) or other Human Rights and Civil Society bodies in Afghanistan. Alternatively, the Pakistani Government gave the tribal justice system freedom to pass resolutions and offer justice. Human rights groups argue that this is wrong as it violates a number of international law standards, especially in the case of women. A probable solution is to include both the traditional and formal justice systems and strike a balance between both.

Gross and continuing violation of human rights, especially those of women and the poor and the minorities have been reported in countries such as Afghanistan and Pakistan where NSJS such as the Jirgas are extensively involved in the delivery of justice. Not only are they biased towards men, but women are also given as brides between warring families as a means of resolving disputes, and are often stopped by their families and communities from approaching formal courts for justice. Their judgments have also reported cruelty to women. Hybrid systems like ADRs have evolved in countries like Bangladesh and Afghanistan to address such human rights issues while delivering justice.

CONCLUSIONS - COUNTRY CONTEXT

Synthesis of evidence on non-state justice systems at the country level indicated extensive treatment of access to justice and speedy and timely delivery of justice in most of the studies. These two aspects address the core drawbacks of the formal system, recognizing the fact that justice delayed is justice denied. Another key aspect of NSJS is the restorative justice system they traditionally follow, which is not available in formal justice systems. Despite the core benefits given by NSJS, they were found to be lacking significantly with respect to gender justice and human rights. It is in this context that many hybrid agencies have evolved mostly by the interventions by Government and international agencies.

4.4 BENEFITS ACCRUING AT THE COMMUNITY/INSTITUTIONAL LEVEL

In this section, we examine the experiences of NSJ on community/institutional level outcomes. We noticed the biggest impact of NSJ at the community/institutional level. We traced the impact of NSJ at 7 outcomes: (1) Access to Justice; (2) Efficiency; (3) Gender justice; (4) Fairness, equality & Accountability; (5) Restorative Justice; (6) Reduction in Crime Rate; and (7) Promotion of Human Rights. Out of the 44 studies identified for the synthesis 27 contained qualitative data on the different kinds of impact NSJ had at the community/institutional level. Of these fifteen studies (Goresh, 2009), (Wardak, 2011), (Shariff, 2008), (Vatuk, 2013), (Klock, 2001), (Baker, 2010), (Cohen, 2006), (Tschalaer, 2010), (Goresh, 2009), (Lugo and Searing, 2014), (Raymond and Shackelford, 2014), (Manganaro and Poland, 2012), (Sbriccoli, 2013), (Roy, 2004), (Jensen, 2011) were of high quality and six studies (Maru, 2006), (Waldorf, 2006), (Goodmark, 2015), (Alkon, 2011), (Chopra, 2012), (Eckert 2004) were of medium quality).

ACCESS TO JUSTICE

NSJS' role in access to justice is largely dependent on the access to formal courts system. Most of the population in Bangladesh live in rural areas and have limited access to the formal courts system (Goresh, 2009). Formal justice delivery systems are usually concentrated in the urban areas where the informal or non-state justice systems prevail in the rural areas (Maru, 2006). In a study involving perceptions of Afghan people of the state and non-state justice systems, it was found that Jigra and Shura (informal justice systems) were perceived by respondents to be better performing than State justice institutions (Wardak, 2011).

Klock (2001) studied the impact of NSJ in panchayat in South Asia and ahalla in Central Asia. The panchayat refers to a type of village council which exists in different forms. The Mahalla is a type of informal neighbourhood which acts as a local administrative unit and a base for community and social networks. Klock (2001) found that both panchayat (in India) and mahalla (in Uzbekistan) resolve conflict within the community, as they are embedded within the social life of the communities in which they exist.

Local justice has three attributes: (1) it focuses on groups rather than individuals; (2) it seeks compromise and community harmony; and (3) it emphasises restitution over punishment (Waldorf, 2006).

The Santal Adivasi of India and Bangladesh at times avoid the state legal order if the remedy provided is not in tune with the needs of the community. Shariff (2008), in a study conducted with the Santal adivasi community in rural villages of north-west Bangladesh and Jharkhand, India, reported that a Santal leader told her that he had resorted to village legal order to resolve a criminal case where state law was unable to provide an appropriate remedy to restore harmony: the case involved the killing of a villager by another, which was reported to the state legal order as an accident.

Many of the claims are not based on empirical evidence. The study on all-women peer-led courts notes that there is no empirical evidence available as to the extent to which the settlements made by the courts resulted in lasting marital reconciliations (Vatuk, 2013). Chirayath et al. (2005) noted that in a review of 78 assessments of legal and justice systems by the World Bank since 1994 pertaining to the

relevance of traditional justice systems, none of the assessments explore the systems in detail or examine the links between local level systems and state regimes (Baker, 2010).

At times, the NSJ and the SJ systems can act synchronously in cases involving crimes. Klock (2001) notes the case of a rape of a fourteen-year old girl, Sonia, in her matrimonial home by her father-in-law which was taken up by the village panchayat and the police. The panchayat ordered social shaming and social ostracism. On its part, the police took action on the complaint and arrested Sonia's father-in-law. Klock (2001) notes this as an instance where official and unofficial mechanisms for conflict resolution worked simultaneously, but independently.

Synergy between state and non-state justice systems in Afghanistan could provide a cost-effective, accessible and restorative justice to its people. Empirical evidence in pilot studies affirms this trend (Wardak, 2011). In a dualist system, the synergy takes three different forms: (1) Invoking the formal legal system to check unfairness and exploitation within the customary system; (2) assisting community members in engaging the formal system to respond to abuse that emanates from some other organ of the formal system; and (3) allowing poor people to access or participate in formal structures (Maru, 2006).

NSJ plays a significant role in issues where the formal justice system is incapable of providing a realistic relief. The mediation programme conducted by the Centre for Victims of Torture (CVICT), which is directly funded by the DFID in Nepal, commonly mediate second and third wife arrangements, often arranging for the husband to divide equitably his resources among his wives (Cohen, 2006). The CVICT mediation combines select alternative dispute resolution (ADR) methods with a locally-invoked human rights vocabulary in order to enhance social justice for women, ethnic minorities, dalits and the economically poor (Cohen, 2006). Hybrid forms of informal dispute resolution mechanism, such as the one followed by CVICT, may be superior to the rigid state legal system (Cohen, 2006).

India's Nyaya panchayat (village courts) and Lok Adalats (people's court) are well-documented instances of failed state informalism (Waldorf, 2006). State efforts to create synergy between formal state systems and informal local systems have generally failed as linking the two tends to undermine the positive attributes of the informal system (Waldorf, 2006). The system collapsed when state coercion replaced social sanction and when informalism was traded for procedural requirements.

In summary, the role of NSJ in justice delivery is dependent on the access to the formal court system. Since they are based within the community, they provide immediate access to resolving disputes affecting the community. Though many of the claims are not based on empirical evidence, the studies show the existence of NSJ as a practical alternative to the formal state justice system. NSJ can play a pivotal role where the state justice system is not able to provide a realistic relief. In Nepal, the CVICT mediates and settles second and third wife arrangements which are illegal under the formal state justice system. NSJ is often used to avoid the state justice systems as the outcomes are not perceived as favourable to the community. The Santal Adivasi in India even resolve criminal cases such as killing a person within the community to restore the harmony of the community. State and non-state justice systems can act synchronously to resolve disputes like crimes, where the community ordered social ostracism of the perpetrator of the crime and the police took action on a complaint of rape, both acting simultaneously but independently. Empirical evidence confirms the trend that synergy between state and non-state justice systems in Afghanistan could provide a cost-effective, accessible and

restorative justice to its people. While informalism works for the NSJs, state sponsored informal justice systems, like the Lok Adalats have failed as the efforts to synergise tends to undermine the positive attributes of the informal system. The system collapsed when state coercion replaced social sanction and when informalism was traded for procedural requirements.

EFFICIENCY IN JUSTICE DELIVERY

Most NSJS prefer using quicker means of dispute resolution, such as mediation and conciliation, in preference to other time consuming means such as arbitration and adjudication. Klock (2001) notes that compared to adjudication, medication can be faster, less expensive, and better suited for tailoring outcomes to the needs of the parties. The character of mediation can change depending on the local customary law, politics and social struggles (Cohen, 2006).

In India, the Social Reform Committee was set up in 1998 by Astha in Udaipur, a state-registered non-governmental organisation concerned with tribal women issues, incorporating elements like state courts such as written records and the structural elements of caste panchayat like the procedure of negotiation (Tschalaer, 2010). Women from the Meena tribe have four different institutions for dispute settlement: family gatherings, the caste panchayat, the state courts and Social Reform Committee (Tschalaer, 2010). The structure of the Social Reform Committee comprises an executive body and a fact-finding committee. Grave crimes like murder are not dealt with by the Committee. Sanctions negotiated during the reconciliation sessions are binding on the parties. The Committee also orders monetary fines but it has a secondary role in dispute settlement. The decisions are always written on paper bearing an INR 100 stamp and are signed by both the parties. The practice of keeping written records was adopted from the state courts (Tschalaer, 2010).

In Bangladesh, a World Bank study highlighted the additional merits of NGO-facilitated mediation in that the most tangible gain from mediation services is the lesser cost of disposing of disputes which benefitted the poor (Goresh, 2009). The shalish provides a number of benefits including reduced costs by bringing low-cost justice to people in remote areas and conducting proceedings in the local language using familiar procedures (Lugo and Searing, 2014). These institutions are perceived as fair. The problems with shalish include their bias against women and marginalised groups, corruption, rent-seeking, clientelism and vulnerability to local musclemen (Lugo and Searing, 2014).

Paralegals can help poor and marginal communities to access the formal system and to make it work for them (Maru, 2006). In a study focussing on an experimental community-based paralegal programme the institution of paralegals was utilised to provide primary justice services, one that combines law with creative tools of social movements. With the establishment of Lok Adalats which focussed on quick redressal, it was felt that the judicial system now seems to place efficiency as a goal over achieving justice (Raymond and Shackelford, 2014).

Thus, NSJS resolve disputes by adopting less-time consuming methods like mediation and conciliation which are faster, less-expensive and better suited for the community, although those methods need to be customised to local needs. The cost effective methods used in NGO-facilitated mediation in Bangladesh benefitted the poor. They also provide low-cost justice to people in remote areas and by conducting proceedings in the local language. Paralegals and NGOs can be put to use to help the community in rendering justice. NSJS at times replicate the procedure followed by the state justice

system to bring in a sense of legitimacy. However, the NSJS have biases against women and are charged with corruption and other ills.

GENDER JUSTICE

Non-state justice systems are generally male-dominated and are perceived to be insensitive to gender rights. Patriarchal attitudes prevail in non-state dispute settlement forums to which women often seek recourse (Vatuk, 2013). In the study covering panchayat in India, it was found that the traditional caste or village panchayat in India consists mainly of men in the village who were called upon to settle disputes in the light of the societal norms that influence social standing, the role of women within the society and the kinds of punishments that would be effective in each situation. Women are not invited to attend the caste panchayat and are only represented by their male relatives (Klock, 2001).

Perceptions of formal and informal justice systems can show how the gender of the participants can affect their attitudes towards the system. In a study drawing upon the survey data from a national probability sample of 6,406 Afghan adults (aged 18 years and older) to explore the gender differences in the perceptions of formal and informal justice systems, it was found that women have more confidence in the formal system than their male counterparts whereas the men had more confidence in the informal system (Manganaro & Poland, 2012). The study attributed the lack of confidence of women in the extra-judicial informal system composed of village elders (*jirgas/shuras*) in Afghanistan to the fact that they are male-only institutions having an inherent bias towards women. Women are excluded from participating in the decision-making bodies of *jirgas* and *shuras* (Wardak, 2011). Women were also least represented in the *jirgas* and *shuras* as only eight per cent of the respondents in a study on the perceptions of the state and non-state systems found that women were represented in the bodies. Women's access to the state justice system in Afghanistan is limited to approximately three per cent of the judges and less than one per cent of the police personnel (Wardak, 2011). The exclusion of women from participation in *jirgas* and *shuras* are not inherent characteristics of non-state justice systems in Afghanistan, rather they are characteristics of Afghan patriarchal society (Wardak, 2011).

The study notes that the informal systems rarely rule in favour of women and that the system is inherently biased against women. Quoting the United Nations Assistance Mission in Afghanistan, the study notes that some of the informal systems also perpetuate sexual violence through the harmful traditional practice of *baad* (the practice of handing over girls to settle disputes) or by insisting that the victim marry the rapist. The practice of *baad* violates Afghan's state law, Shari'a and fundamental human rights (Wardak, 2011).

In India, women's court (also known as Mahila Adalat, Mahila Mandal, Mahila Panchayat, Mahila Manch and Nari Nyaya Samiti) refers to a broad and diverse category of dispute resolution bodies set up specifically to deal with women's marital and family problems usually by counselling and mediation between the complainant and her husband and other relatives (Vatuk, 2013). The goal of the women's court is to avoid matrimonial litigation and to find a way to reconcile the couple and keep the family intact. Some of them are run by official governmental bodies while others are run by voluntary organisations. Vatuk (2013) identifies a particular type called the "all-women's court" where all the mediators are female and the mediators come from a similar cultural and social background as the

complainant. The study notes that peer mediators were able to suggest solutions based on the realities of the women's lives (Vatuk, 2013).

NGO-assisted shalish systems in Bangladesh, who had earlier worked on family planning and established a good rapport with the communities were able to leverage the good will to stimulate acceptance of women's legal rights and to foster gender equity within the communities (Goresh, 2009). By blending mediation with gender equality or micro-credit, NGOs like Banchte Shekha, were able to create a more conciliatory environment and a more equal dispute resolution system (Goresh, 2009).

In conclusion, since NSJS are male-dominated, women are excluded and are least represented in the justice delivery systems. In post-conflict societies like Afghanistan where access to formal state justice systems is limited, women were found to have more confidence in the formal system due to the lack of inclusiveness of women, while men preferred the non-state justice system. Even the ruling of the NSJS are rarely in favour of women and harmful traditional practices like *baad* (the practice of handing over girls to settle disputes) still exist in Afghanistan despite the practice violating Afghan's state law, shari'a and fundamental human rights. The dispute settlement mechanism run exclusively by women, such as the "all-women's court," were more congenial places for women to address their issues and peer-mediators were found to suggest solutions based on the realities of the women's lives. Experienced NGOs who had worked on other welfare-related issues were able to advocate and foster gender equity within communities in Bangladesh.

FAIRNESS, EQUALITY AND ACCOUNTABILITY

Governance of mediation by personal norms and principles, which usually happens in a NSJ system, is bound to raise issues of fairness of the mediation process. Mediators can promote the reasonable decisions based on an independent, impartial assessment of the realistic and practical effects of potential outcomes (Klock, 2001).

The shalish system in Bangladesh faces criticism on corruption, abuse of power, biases in judgment, non-compliance with human rights standards, lack of inclusiveness and lack of accountability (Goresh, 2009). It is perceived to uphold perceived cultural norms and community biases. The bias appeared to be particularly pronounced in the cases involving the poor.

Non-state justice systems sometimes bring in accountability by accommodating a rudimentary system of appeals. The Raika jati panchayat (a traditional caste panchayat in Rajasthan, India) has a series of inclusive layers from village level up to encompass the whole region where the upper ones sometimes function as 'courts of appeal' for decisions from the lower levels (Sbriccoli, 2013).

The influence of warlords in some parts of Afghanistan jirgas and shuras may produce bias and unfair outcomes (Wardak, 2011). The linkage between state and non-state justice systems could be established through the use of appeal by which decisions from the non-state justice system could be entertained by the state justice system (Baker, 2010). To have a system of appeals to the state justice system, the non-state justice system should develop a system of keeping records of its proceedings for future scrutiny.

In sum, in order to be perceived as fair, the justice delivery process, like mediation and conciliation followed by NSJS should not be rooted in personal norms and principles. Much of the criticism of the NSJS stems from the corruption, abuse of power, biases in judgment, non-compliance with human rights standards, lack of inclusiveness and lack of accountability in the justice delivery process. Sometimes NSJS do bring in the principle of accountability by providing for rudimentary appeal mechanisms. Complementarity between the two systems can be achieved by having a system of appeal from the non-state justice system to the state justice system. Record keeping is a must to achieve complementarity between the two systems.

RESTORATIVE JUSTICE

Retributive justice focuses on punishment whereas restorative justice's aim is to repair and heal the relationships damaged by the conflict. Restorative justice proponents argue that offenders should be reintegrated into society (Goodmark, 2015). The sanctions imposed by caste panchayats include social ostracism. Klock (2001) notes the example of the impact of the cast panchayat in a domestic rape case in India. The case of a fourteen-year old girl, Sonia, who was raped by her father-in-law in her matrimonial home, was brought before the caste panchayat. A women's organisation that was advising Sonia also asked her to file a formal complaint with the police. The caste panchayat decided the case as a conflict between Sonia and her father-in-law. After hearing the case, the panchayat, which also comprised of a newly elected female sarpanch (village chief), gave its decision to banish Sonia's father-in-law, her husband and her father (who indicated that Sonia kills herself to save the honour of the family and the village) from the community. The panchayat ordered all of them to be socially ostracised from the community for the rest of their lives and asked the community to boycott them. The means of boycott included not sharing food and having any social alliances with them. In addition, a penalty for violation of the ban of \$500 would also imposed.

The close-knittedness of the local community often acts as a social pressure in resolving conflicts. Klock (2001) notes the use of shame acts as an effective social pressure and does not hold any legal or institutionalised power or accountability. Klock (2001) notes the role of social shaming as a part of the decision of the panchayat in Sonia's case, where the panchayat instructed Sonia to strike her husband and her father on their head with a shoe in front of the entire village.

In summary, NSJ system is a community-based justice delivery mechanism which focuses on conciliation to keep the social fabric of the community intact. Restorative principles of justice are employed to reform and integrate the offenders into the community. Social sanctions are imposed on the offenders by way of social shaming and social ostracism.

REDUCTION IN CRIME RATE

In general, when NSJS resolve a dispute within the community in an acceptable way, there is no further flaring of the dispute within the community. This leads to an overarching effect of reducing the crime rates within the community. The studies covered in the review did not report any quantifiable information on reduction in crime rates following any intervention.

Non-state justice delivery systems do not aim, especially in cases involving women's rights, to ensure that the women who come to them for help get their rights to which they are entitled to under the human rights principles or under the law. Their primary purpose is to defuse the hostility that has developed between the parties to the dispute and to find a compromise solution that will allow them to live together in relative peace (Vatuk, 2013).

The linkage between the non-state justice systems and the state justice systems is needed to ensure the effective implementation and monitoring of international laws (Tschalaer, 2010). One of the key factors required for complementarity to work is that the NSJS should be regarded as legitimate justice delivery systems. Alkon (2011), in a study that focuses on Alternative Dispute Resolution programs that assist or support the formal legal system and not the NSJS, notes that legitimacy is a "key precondition" to people voluntarily complying with the law and legal authorities. The issue of legitimacy looks at both whether the law itself is perceived as legitimate and whether individual legal authorities or institutions are perceived as legitimate (Alkon, 2011).

The legitimacy is assigned by following certain procedures which make it easier for the matter to be documented and brought up, if necessary, before the formal justice system. To enhance their claim to legitimacy, alternative dispute resolution fora may employ quasi-judicial rhetoric when referring to their aims and modes of operation and in the method of record keeping at the hearings (Vatuk, 2013).

Vatuk (2013), covering the all-women peer-led courts, a type of alternative dispute resolution forum, noted that a successful session of counselling ends with the drafting of an agreement to which both the parties affix their signatures or thumbprints. If the mediators are not able to resolve the issues, the court may help the woman to file a police complaint or a case before the civil court (Vatuk, 2013). The study noted that that all-women peer-led courts offered a system of justice delivery that is parallel to that of the state as well as superior to it in terms of outcomes.

The legitimacy of an informal legal system may sometimes come through judicial pronouncements of the courts of the formal system. The Supreme Court of Bangladesh, in what is regarded as one of the highest forms of formal recognition of customary indigenous law within Bangladesh, declared that the office of the Bohmong Chief is a customary office and both the Government and the Court have to recognise the custom and not introduce any other criterion or factor that will add to the customary requirements of the office (Roy, 2004).

Non-state justice systems may be crucial to restoring some degree of law and order in post-conflict countries (Baker, 2010). In post-conflict countries, such as Afghanistan after the United States takeover in 2001, the rule of law efforts are mostly concentrated in the urban centres, allowing informal justice systems to take root in the rural areas where most of the population live (Jensen, 2011). The access to rural Afghan's state justice system is hindered by low education levels among Afghan citizens, police and judges, a pervasive culture of distrust of state institutions and the remoteness of court locations in rural areas (Jensen, 2011).

Some NSJS may violate the rule of law in the process of dispute resolution. Eckert (2004) notes that the Shakhas run by the Shiv Sena do not follow the rule of law in settling disputes. Eckert's conclusion points to this,

“The story of the emergence of the dominance of the ‘elites’ in shaping a particular constellation of legal pluralism and *devolving* local control to organisations like the *Shiv Sena* (e.g. Brass 1997); or as the story of ‘failure of governance’ (Sen Gupta 1996; Chopra 1996) where a local organisation has *appropriated* the powers of the state, its monopoly of coercive force and law, as many of the analyses of the demise of the Nehruvian developmental state would hold. (It can also be told as the story that the failure of governance is in fact a strategy of cunning: Randeria 2002). But both seem to be the case.” (Eckert, 2004) 56

Thus, since the focus of the NSJ is to resolve the conflict in a way acceptable to the community, promotion of human rights and upholding of the rule of law do not figure significantly as outcomes in the studies reviewed. But the linkage between the two systems can lead to the NSJ following the international laws. For complementarity to work between the two systems, the NSJ should be perceived as a legitimate system. The legitimacy is a key pre-condition for people to voluntarily comply with laws and legal authorities. Legitimacy can be achieved by following certain procedures that are viewed as fair and just. Some NSJS employ the quasi-judicial rhetoric when referring to their aims and modes of operation and in the method of record keeping at the hearings. Legitimacy may also come through judicial pronouncement of the formal state justice system when matters pertaining to NSJS are brought up before it. NSJS can also play a vital role in restoring the rule of law in post-conflict countries like Afghanistan. NSJS may also usurp the authority vested with them and lead to violations of the rule of law.

CONCLUSIONS — COMMUNITY/ORGANISATION

We noted the following outcome at the community/organisation level:

- Being community-based mechanisms, NSJ provides immediate access to resolving disputes affecting the community. NSJ can play a pivotal role where the state justice system is not able to provide a realistic relief. NSJ is often used to avoid the state justice systems as the outcomes are not perceived as favourable to the community. State and non-state justice systems can act synchronously to resolve disputes like crimes.
- NSJS resolve disputes by adopting less-time consuming methods like mediation and conciliation which are faster, less-expensive and better suited for the community but those methods need to be customised to local needs. The cost effective methods used in NGO-facilitated mediation in Bangladesh benefitted the poor. Employing paralegals and NGOs can help the community in rendering justice. NSJS at times replicate the procedure followed by the state justice system to bring in a sense of legitimacy. However, the NSJS have biases against women and are charged with corruption and other ills.
- Male-dominated NSJS have traditionally excluded women. Women are least represented in these justice delivery systems. In post-conflict societies, like Afghanistan where access to formal state justice systems is limited, women were found to have more confidence in the formal system due to the lack of inclusiveness of women, while men preferred the non-state justice system. The dispute settlement mechanism run exclusively by women, such as the “all-women’s court,” were more congenial places for women to address their issues and peer-mediators were found to suggest solutions based on the realities of the women’s lives.

- The justice delivery process, like mediation and conciliation, followed by NSJS should not be rooted in personal norms and principles. Much of the criticism of the NSJS stems from the corruption, abuse of power, biases in judgment, non-compliance with human rights standards, lack of inclusiveness and lack of accountability in the justice delivery process. Sometimes NSJS do bring in the principle of accountability by providing for rudimentary appeal mechanisms. Complementarity between the two systems can be achieved by having a system of appeal from the non-state justice system to the state justice system. Record keeping is a must to achieve complementarity between the two systems.
- The NSJ system is a community-based justice delivery mechanism which focuses on conciliation to keep the social fabric of the community intact. Restorative principles of justice are employed to reform and integrate the offenders into the community by using social sanctions like social shaming and social ostracism.
- The studies covered in the review did not report any quantifiable information on reduction in crime rates following any intervention.
- The aim of NSJ is to resolve the conflict in a way acceptable to the community and as such promotion of human rights and upholding of the rule of law do not figure significantly as an outcome in the studies reviewed. But the linkage between the two systems can lead to the NSJ following the international laws. For complementarity to work between the two systems, the NSJ should be perceived as a legitimate system. Some NSJ systems employ the quasi-judicial rhetoric when referring to their aims and modes of operation and in the method of record keeping at the hearings. Legitimacy may also come through judicial pronouncement of the formal state justice system when matter pertaining to NSJ systems are brought up before it. NSJ systems can also play a vital role in restoring the rule of law in post-conflict countries like Afghanistan. NSJ may also usurp the authority vested in them and lead to violations of the rule of law.

5. SUMMARY & CONCLUSION

On review of the studies, we were able to compile our conclusions which are stated below under their respective outcomes.

5.1 ACCESS TO JUSTICE

Physical access to justice delivery systems – The use of NSJS is dependent on the physical access to the formal state justice systems. Litigants turned to NSJ due to its proximity to the local community. The concentration of formal justice systems in the urban areas is noted as a reason for the NSJS to flourish in rural areas. The geography of certain regions, especially rural areas in Afghanistan, Bangladesh and Nepal, may be the reason for impeding physical access to the formal system. Complementarity can be improved by aligning the NSJ as an ally to the state justice system, as NSJ is more accessible and informal.

Financial and other barriers to entry – The formal system is known to have high economic costs which erect barriers for the less privileged to access. The use of NSJ, especially in Afghanistan, is due to lack of trust in the formal system owing the corruption, at courts, prosecutor's office and policemen and difficulties in access to the courts.

Third-party facilitation – NSJ systems benefit from third-party intervention. Interventions by NGOs, religious bodies, international developmental agencies and political parties have attempted to reduce both physical and economic barriers and their participation in facilitation and training of personnel should improve the access to justice of NSJS.

ADR as preferred choice of method – NSJ intervention usually employed ADR methods to resolve disputes. These interventions, mostly by using ADR methods like arbitration, mediation and conciliation, have attempted to provide justice to a wide range of matter covering civil and criminal disputes, women, minority and human rights related disputes and petty cases and such interventions are to be encouraged.

Reinforcing enforcement mechanism – ADR mechanisms, though a practical alternative to the formal state justice system, lack enforcement power. The formal system should make efforts to integrate the NSJ systems like Jirgas in Afghanistan. Though the informality of the NSJ process attracts more participants, the lack of recording of proceedings and binding provisions to enforce the decision has been a cause for concern. Complementarity with the formal state systems should ensure that the decisions of the NSJS, in so far as they comply with the existing norms of the state justice systems, should be enforced. The state justice system must exercise more authority in enforcing the decisions taken by the NSJS for the system to have any binding effect. There could be measures to improve the enforcement of the decisions of the NSJS using the formal state machinery as the NSJ system is plagued with problems on the implementation of the rulings or the mediation outcomes.

Emergence of hybrid systems – Hybrid systems that take the positives of both the systems and which aim to avoid the drawbacks, like the NGO assisted Shalish, have seen effectiveness in their ability to settle disputes. Combining traditional justice delivery systems with the flexibility of NGOs can create

hybrid systems. Hybrid systems can also emerge from government initiatives like the Mediation Boards in Sri Lanka. We find that interventions specifically directed towards improving the access and utilisation of justice by women have opened up new spaces for women, like the all-women peer-led courts in India, to air their complaint and at times earn their rightful place in family and society. NSJS could also be designed for handling special types of disputes like the bodies following the traditional system of disputes settlement in Afghanistan for commercial dispute.

Creating effective checks and balances – Mus-la-hathi’s use of police force to enforce its judgment and Shivsena’s use of violence may not confirm to the rule of law and international human rights norms. The state justice system should provide for effective checks and balances to keep the unauthorized use of power by the NSJS. Providing a system to appeal against the decisions of the NSJ should keep NSJ under the supervisory jurisdiction of the state justice system. State justice systems may also evolve a means of recognizing NSJS as legitimate systems.

Local solution to local problems – NSJ can play a pivotal role where the state justice system is not able to provide a realistic relief. In Nepal, the CVICT mediates and settles second and third wife arrangements which are illegal under the formal state justice system. NSJ is often used to avoid the state justice systems as the outcomes are not perceived as favourable to the community. The Santal adivasi in India even resolve criminal cases such as killing a person, within the community to restore the harmony of the community. State and non-state justice systems can act synchronously to resolve disputes like crimes, where the community ordered social ostracism of the perpetrator of the crime and the police took action on a complaint of rape, both acting simultaneously but independently.

Recognition of legitimacy – NSJ may exceed the authority vested in it and lead to violations of the rule of law. The NSJ intervention mechanism can be further strengthened by a formal recognition by the state and by providing a structured direction and resources both human and financial to the intervening agencies. In Bhutan, forms of NSJ such as Chimi, Gup, Chipon, Barmi and Mangmi have been identified and accepted during the regulation of the judicial system of Bhutan and strengthening of the courts and staff. Since the focus of the NSJS is to resolve the conflict in a way acceptable to the community, promotion of human rights and upholding of the rule of law do not figure significantly as an outcome in the studies reviewed. But linkage between the two systems can lead to the NSJ system following the international laws. For complementarity to work between the two systems, the NSJ system should be perceived as a legitimate system. Legitimacy is a key pre-condition for people to voluntarily comply with laws and legal authorities and can be achieved by following certain procedures that are viewed as fair and just. Some NSJS employ the quasi-judicial rhetoric when referring to their aims and modes of operation and in the method of record keeping at the hearings. Legitimacy may also come through judicial pronouncement of the formal state justice system when matter pertaining to NSJS are brought up before it, as has been declared by the Supreme Court of Bangladesh recognizing some NSJS. NSJS can also play a vital role in restoring the rule of law in post-conflict countries like Afghanistan.

5.2 GENDER JUSTICE

Need for women centric systems – Though the traditional NSJS are male-dominated institutions where the voice of women is not heard, the hybrid NSJS which provide a confidential space for women to

bring out their grievances, need to be promoted. The patriarchal character of the societies is also reflected in the nature of justice delivery processes in Jirgas and Shuras in Afghanistan. Women centric systems can be accessed and utilised by women which will reduce the barriers in terms of costs and cultural beliefs imposed by the formal and traditional justice delivery systems. The All-Women Police Units in Tamil Nadu, India have been known to be more accessible to women. The dispute settlement mechanisms run exclusively by women, such as the “all-women’s court,” were more congenial places for women to address their issues and peer-mediators were found to suggest solutions based on the realities of the women’s lives. Experienced NGOs who had worked on other welfare-related issues were able to advocate and foster gender equity within communities in Bangladesh.

Sensitization to women’s issues – Even the rulings the NSJS are rarely in favour of women and harmful traditional practices like *baad* (the practice of handing over girls to settle disputes) still exist in Afghanistan despite the practice violating Afghan’s state law, shari’a and fundamental human rights. The dispute resolution systems should be sensitive to gender issues. Women should be made to participate in the process of justice delivery. Peer-led mediation centres have been effective in some cases. Issues pertaining to disclosing family matters to strangers which have attracted violent reactions from family members in Afghanistan can be avoided when the dispute resolution mechanism is peer-led.

Restructuring existing systems – The Jirgas in Pakistan do not have a representation of women and as such are prone to gender bias. Revamping and restructuring some of the existing systems such as Shalish in Bangladesh do provide more space for women to voice their grievances. However such innovations are often plagued by the lack of training for the people involved in mediations and the NGOs have been seen as a positive intervention in offering training to the mediators. Interventions that are routed in the local cultural and political milieu pose limitations for effective enactment of settlements as they tend to carry forward the prejudices against women that exist within the societies. In post-conflict societies like Afghanistan where access to formal state justice systems is limited, women were found to have more confidence in the formal system due to the lack of inclusiveness of women, while men preferred the non-state justice system.

5.3 EFFICIENCY IN JUSTICE DELIVERY

Employment of support systems – NSJS reported efficiency in justice delivery achieved by the service of community paralegals. Community paralegals can play a role in the efficient delivery of justice in countries like Afghanistan where informal systems are prevalent. The lack of formal procedures makes the NSJS (like the Muslahathi Committees in Pakistan) efficient in providing justice quickly.

Cost-efficiency of justice delivery – The choice of opting for the non-state justice system is often resorted to due to the inaccessibility of the state justice system and the high costs involved in seeking justice. NSJ interventions have a clear advantage in reducing delays and delivering justice in shorter periods of time with lesser costs. NSJS resolve disputes by adopting less-time consuming methods like mediation and conciliation which are faster, less-expensive and better suited for the community, but those methods need to be customised to local needs. The cost effective methods used in NGO-facilitated mediation in Bangladesh benefitted the poor. They also provide low-cost justice to people in remote areas and help by conducting proceedings in the local language.

5.4 FAIRNESS EQUALITY AND ACCOUNTABILITY

ADR for quick resolution – The usage of ADR such as mediation as opposed to an adjudication, which relies on fault finding especially in civil disputes involving close relatives and disputes regarding women, often reinforces the social fabric. Though NSJS offered quicker resolution of disputes, which was beneficial to the poor who got the compensation quicker in cases involving payment of money than they would have had before the formal courts, the speed of operation may not always result in the best outcome in terms of justice.

Training the adjudicators – Complementarity will be strengthened if the organisers of NSJ can be trained in justice delivery mechanism, as is the case with NGO-assisted Shalish in Bangladesh.

Reducing the backlog of pending cases – There exists a preference towards institutions in NSJ as formal systems consume financial resources and often have undue delays. This is due to the heavy backlog of cases that have been handled by the formal justice delivery mechanisms. In this context, NSJS play a vital role in reducing the backlog of cases and delivering speedy justice to litigants. Complementarity between state and non-state justice system can be enhanced when the state justice systems can transfer a case to the NSJ, like the Lok Adalat, for ADR methods like mediation which can substantially reduce the work load of the courts.

Absence of procedure – In order to be perceived as fair, the justice delivery process, like mediation and conciliation, followed by NSJS should not be rooted in personal norms and principles. Much of the criticism of the NSJS stems from the corruption, abuse of power, biases in judgment, non-compliance with human rights standards, lack of inclusiveness and lack of accountability in the justice delivery process. NSJS at times replicate the procedure followed by the state justice system to bring in a sense of legitimacy. Some systems bring a sense of formality by marking the parties sign the terms of the conciliation in the form of an agreement. Record keeping is conspicuously absent in most NSJS.

Accountability – Sometimes NSJS do bring in the principle of accountability by providing for rudimentary appeal mechanisms. Complementarity between the two systems can be achieved by having a system of appeal from the non-state justice system to the state justice system. Maintaining records will be useful for the formal state system to maintain supervisory jurisdiction over the NSJS.

5.5 RESTORATIVE JUSTICE

Focus on conciliation – Most NSJS resort to the principles of restorative justice in settling disputes between parties. The focus of the disputes settlement mechanism is to reconcile the parties as opposed to determining the fault and imposing penalties. Forgiveness plays a vital role due to the close-knittedness of the community.

Use of social sanction – NSJS are community-based justice delivery mechanisms which focus on conciliation to keep the social fabric of the community intact. Restorative principles of justice are employed to reform and integrate the offenders into the community. Social sanctions are imposed on the offenders by way of social shaming and social ostracism.

Issues with the absence of retribution – Restorative justice as practiced by Jirgas in Afghanistan and Pakistan refer to the pre-Islamic restorative justice institutions practiced in Palestine and across the

Middle-East. The fact that the guilty are not punished, as per the formal state justice principles, could lead to issues.

5.5 REDUCTION IN CRIME RATE

The studies covered in the review did not report any quantifiable information on reduction in crime rates following any intervention though a general reduction in the crime rate is expected when disputes are settled effectively.

Role of community – Community policing, though not a means of dispute settlement, saw the active participation of the community in order to solve and prevent crime problem in Sri Lanka. NSJS use social sanctions to implement their decisions.

5.6 PROMOTION OF HUMAN RIGHTS

Cruelty towards women – Gross and continuing violations of human rights, especially those towards women and the poor have been reported in countries like Pakistan and Afghanistan where NSJS like Jirgas are extensively involved in the delivery of justice. Not only are they biased towards men, but women are also given away as brides by warring families to settle disputes and are often stopped from approaching the formal courts. The decisions of the NSJ have reported cruelty on women. Though NSJS solved the problem of access, they did it at the cost of human rights. Jirgas in Afghanistan were notorious for violating human rights norms.

Intervention by non-state actors - Hybrid systems like ADR based systems in countries like Bangladesh and Afghanistan can address such gross violation of human rights while delivering justice. The intervention by international actors and established NGOs provides a means to introduce international standards of the rule of law and human rights to the NSJS. Hybrid systems, which can benefit from the positives of both the formal and informal systems, could be evolved to address human rights concerns as some of the Jirgas in Afghanistan have done.

Respect for rule of law – Complementarity between state and non-state justice delivery systems brought about by the intervention of NGOs and international bodies can incorporate the rule of law standards and international human rights norms in the functioning of the NSJ. NSJ is able to bring about legitimacy by combining customary and religious laws. Complementarity between the systems can be achieved when the state justice system recognizes and legitimizes the NSJ, violations of human rights can be kept under check. NSJS which are influenced by warlords and commanders have been shown to have little or no regard for human rights. Incorporating the rule of law concerns into the working of NSJ can address the issues of gender and human rights.

5.7 IMPLICATIONS FOR RESEARCH

Based on the review, we have the following suggestions for research:

- There is a dearth of empirical evidence on the outcomes of NSJ interventions. Most of the studies covered the perception of the users of the system. Empirical studies should target successful NSJS to explore possibilities of replication in other regions.

- Geographical location of NSJS is found to have a positive impact on the access to justice, especially in Bangladesh, Nepal and Afghanistan. On the contrary, there are also other region specific factors that influence effectiveness of NSJS, which needs further empirical exploration.
- Though studies have compared the merits and demerits of various aspects of NSJS, it is generally believed that a one-size fits all approach in terms of provisioning of NSJS has not been effective. Therefore research should be set in the context of the prevailing NSJ interventions at the regional level or at the local community level to aid policy formulation.

5.8 IMPLICATIONS FOR PRACTICE AND POLICY

Based on the review, we have the following policy suggestions:

- NSJS 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. Complementarity between the NSJ and the formal system can be improved by aligning the NSJ as an ally to the state justice system.
- NSJ can be promoted by encouraging ADRs as it provides speedy and cost effective justice in a wide range of cases covering civil and criminal disputes, women, minority and human rights. In addition, the formal systems should make efforts to integrate ADRs as they lack enforcement. The state justice system must exercise more authority in enforcing the decisions taken by the NSJ for the system to have any binding effect.
- NSJS could also be designed for handling special types of disputes such as commercial disputes as these require speedy settlements. Further, the creation of hybrid institutions incorporating the characteristics of formal justice systems and NSJS would serve better in handling special types of disputes.
- The state justice systems and NSJS should be synchronised to resolve criminal disputes where both the systems act independently in delivering justice. The focus of the NSJ should be to resolve conflicts in a way acceptable to the community. Further for a synchronisation to work, NSJ should be perceived as a legitimate system.
- There exists a need to promote hybrid NSJS 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. In addition women should be made to participate in the process of justice delivery.
- Training the mediators and conciliators who man the NSJS is required for the system to dispense justice effectively. The reorientation can be done locally by trained government officials and NGOs.
- Record keeping should be strengthened as it is conspicuously absent in most NSJS. Due to this lacuna NSJS at times replicate the procedure followed by the state justice system to bring in a sense of legitimacy.
- NSJS need to focus on conciliation as there exists a need for them to keep the social fabric of the community intact. In some cases the absence of retribution could lead to the guilty not being punished, as per the formal state justice principles, which could lead to legal issues.

- NSJS are expected to address the problem of access; it should not be at the cost of human rights. In such circumstances 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.

6. APPENDICES

6.1 APPENDIX 1 - REFERENCES

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6.2 APPENDIX 2 - AUTHORSHIP OF THIS REPORT

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Conflicts of interests

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

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6.3 APPENDIX 3 - INCLUSION AND EXCLUSION CRITERIA

Criteria	Inclusion	Exclusion
Country context and participant type	<p>Developing countries in South Asia such as:</p> <ul style="list-style-type: none"> • Afghanistan • Bangladesh • Bhutan • India • Myanmar • Nepal • Pakistan • Sri Lanka 	<ul style="list-style-type: none"> • Any other country studies other than the 8 developing countries of South Asia mentioned
Intervention	<ul style="list-style-type: none"> • Interventions by the respective government (such as the introduction of the Lok Adalat in India or dispute settlement in women’s police station in India or Muslahathi committee in Pakistan) • NGOs or donors (such as interventions by NGOs in Bangladesh where disputes like civil and family disputes are resolved by NGO, one such NGO called BLAST resolves family disputes) • Interventions by religious bodies (such as intervention by jamaat and ulama in Afghanistan and Pakistan). • Community justice methods like Shalish in Bangladesh and Jirga in Afghanistan. 	<ul style="list-style-type: none"> • Formal court and tribunal systems • Non-state systems that are not recognized as legitimate systems by the state in which they operate
Study design and methodology of the study	<p>Research design of the studies used:</p> <ul style="list-style-type: none"> • Doctrinal research • Non Doctrinal research <p>Methodology of study:</p> <ul style="list-style-type: none"> • Impact evaluation studies • Qualitative studies 	<ul style="list-style-type: none"> • Studies that report upon non-recognised justice systems alone are excluded. • Studies without supporting information. • Studies involving only personal opinions

	<ul style="list-style-type: none"> • Review reports/studies • Perception-based studies • Regional/sectoral studies on non-state justice systems • Studies pertaining to complementarity • Empirical studies • Case studies • Studies pertaining to dispute free region aided by NSJ 	
Outcomes	<ul style="list-style-type: none"> • Efficiency in justice delivery • Improved access to justice • Gender Justice • Promotion of fairness, equality and accountability • Speedy delivery of justice • Decrease in crime rate • Reduction in workload or formal courts or state justice systems • Cost effective/Cost saving • Restorative • Promotion of human rights • Complementarity between state and Non-state justice system • Drawbacks of state justice systems • Challenges faced by non-state justice system 	<ul style="list-style-type: none"> • Studies on non-state justice systems that do not identify any socio-economic impact on the people i.e., Cultural, political and religious impacts (excluded as it will not lead to complementarity)
Type of publication	<ul style="list-style-type: none"> • Published research studies • PhD thesis • Organisation reports • Conference proceedings 	<ul style="list-style-type: none"> • Editorials • Theoretical/conceptual papers • Newspapers
Year	Research published on or after 1990	Research published before 1990
Language	Published in English	Not published in English

6.4 APPENDIX 4 - DESCRIPTION FOR INCLUSION AND EXCLUSION

Inclusion criteria

Inclusion Criteria	Description
Studies in context of non-South Asian countries	Only studies pertaining to developing South Asian countries, as classified by the World Bank, were considered. Studies which contain details about South Asian countries in the context of non –state justice system, though the study is not fully about South Asian countries are also included. The review covers studies on Afghanistan, Pakistan, Bangladesh, Nepal, Maldives, Bhutan, Sri Lanka and India.
Outcome	Studies depicting outcomes which leads to complementarity of relationship between non-state justice system and state justice systems like improving access to justice, speedy justice, cost efficiency, gender justice, fairness, equality, reduction in workload of formal courts, etc. are included. Studies which speak about the drawbacks of state justice system or challenges faced by non-state justice systems are also included.
Intervention	Studies depicting interventions which are not a part of state justice system but which are recognized by the state as legitimate such as intervention by Government like Lok Adalt, intervention by NGO, recognized community justice systems like shura in Afghanistan and shalish in Bangladesh, intervention by religious bodies like jamaat or ulemas.
Year of publication	The studies which are published post 1990 were considered for the systematic review as studies which can be related to contemporary situation. Latest information would be useful for analysing the present system of non-state justice and its complementarity between state-justice and would be more informative. Although most of the studies analysing non state justice interventions have appeared post 1990s, the start date for inclusion in this review is from 1990.
Language	Only studies which are published in English are considered for this systematic review as English is considered to be the universal language and as much recognized official information and data is available only in English.

Type of publication	As proper legitimate and recognized studies are required for the review for true and verified information, only published research reports, organisational reports, official conference proceedings and PhD theses are included in the review.
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Exclusion criteria

Exclusion Criteria	Description
Studies in context of non-South Asian countries	Studies that were not based on the South Asian countries or studies which do not contain any information about South Asian countries in the context of non-state justice system are excluded.
Studies that were not focused on intervention	Studies which do not focus on legitimate non-state justice interventions nor contain any information on non-state justice interventions which are recognized by state are excluded.
Studies that did not discuss outcome	Studies that do not measure or discuss or analyse any outcome of non-state justice system like improved access, cost efficiency, speedy justice, efficient justice delivery, gender justice, promoting human rights, reducing workload of courts are which leads to complementarity between state and non-state justice system nor discuss about the drawbacks or challenges faced by state and non-state justice were excluded from this review.
Studies published before 1990	Studies which were published before 1990 would not be reliable or accurate and would not be suitable for the existing state of affairs or contemporary situation. Therefore, the studies which were published before 1990 are excluded.
Studies not published in English	English being the universal language, where most of legal research is conducted and expressed in English. The majority of legal data and information is available in English. Studies which are not in English are difficult to synthesise and conduct research on. Therefore studies not in English are excluded. The constraints on time and language of the research team forced us to focus only on studies that were published in or translated into English.

6.5 APPENDIX 5 - SEARCH STRATEGY

Sources

1. Electronic search of bibliographical databases such as Lexis, HeinOnline, JStor, EBSCO, Wiley Online Library, ProQuest, SSRN, Springer Link, Emerald, Taylor & Francis, Science Direct
2. Systematic review databases such as the Campbell Collaboration Library of systematic reviews and the Cochrane Library
3. Existing systematic reviews to ensure that all the studies included in the earlier systematic reviews in a similar domain are included in this review.
4. Key websites:
 - o PhD thesis abstracts (<http://www.sasnet.lu.se/sasnet/sasnet-nordicdissertations>;
http://www.library.illinois.edu/asx/southasiancollection/sa_dissertations)
 - o DFID
 - o Association for Asian Studies (AAS)
 - o British Association for South Asian Studies (BASAS)
 - o South Asia Archive and Library Group (SAALG)
 - o Asian Journals Online
 - o Nepal Journals Online
 - o Bangladesh Journals Online
 - o Vietnam Journals Online
 - o Philippines Journal Online
 - o Sri Lanka Journals Online
 - o Indonesia Journals Online
 - o Indian Citation Index
 - o South East Asia Index
 - o SAGE Journals

In addition we will search policy pointers such as:

- UNESCO Social and Human Science Publications,
<http://www.unesco.org/new/en/social-and-humansciences/resources/online-materials/publications/unesdoc-shs/>
- IDRC digital library, <http://idl-bnc.idrc.ca/dspace/>

The search engines that will be used are Google and Google Scholar.

5. Electronic and hand search of the following journals that focus on the subject area of the systematic review
 - Women and Criminal Justice
 - Development Policy Review
 - Critique of Anthropology
 - International Criminal Justice Review
 - Journal of Law, Policy and Globalization

- Canadian Journal of Criminology and Criminal Justice
- The Journal of Social Studies Research
- International Journal of Law, Crime and Justice (formerly known as the International Journal of the Sociology of Law)
- The Social Science Journal
- Social Science Research
- Criminal Justice Matters
- Comparative Legal History
- Criminal Justice Studies: A Critical Journal of Crime
- Law and Society
- Griffith Law Review
- International Journal of Comparative and Applied Criminal Justice
- Journal of Crime and Justice
- Journal of Islamic law and culture
- The Journal of Legal History
- The Journal of Legal Pluralism and Unofficial Law
- King's Law Journal
- Oxford University Commonwealth Law Journal
- Peking University Law Journal
- Restorative Justice: An International Journal
- Victims and Offenders: An International Journal of Evidence-based Research, Policy and Practice
- Women and Criminal Justice
- Contemporary Justice Review: Issues in Criminal, Social and Restorative Justice
- Contemporary Social Science: Journal of the Academy of Social Sciences
- Contemporary South Asia
- European Journal of Cultural and Political Sociology
- European Societies
- Global Crime
- Journal of Contemporary European Studies
- Journal of International and Comparative Social Policy
- Justice Quarterly
- Kotuitui: New Zealand Journal of Social Sciences Online
- Restorative Justice: An International Journal
- South Asian History and Culture
- South Asian Studies
- Criminal Law and Philosophy
- Criminal Law Forum
- Crime, Law and Social Change
- Journal of Criminal Justice
- Ohio State Journal of Criminal Law
- American Criminal Law Review

- Berkeley Journal of Criminal Law
- Virginia Journal of Criminal Law
- University of Denver Criminal Law Review
- Justice System Journal

For those journals available in print form only, we will undertake hand searching by reading the contents page of each journal issue.

We will search for relevant PhD theses published online, and those available in print form in reputed universities and research institutes in India will be hand searched.

6.6 APPENDIX 6 - SEARCH TERMS

Outcome or Intervention: (access* OR delivery OR decision* OR accountability* OR gender* OR enforcement* OR workload* OR corruption* OR bias* OR “human* rights” OR economy*)

Countries: (Asia OR Asian OR "South Asian" OR Afghanistan OR Bhutan OR Bangladesh OR India OR Maldives OR Nepal OR Pakistan OR "Sri Lanka" OR Bhutanese OR Nepalese OR Nepali OR Afghan OR Afghans OR Bangladeshi OR Pakistani OR Indian OR Maldivian OR Sri Lankan OR Bangladeshis OR Pakistanis OR Indians OR Maldivians OR "Sri Lankans").

Method: (outcome* OR evaluat* OR effect* OR efficacy OR compar* OR experiment* OR trial OR control* OR random OR study OR studies OR assessment OR impact* OR research*)

Search term 1: (“justice delivery*” OR “non-state* justice*” OR “informal justice*” OR “non-formal justice*” OR “local justice*” OR “traditional justice*” OR “community based justice*” OR “participatory justice” OR “panchayati justice” OR “dispute resolution” OR “settlement of disputes*” OR “restorative justice*” OR “local self-government*” OR “non-state actors” OR “community justice*” OR “customary justice*” OR “customary law*” OR arbitration* OR mediation* OR conciliation* OR “village mediation” OR “Indian tribal courts” OR “nyaya panchayat” OR “religious courts*” OR “alternative dispute resolution” OR “legal pluralism”)

Search term-2: (justice* OR non-state OR legal OR traditional OR panchayat OR “non* formal*”) **AND** (access* OR decision* OR accountability* OR gender* OR enforcement* OR workload* OR corruption* OR bias* OR “human* rights” OR economy*) **AND** (outcome* OR evaluat* OR effect* OR efficacy OR compar* OR experiment* OR trial OR control* OR random OR study OR studies OR assessment OR impact* OR research*) **AND** (Asia OR Asian OR "South Asian" OR Afghanistan OR Bhutan OR Bangladesh OR India OR Maldives OR Nepal OR Pakistan OR "Sri Lanka" OR Bhutanese OR Nepalese OR Nepali OR Afghan OR Afghans OR Bangladeshi OR Pakistani OR Indian OR Maldivian OR Sri Lankan OR Bangladeshis OR Pakistanis OR Indians OR Maldivians OR "Sri Lankans")

Combined search Term:

(“justice delivery*” OR “non-state* justice*” OR “informal justice*” OR “non-formal justice*” OR “local justice*” OR “traditional justice*” OR “community based justice*” OR “participatory justice” OR “panchayati justice” OR “dispute resolution” OR “settlement of disputes*” OR “restorative justice*” OR “local self-government*” OR “non-state actors” OR “community justice*” OR “customary justice*” OR “customary law*” OR arbitration* OR mediation* OR conciliation* OR “village mediation” OR “Indian tribal courts” OR “nyaya panchayat” OR “religious courts*” OR “alternative dispute resolution” OR legal pluralism) **AND** (access* OR delivery OR decision* OR accountability* OR gender* OR enforcement* OR workload* OR corruption* OR bias* OR “human* rights” OR economy*) **AND** (outcome* OR evaluat* OR effect* OR efficacy OR compar* OR experiment* OR trial OR control* OR random OR study OR studies OR assessment OR impact* OR research*) **AND** (Asia OR Asian OR "South Asian" OR Afghanistan OR Bhutan OR Bangladesh OR India OR Maldives OR Nepal OR Pakistan OR "Sri Lanka" OR Bhutanese OR Nepalese OR Nepali OR Afghan OR Afghans OR Bangladeshi OR Pakistani OR Indian OR Maldivian OR Sri Lankan OR Bangladeshis OR Pakistanis OR Indians OR Maldivians OR "Sri Lankans")

6.7 APPENDIX 7 - ELECTRONIC SEARCH

S. No	Database	Search criteria	Search term used	Subject/publication	Fields search	Hits
1	EBSCO	Advanced search	Original search term	<ul style="list-style-type: none"> • Full text • Peer reviewed 	All fields	880
2	ProQuest	Advanced search	Original search term	<ul style="list-style-type: none"> • Scholarly Journals • Dissertations & Theses • Reports • Working Papers • Full text • Peer reviewed 	All fields	1009
3	EMERALD	Advanced search	Original search term	<ul style="list-style-type: none"> • Articles/Chapters • All cover in the database 	Anywhere	370
4	JStor	Advanced search	Original search term	<ul style="list-style-type: none"> • Law • Criminology 	Full text	1760
5	Science Direct	Expert search	Original search term	<ul style="list-style-type: none"> • Arts and Humanities • Business Management & Accounting • Economics, Econometrics and Finance • Social Sciences • Psychology 	All fields	409

6	Taylor & Francis	Advanced search	Original search term	<ul style="list-style-type: none"> • All covered in the database 	All Content	1360
7	Springer Link	Advanced search	Original search term	<ul style="list-style-type: none"> • Law • Criminology • Criminal • Article 	All fields	351
8	Wiley Online Library	Advanced search	Original search term	<ul style="list-style-type: none"> • All covered in the database 	All fields	1595
9	SSRN	Advanced search	Original search term	<ul style="list-style-type: none"> • All covered in the database 	Title, Abstract Keywords	59
Total search hits obtained						7793

Electronic Searches

Lexis Nexis

We have obtained 250 studies from Lexis Nexis using the search terms mentioned. After applying the inclusion/exclusion criteria only 26 studies were found eligible for systematic review and were included for systematic review.

6.8 APPENDIX 8 - LIST OF HAND SEARCH

S. No	List of hand search journals	Year	Publication	Hits
1	Women and Criminal Justice	1990-2015	Taylor & Francis	334
2	Criminal Justice Matters	2013-2015	Taylor & Francis	1404
3	Comparative Legal History	1990-2015	Taylor & Francis	35
4	Criminal Justice Studies: A Critical Journal of Crime	2003-2015	Taylor & Francis	493
5	Griffith Law Review	1990-2015	Taylor & Francis	329
6	International Journal of Comparative and Applied Criminal Justice	1990-2015	Taylor & Francis	726
7	Journal of Crime and Justice	1990-2015	Taylor & Francis	425
8	Journal of Islamic law and culture	2008-2011	Taylor & Francis	63
9	The Journal of Legal History	1990-2015	Taylor & Francis	307
10	The Journal of Legal Pluralism and Unofficial Law	1990-2015	Taylor & Francis	287
11	King's Law Journal	1999-2015	Taylor & Francis	359
12	Oxford University Commonwealth Law Journal	2001-2015	Taylor & Francis	169
13	Peking University Law Journal	2014-2015	Taylor & Francis	23
14	Restorative Justice: An International Journal	2013-2015	Taylor & Francis	32
15	Victims and Offenders	2006-2015	Taylor & Francis	210
16	Contemporary Justice Review: Issues in Criminal, Social and Restorative Justice	2002-2015	Taylor & Francis	463
17	Justice System Journal	1990-2015	Taylor & Francis	452
18	Contemporary Social Science: Journal of the Academy of Social Sciences	2006-2015	Taylor & Francis	243
19	Contemporary South Asia	1992-2015	Taylor & Francis	678
20	European Societies	1999-2015	Taylor & Francis	521
21	Global Crime	2004-2015	Taylor & Francis	314
22	Journal of Contemporary European Studies	1990-2015	Taylor & Francis	857
23	Journal of International and Comparative Social Policy	1990-2015	Taylor & Francis	320

24	Justice Quarterly	1990-2015	Taylor & Francis	846
25	Kotuitui: New Zealand Journal of Social Sciences Online	2006-2015	Taylor & Francis	120
26	South Asian History and Culture	2009-2015	Taylor & Francis	318
27	South Asian Studies	1990-2015	Taylor & Francis	345
28	Policy & Practice	2002-2015	Taylor & Francis	240
29	The Journal of Social Studies Research	2013-2015	ELSEVIER	117
30	International Journal of Law, Crime and Justice	2008-2015	ELSEVIER	176
31	The Social Science Journal	1990-2015	ELSEVIER	1419
32	Social Science Research	1990-2015	ELSEVIER	1343
33	Journal of Criminal Justice	1990-2015	ELSEVIER	1595
34	Journal of Law and Society	1997-2015	Wiley	616
35	Developmental Policy Review	1990-2015	Wiley	725
36	Criminal Law and Philosophy	2007-2015	Springer	308
37	Criminal Law Forum	1990-2015	Springer	385
38	Crime, Law and Social Change	1990-2015	Springer	957
Total hits obtained from hand search				18554

6.9 APPENDIX 9 - LIST OF INCLUDED STUDIES

1. Ahmed, F. (2007) Shari'a, custom, and statutory law: Comparing state approaches to Islamic jurisprudence, tribal autonomy, and legal development in Afghanistan and Pakistan. *Global Jurist*, 7(1), 5.
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3. Alkon, C. (2011) Lost in translation: Can exporting ADR Harm rule of law development? *Journal of dispute resolution*. 165.
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5. Baker, B. (2010) Linking state and non - state security and justice. *Development Policy Review*, 28(5), 597-616.
6. Basu, S. (2006) Playing off courts: The negotiation of divorce and violence in plural legal settings in Kolkata. *The Journal of Legal Pluralism and Unofficial Law*, 38(52), 41-75.
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8. Chopra, T., Isser, D. (2012) Access to justice and legal pluralism in fragile states: The case of women's rights. *Hague Journal on the Rule of Law*, 4(2), 337-358.
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12. De Lauri, A. (2013). Access to justice and human rights in Afghanistan. *Crime, law and social change*, 60(3), 261-285.
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17. Goodmark, L. (2015) Law and justice are not always the same: Creating community-based justice forums for people subjected to intimate partner abuse. *Florida State University Law Review*, 42, 707.
18. Gordon, G. S. (2010) Complementarity and alternative justice. *88 Oregon Law Review*, 621
19. Goresh, M. A. (2009) Paving the road to a more free world: ADR as sustainable development-A look at Bangladesh. *Pepperdine Dispute Resolution Law Journal*, 9, 251.
20. Hakimi, N. (2016) Designing an emergency arbitration mechanism for Afghanistan: A composite of successful models from the international community. *Southwestern Journal of International Law*, 22, 269.
21. Hong Tschalaer, M. (2010) Women entering the legal landscape: negotiating legal gender reforms in a 'tribal' women's forum in South Rajasthan, India. *The Journal of Legal Pluralism and Unofficial Law*, 42(60), 41-72.
22. Jensen, K. (2011) Obstacles to accessing the state justice system in rural Afghanistan. *Indiana Journal of Global Legal Studies*, 18(2), 929-950.
23. Klock, K. A. (2001) Resolution of domestic disputes through extra-judicial mechanisms in the United States and Asia: Neighborhood justice centers, the panchayat, and the mahalla. *Temple International & Comparative Law Journal*, 15, 275.
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31. Parashar, A. (2013) Religious personal laws as non-state laws: implications for gender justice. *The Journal of Legal Pluralism and Unofficial Law*, 45(1), 5-23.
32. Pfeiffer, J. (2011) Traditional dispute resolution mechanisms in Afghanistan and their relationship to the national justice sector. *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America*, 81-98.
33. Raymond, A., Shackelford, S. (2014) Technology, ethics and access to justice: Should an algorithm be deciding your case? *35 Michigan Journal of International Law* 485
34. Roy, R. D. (2004) Challenges for juridical pluralism and customary laws of indigenous peoples: The case of the Chittagong Hill Tracts, Bangladesh. *Arizona Journal of International and Comparative Law*, 21, 113.
35. Sbriccoli, T. (2013) Legal pluralism in discourse: justice, politics and marginality in rural Rajasthan, India 1. *The Journal of Legal Pluralism and Unofficial Law*, 45(1), 143-164.
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43. Xavier, A. (2006) Mediation: Its origin and growth in India. *Hamline Journal of Public Law & Policy*, 27, 275.
44. Zainulbhai, T. (2011) Justice for all: Improving the Lok Adalat system in India. *Fordham International Law Journal*, 35, 248.

6.10 APPENDIX 10 - DESCRIPTION OF INCLUDED STUDIES

Study	Intervention	Research design, quotes and sample	Effects on NSJ	Subject	Outcome
Ahmed, 2007, Afghanistan & Pakistan	Community Justice-Shura, Jirga and settlement by council of village elders Intervention by religious bodies-Ulama	A doctrinal study on the analysis of articles and reports <ul style="list-style-type: none"> • Case studies • Secondary data Quotes- "Justice delayed is justice denied." "what is accepted by 'urf is like a stipulated condition"	Community and country level	Civil & Criminal	Improved Access to justice Speedy justice Promotion of human rights
Basu, 2006, India	Community justice and Intervention by NGO	Non doctrinal: Interview with litigants and dispute resolving bodies. i.e., NGOs Doctrinal: Case study, Research reports and articles Quotes : Law is "simultaneously a maker of hegemony and a means of resistance" (Lazarus-Black and Hirsch 1999: 9), Family Courts are set up "with a view to promote conciliation in, and secure speedy settlement of disputes related to marriage and family affairs" (s. 1 of the Act)	Community level	Criminal-Domestic Violence Disputes relating to women- Domestic violence, Divorce Civil- Divorce	Reducing workload of formal courts, Improved access to justice
Shariff, 2008 India & Bangladesh	Community justice and Intervention by NGO	This involves non doctrinal research method of interviews and analysis of the a sample geographical area A doctrinal study on the analysis of articles and reports	Country and community level	Criminal-Murder, Domestic violence Disputes relating to women and minorities-	Improved access to justice, Cost efficient, Gender justice

		Quotes : “Untold Number of associations in society that exercise coercion much forcibly than state”(Ehrlich 1936: 64)		Domestic violence against women	
Vatuk, 2013 India	<p>Community justice (panchayat, mahila panchayat),</p> <p>Intervention by religious bodies (Jamaat)</p> <p>Intervention by Government (WPS, Lok Adalat),</p> <p>Intervention by NGO (Mahila sanghs)</p>	<p>A doctrinal study on the analysis of articles and reports</p> <ul style="list-style-type: none"> • Secondary data • Quotes: “For large sectors of society and large areas of conduct, civil courts afford no remedies or protection. When pressure builds to provide usable remedies for a particular sort of grievance, the solution, understandably, is not to undertake the Sisyphean task of reforming the lower courts, it is to bypass them (2003: 203)” <p>“trading justice for harmony’ in order to ‘get the ‘garbage cases’ out of the [regular, overcrowded] courts,’ (1992, 468) – that an almost inevitable consequence of diverting disputes between unequals to ADR bodies for mediation is that the powerful will prevail (Nader 2002).”</p> <p>“low-caste Rajasthani villager once explained to Erin Moore, ‘With money you can buy any result you want; if you put the skull of a man whom you have killed into the palm of your hand and lay five or ten thousand rupees on top of that, you will be set free’ (1993, 530–531)”</p>	Individual level and community level	<p>Criminal-Domestic violence, Honour killing</p> <p>Disputes relating to women and minorities- Domestic violence, women inheritance and property rights</p> <p>Civil (Property)- Women inheritance</p>	Improved access to justice, Gender justice

Jensen, 2011, Afghanistan	Community justice (Jirga)	A doctrinal study on the analysis of articles and reports Secondary data Quotes : “ A serious effort to pursue Transitional justice could implicate half the current cabinet” (one Afghan official)	Individual and Community level	Criminal & Petty cases	Increased accountability and gender justice
Hakimi, 2016, Afghanistan	Community justice - Shura, Jirga and arbitration	A doctrinal study on the analysis of articles and reports Secondary data	Country level	Commercial disputes	Efficiency in justice delivery
Sbriccoli, 2013, India	Intervention by NGOs and Community justice	A doctrinal study on the analysis of articles and reports and case study Secondary data	Community level	Civil - Family disputes Disputes related to women and minorities	Improved access to justice Efficient justice delivery
Eckert, 2004 India	Intervention by NGO - (regional political party through its Shakhas) Intervention by Religious body	A doctrinal study on the analysis of articles and reports • Case study Quotes: “For the people, anything is better than paying lawyers’ fees and then waiting endlessly for judgments. We have had Lok Panchayats [local governing councils] long before they were introduced by law and I think this is just like common Lok Adalat [customary law], as now favoured by the government.” “Women’s rights are generally one of the favourite subjects of Hindu-nationalist organisations that have been skilful in	Individual and Community	Petty Cases- Everyday disputes, quarrels, neighbourhood tensions Civil - Property and family disputes Commercial - Labour issues Disputes relating to women - Harassment and violence	Improved access to justice Efficient justice delivery

		using the "obvious popularity of women's issues"			
Xavier, 2006 India	Community Justice	<p>A non-doctrinal study "Mediation is no panacea, no magic solution to overcome the institutional challenges of national court systems." Quotes: "Once it is understood that mediation is intended to complement (not replace) the judicial process, that it is highly Adaptable to different contexts, and that expertise in India is already growing rapidly, the apprehensions may quickly dissipate."</p>	Country Level	Nil	Improved access to justice, speedy justice, Cost effectiveness
Goresh, 2009 Bangladesh	Intervention by NGOs, community justice	<p>A doctrinal study on the analysis of articles and reports Quotes: "Leaders say that "resolving disputes informally enables the community as a whole to remain peaceful[,] and villagers to "avoid embarrassment in the court." "It [BRAC] has been intervening in the villages by developing "federations," called Polli Shomaj, by which "members aim to achieve high awareness of their social and political conditions, increase their ability to undertake and manage social and economic action, and develop the ability to solve their own disputes through informal justice."</p>	Individual and Institutional Levels	<p>Civil- Land and family disputes Human Rights- trafficking and child rights Commercial Disputes Disputes relating to women-violence</p>	Access to justice, Gender Justice cost effectiveness, decrease in crime rates

		<p>“Because ADR is successfully curbing corruption within the courts while also helping to alleviate backlog from heavy case dockets, it should continually be integrated into the formal court system.”</p>			
<p>Simoni and Whitecross, 2007 Bhutan</p>	<p>Community Justice</p>	<p>A doctrinal study on the analysis of articles and reports Quotes: In the 14th century, the Tibetan Buddhist scholar Longchen Rabjam described acting as a mediator in reconciling differences as a "virtuous deed." However, "subtle social pressures appear to exist to encourage settlement of disagreements for the well-being of the wider community, and failure or apparent obstinacy can be interpreted as a lack of thadamtshi (respect) for the community."</p> <p>“The use of traditional dispute resolution system is merely the effect of general economic backwardness, limited mobility of the population and the overall geographic context, and the importance of traditional dispute resolution will decrease as such factors are changing.”</p>	<p>Country Level</p>	<p>Nil</p>	<p>Cost Saving Time saving/ speedy Efficiency in justice delivery</p>
<p>Manganaro & Poland, 2012 Afghanistan</p>	<p>Community Justice</p>	<p>Non doctrinal-empirical study to explore gender differences in the perceptions of formal and informal justice system Quotes</p>	<p>Individual and community level</p>	<p>Criminal Disputes- Murder</p>	<p>Improved access to Justice, Speedy Justice, Cost Effective,</p>

		<p>“A first line of defence to many social ills in any democracy, but particularly in war-ravaged societies, is a country’s judicial system.”</p> <p>“Women would have more confidence in the formal system and less confidence in the informal system.”</p>			<p>Gender Justice, Fairness and Equality Restorative justice</p>
<p>Lugo, Searing, 2014 Bangladesh</p>	<p>Intervention by NGOs, community justice</p>	<p>A doctrinal study on the analysis of articles and reports- also includes quantitative analysis</p> <p>Quotes: “the presence of informal institutions is a stronger determinant of development” and that “formal institutions are only successful when embedded in the informal system.”</p>	<p>Individual and Institutional Level</p>	<p>Civil- Land Disputes Criminal Disputes Family- Maintenance, inheritance Disputes relating to women- domestic abuse Commercial Disputes- Wrongful termination of employment</p>	<p>Access to Justice, Speedy Justice Cost Effective</p>
<p>Cohen, 2006 Nepal</p>	<p>Intervention by NGO (Donor funded and NGO aided mediation.) Community justice</p>	<p>A doctrinal study on the analysis of articles and reports as well as on filed research.</p> <p>Quotes: “In addition, the VDCs are now run by bureaucratic rather than elected representatives, leaving villagers in Nepal without a democratic means of inclusion in government. This in turn, significantly enhances the role of international donor agencies and NGOs in the regulation and negotiation of everyday life, including the</p>	<p>Individual and Institutional Level</p>	<p>Family- property, divorce settlement Human Rights- help victims of state torture Criminal- domestic violence Disputes regarding women and minorities- Domestic violence</p>	<p>Access to justice, Promoting human rights, Gender Justice</p>

		provision of dispute resolution forums and community justice”			
Parashar, 2013 India	Community justice	A doctrinal study on the analysis of articles and reports as well as on filed research	Country level	Disputes regarding women Civil disputes	Improved access to justice, Reduction in workload of formal courts, Accountability, Challenges faced by NSJS
Natarajan, 2005 India	Community justice Intervention by Government	A non doctrinal study based on interviews and case studies Consists little secondary data from reports	Country level	Disputes regarding women and minorities- Domestic violence, Dowry Criminal cases- Domestic violence	Gender justice, Improved access to justice, Speedy justice, cost effective, Efficiency in justice delivery, Reducing workload of formal courts, Challenges faced by NSJ
Forsyth, 2007	Community justice Intervention by Govt. Intervention by NGO and religious bodies	A doctrinal study on the analysis of articles and reports Secondary data Quotes: “it is reasonable to expect that one size will not fit all and a variety of forms of modelling and agreement-making could be pursued in regard to community justice”[The Australian	Institutional level	Multiple	Improved access to justice Accountability Promotion of human rights Reducing workload of state system Challenges faced by NSJS

		Human Rights and Equal Opportunity Commission (2003: 29)] the Northern Territory Law Reform Commission (2003: 6) has proposed that “one approach to dealing with traditional law is for each Aboriginal community [to] define its own problems and solutions”.			
Chopra, 2012 Afghanistan	Community justice	A doctrinal study on the analysis of articles and reports Secondary data	Country level	Disputes regarding women and minorities- Disputes related to women	Improved access to justice Gender justice Promotion of human rights Reducing the workload of formal courts
Raymond & Shackelford, 2014, India	Intervention by Government (Lok Adalat)	A doctrinal study on the analysis of articles and reports Secondary data Quotes- "Accessibility includes general awareness of available remedies, availability and affordability of legal advice and representation, and absence of excessive or unreasonable fees and hurdles"(World justice project) The role of law, as argued by Gandhi, is to "unite parties driven asunder." "Lok Adalat originated from the failure of the ... [Indian] legal... system to provide effective,	Institutional Level	Commercial disputes	Improved access to justice, efficient justice delivery speedy justice, reduce workload of formal courts , accountability, promoting fairness and equality

		<p>fast, and affordable justice”(Girish patel, India together)</p> <p>Gujarat High Court stated, "Lawyers and judges cannot be mere black-letter men looking upon law as only an exercise in logic and not in life."</p> <p>As noted by the Madras High Court, "justice has to be imparted: [sic] justice cannot be hurried to be buried. We have to 'decide' the cases and not just 'dispose them of (Patel, supra note)</p>			
Braithwaite and Gohar, 2014, Pakistan	<p>Community justice (Jirga)</p> <p>Intervention by Government (Muslahathi committee)</p> <p>Intervention by religious bodies</p>	<p>This involves non doctrinal research method of case study (observing a case)</p> <p>A doctrinal study on the analysis of articles and reports and case study</p> <p>Secondary data</p> <p>Quotes- "Custom used to be treated as the precursor of the law, its evolutionary source" (Moore 1978: 13)</p>	Country level	<p>Criminal- Murder, Cruelty</p> <p>Civil- Property</p> <p>Human rights- Honour killing, etc.</p>	<p>Gender justice</p> <p>Cost saving</p> <p>Improved access to justice</p> <p>Speedy justice</p> <p>Restorative justice</p>
Goodmark, 2015 India	<p>Community justice</p> <p>Intervention by NGO</p>	<p>A doctrinal study on the analysis of articles and reports</p> <p>Secondary data</p> <p>Quotes-</p> <p>Kenneth Ehrenberg explains that "Justice is about situations of actual or potential conflict and the outcomes to these conflicts or the distributions made based on the resolution of these conflicts."</p> <p>Law professor Megan Carpenter notes, Merriam-Webster's dictionary defines justice</p>	Community /institutional level	<p>Civil- Family, marriage</p> <p>Criminal- Domestic violence, murder</p> <p>Dispute regarding women- Domestic violence, cruelty towards women, Divorce</p>	<p>Improved access to justice</p> <p>Efficiency in justice delivery</p> <p>Gender justice</p> <p>Fairness and equality</p> <p>Reduction in crime rate</p>

		<p>as the "administration of what is just, the quality of being just and the principle of just dealing."</p> <p>"The needs of the victims [drive] the proceedings." [Roslyn Myers]</p>			
<p>Connolly, 2005 Bangladesh</p>	<p>Community justice Intervention by NGO</p>	<p>A doctrinal study on the analysis of articles and reports Secondary data Quotes: 'As justice needs a foundation to rest on, the resting of law on indigenous pillars provides one way forward'[Julia Hausermann and Nazila Ghanea] As Gordon Woodman has explained, the exercise of state power over a community will necessarily affect the relations within that community: "It cannot insulate a community from its own power."</p>	<p>Institutional level</p>	<p>Nil</p>	<p>Improved access to justice Gender justice Efficient justice delivery Reduction in workload of formal courts</p>
<p>Wardak, 2011 Afghanistan</p>	<p>Community justice (Customary justice)</p>	<p>A doctrinal study on the analysis of articles and reports Secondary data</p>	<p>Institutional and country level</p>	<p>Civil- Property and family Criminal Commercial</p>	<p>Improved Access Cost efficient Efficient justice delivery Gender justice Fairness and equality Restorative justice</p>
<p>De Lauri, 2013 Afghanistan</p>	<p>Community justice Intervention by NGO</p>	<p>Non doctrinal- empirical study based on interviews and case studies Quotes;</p>	<p>Country level</p>	<p>Criminal- domestic violence, Murder</p>	<p>Improved access to justice Accountability</p>

		<p>“Justice is when parents treat their sons and daughters in the same and correct way.”[Basir]</p> <p>“Justice is measured by the ability to make up for a suffered injustice.”[One Afghan advocate]</p> <p>Justice is simultaneously an attribute of the person and of the times in which one lives. Justice therefore occupies a middle ground between the public and the private. For while it is possible that a man may be just (‘adl) and the times unjust, it is thought that one needs just times in order for this personal possibility to be most fully realized (Lawrence Rosen [60]: 68–69).</p> <p>According to Rosen, the Islamic idea of justice “depends on the good opinion, the proven trustworthiness born by a network of consequential social ties, the common design that is forged with other believers” ([60]: 69).</p> <p>“One crucial condition of possibility for deep democracy is the ability to meet emergency with patience” (Appadurai [15]: 43).</p>		<p>Human right disputes Civil-Family Dispute regarding women and children-Domestic violence</p>	
Gordon, 2010, Bangladesh	Intervention by NGO Community justice	<p>A doctrinal study on the analysis of articles and reports Secondary data Quotes: Shalish described as “a loud and passionate event which is generally open to</p>	Institutional Level	<p>Civil Criminal Human Rights</p>	<p>Improved access to justice Efficient justice delivery Gender justice</p>

		the whole community but is largely male-dominated."[Connolly]			
Tschalaer, 2010 India	Intervention by NGO Community justice	A non doctrinal empirical study and case study Quotes- "If five men gathered in the village five women would join them"[One Rajasthani tribal woman]	Individual and community level	Civil- Family dispute Criminal- Domestic violence Dispute regarding women and children- domestic violence, divorce, inheritance	Improved access to justice Efficient justice delivery Cost effective Gender justice
Baker, 2010 Afghanistan	Intervention by NGO Intervention by Government	A doctrinal study on the analysis of articles and reports Secondary data	Institutional level	Nil	Improved access to justice Efficiency in justice delivery
Ashrafun & Saavala, 2014 Bangladesh	Intervention by NGO Community justice	A non-doctrinal empirical study involving : Interviews & case studies This study consists of few secondary data	Individual level	Criminal- Domestic Violence Disputes regarding women and other minorities- Cruelty against women, domestic violence, Divorce Civil- Family disputes(Divorce)	Cost effective Gender justice Challenges faced by NSJ
Stich, 2014 Afghanistan	Community justice (Customary justice)	A doctrinal study on the analysis of articles and reports Quotes: Rule of law is formed by "power and culture, not laws and institutions."[Rachel Kleinfeld]	Community and country level	Criminal Civil- Family disputes	Improved access to justice Speedy justice Cost efficient accountability

		"The government can't protect you in the desert." [Iraqi Proverb] [T]he strengthening of traditional dispute resolution at the local level is one of the most efficient and effective ways to achieve the kind of security and stability that can enable transition of responsibility to the Afghan government and its forces, and protect our own core national security interests.[Brigadier General Mark Martins]			Reducing workload of formal courts
Farid, 2013, Bangladesh	Intervention by NGO	A doctrinal study on the analysis of articles and reports	Country level	Human Rights disputes	Improved access to justice Fairness and equality Speed justice Efficiency in justice delivery
Galanter & Krishnan, 2004, India	Community justice Intervention by Government	A doctrinal study on the analysis of articles and reports Secondary data This study involves case studies Quotes: "The Nyaya Panchayat is thus a body of men that handles disputes without regard to applicable rules and yet appears to villagers as formal and incomprehensible." [Catherine Meschievitz] "Gruff justice is good(enough) justice"	Country level	Civil-Property and family disputes, labour disputes Petty cases	Speedy justice Cost effective Improved access to justice Efficiency in justice delivery Challenges faced by NSJS
Pfeiffer, 2011, Afghanistan	Community justice	A doctrinal study on the analysis of articles and reports	Country level	Civil- Property	Promoting human rights,

	Intervention by Government Intervention by Religious bodies-Ulama, hazars	Secondary data		Disputes regarding women and other minorities	Gender justice
Maru,2006 India	Community Justice Intervention by Government	A doctrinal study on the analysis of articles and reports Secondary data	Institutional level and community level	Human right disputes Civil- Property disputes	Improved access to justice, Speedy justice delivery, Gender justice, Promotion of human rights Fairness and equality
Roy,2004, Bangladesh	Community justice (Customary justice)	A doctrinal study on the analysis of articles and reports Secondary data	Individual level Community level	Human rights disputes Disputes regarding women and minorities Civil- family disputes and property disputes	Improved access to justice, cost saving, gender justice, accountability
Christensen, 2011 Afghanistan	Community justice (Customary justice), Intervention by religious bodies	A doctrinal study on the analysis of articles and reports Secondary data	Country level Community level	Civil- Property disputes Human rights disputes	Improved access to justice Reducing workload of formal courts Speedy justice Challenges faced by JSJS

Sivakumar,2003 India	Community justice Intervention by Government Intervention by NGO	A doctrinal study on the analysis of articles and reports Secondary data	Country level	Civil cases Disputes regarding women and other minorities- Women	Improved access to justice Cost efficient Efficient justice delivery Reducing workload of formal courts
Zainulbhai,2011 India	Intervention by Govt. Community justice	A doctrinal study on the analysis of articles and reports Secondary data Quotes- "Lawyers are famous for dragging on cases"[Galanter and Krishnan]	Country level and Institutional level	Civil cases Petty cases	Improved access to justice Speedy justice Efficient justice delivery Reducing workload of formal courts Promotion of fairness and equality
Nupur, Pandey, Shukla, Krishnan, Kavadi, Khupkar, Kokal, 2014, India	Intervention by Govt. Intervention by NGO Community justice	Non doctrinal research using the methods of semi structured interviews and ethnographic observations and case studies Quotes: "If there are disputes [with the government],"there is no way to solve them ... [because] they will never get resolved or compromised at the village level.[remark by a himachali litigant] "Never letting my profession stand in the way of my public service"[Gandhian maxim]	Country level	Disputes regarding women and other minorities- Domestic violence, succession, divorce Civil cases[property] Civil cases[family]- Divorce, Maintenance Criminal- Domestic violence, rape, honour killing	Improved access to justice Speedy justice, Gender justice, Efficient justice delivery Challenges face by NSJ

				Human right disputes	
Klock, 2001 India	Community justice	A doctrinal study on the analysis of articles and reports Secondary data Quotes- “Legitimize diversionary options for problems the court does not wish to hear”[Id at 3]	Community level Institutional level	Disputes regarding women and other minorities- Rape, domestic violence Civil- family disputes Criminal- Rape, Domestic violence Petty cases	Improved access to justice, Speedy justice, Efficient justice delivery, Reducing workload of formal courts, Gender justice, Challenges faced by NSJ
Waldorf, 2006 India	Community justice Intervention by Government	A doctrinal study on the analysis of articles and reports Secondary data	Community level Institutional level	Human right disputes- genocide	Improved access to justice Challenges faced by NSJ
Lam,2006 Bangladesh	Intervention by NGO	A doctrinal study on the analysis of articles and reports Secondary data	Country level	Dispute regarding women and minorities- Women and religious minorities	Improved access to justice Gender justice
Akers,2016, Afghanistan	Community justice Intervention by Government	A doctrinal study on the analysis of articles and reports Secondary data Quotes- “Rule of law has no one-size-fits-all approach and projects take place around the world in extraordinarily varied situations”[Id at 3]	Country level	Civil cases Criminal cases Human rights disputes	Accountability, Efficiency in justice delivery, Improved access to justice, Speedy justice,

		<p>“Justice system that exists at the local or community level, that have not been set up by the state and that derive their legitimacy from the mores, values and traditions of the indigenous group[Janine Ubink, Id at 6]</p> <p>According to neo-cultural interventionists, culture and law cannot be separated; culture is a "tool to take law - formal and a cultural - and to translate it into something that is specific, local, embedded in individual consciousness, and hence powerful." [Id at 8]</p>			<p>Cost efficient,</p> <p>Restorative</p>
<p>Niriella, 2013 Sri Lanka</p>	<p>Community justice Intervention by Government</p>	<p>A doctrinal study on the analysis of articles and reports Secondary data</p>	<p>Country level</p>	<p>Criminal cases Human rights disputes</p>	<p>Reduction in crime rate, Improved access to justice, Speedy justice, Restorative</p>
<p>Alkon, 2011 Afghanistan</p>	<p>Community justice</p>	<p>A doctrinal study on the analysis of articles and reports Secondary data</p>	<p>Institutional level</p>	<p>Criminal cases</p>	<p>Improved access, Reducing the workload of formal courts, Efficient justice delivery, Speedy justice, Challenges faced by NSJS</p>

6.11 APPENDIX 11 - QUALITY ASSESSMENT TOOL

S.No	Questions	Appraisal rating
1	Is the research aim clearly stated?	<i>Yes / No / Partially / Unclear</i>
2	Is there a clear link to relevant literature/theoretical frame work?	<i>Yes / No / Partially / Unclear</i>
3	Does the study pose a research question or outline a hypothesis?	<i>Yes / No / Partially / Unclear</i>
4	Does the study describe the data collection method and sampling procedure?	<i>Yes / No / Partially / Unclear</i>
5	Does the study mention the selection process of participants for analysis?	<i>Yes / No / Partially / Unclear</i>
6	How were the data collected? <i>(How the interview were conducted (Interviews, FDG etc.)</i>	<i>Yes / No / Partially / Unclear</i>
7	Are the data characteristics reported clearly? <i>(sample size, location etc)</i>	<i>Yes / No / Partially / Unclear</i>
8	Is the design appropriate to answer the research question?	<i>Yes / No / Partially / Unclear</i>
9	Does the study demonstrate why chosen design and method are well suited to the research question?	<i>Yes / No / Partially / Unclear</i>
10	Method of data analysis explicitly stated?	<i>Yes / No / Partially / Unclear</i>

11	To what extent are these studies internally/externally valid?	<i>Yes / No / Partially / Unclear</i>
12	Was the data analysis sufficiently rigorous?	<i>Yes / No / Partially / Unclear</i>
13	To what extent does the author consider the study's limitations and/or alternative interpretations of the analysis?	<i>Yes / No / Partially / Unclear</i>
14	Are the conclusions clearly based on the study's results?	<i>Yes / No / Partially / Unclear</i>
15	Has the research process been clearly documented?	<i>Yes / No / Partially / Unclear</i>

Note: Yes = 3; No =0; Partially =2; Unclear =1

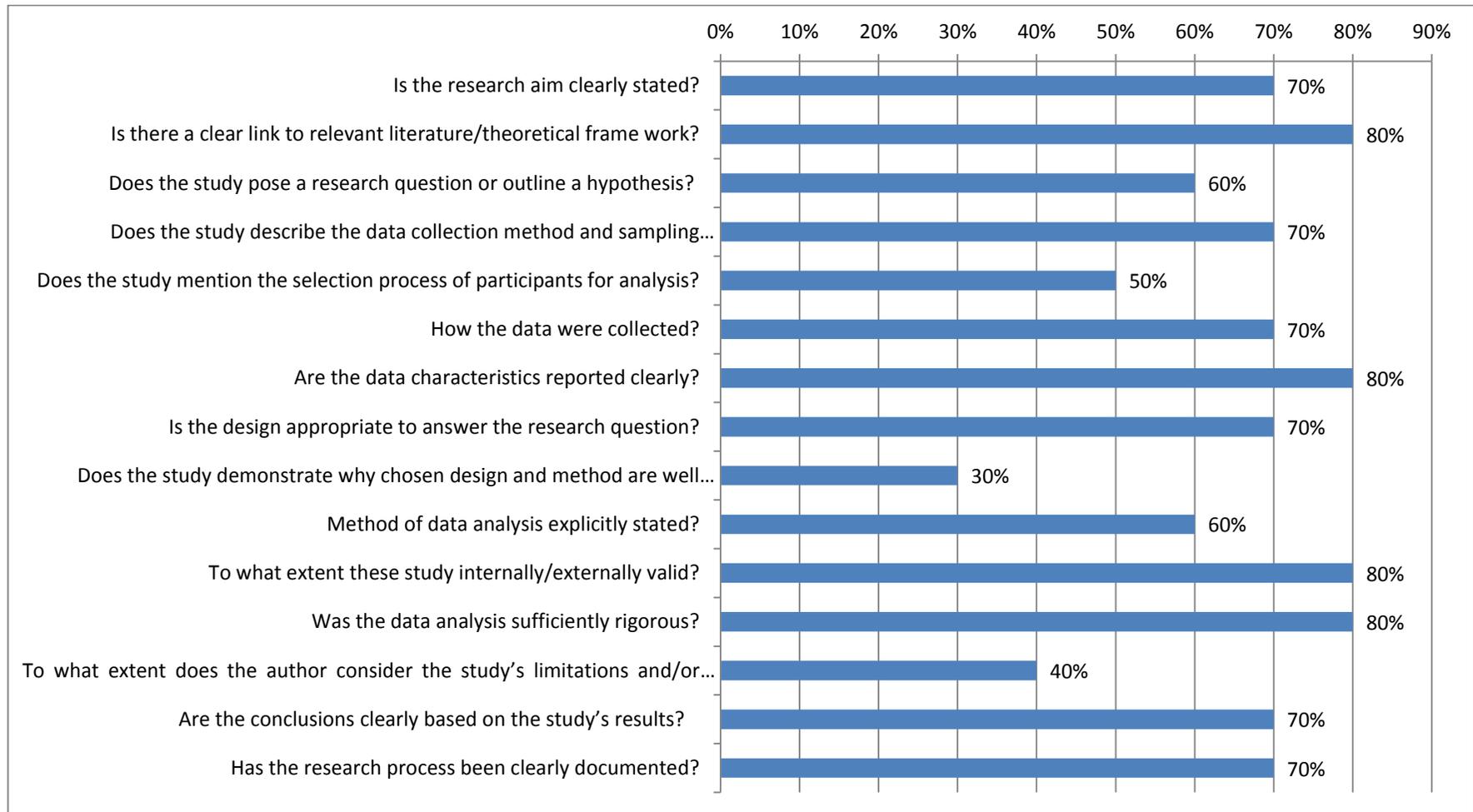
Individual study quality assessment score

Study code	Study author	QA Score	Study quality
A1	Ahmed, F. (2007)	42	High
A2	Akers, P. (2016)	40	High
A3	Alkon, C. (2011)	28	Medium
A4	Ashrafun, L., Saavala, M. (2014)	41	High
A5	Baker, B. (2010)	35	High
A6	Basu, S. (2006)	38	High
A7	Braithwaite, J., Gohar, A. (2014)	35	High
A8	Chopra, T., Isser, D. (2012)	29	Medium
A9	Christensen, M. (2011)	35	High
A10	Cohen, A. J. (2006)	36	High
A11	Connolly, B. (2005)	27	Medium

A12	De Lauri, A. (2013)	43	High
A13	Eckert, J. (2004)	29	Medium
A14	Farid, C. (2013)	34	High
A15	Forsyth, M. (2007)	37	High
A16	Galanter, M., Krishnan, J. K. (2003)	40	High
A17	Goodmark, L. (2014)	27	Medium
A18	Gordon, G. S. (2010)	30	Medium
A19	Goresh, M. A. (2009)	39	High
A20	Hakimi, N. (2016)	32	High
A21	Hong Tschalaer, M. (2010)	38	High
A22	Jensen, K. (2011)	55	High
A23	Klock, K. A. (2001)	35	High
A24	Krishnan, J. K. et al. (2013)	41	High
A25	Lam, J. H. (2006)	35	High
A26	Lugo, K., Searing, E. A. (2014)	45	High
A27	Manganaro, L. L., Poland, A. L. (2012)	45	High
A28	Maru, V. (2006)	30	Medium
A29	Natarajan, M. (2005)	44	High
A30	Niriella, M. A. D. S. J. S. (2013)	38	High
A31	Parashar, A. (2013)	41	High
A32	Pfeiffer, J. (2011)	30	Medium
A33	Raymond, A., Shackelford, S. (2013)	31	High
A34	Roy, R. D. (2004)	44	High
A35	Sbriccoli, T. (2013)	43	High
A36	Shariff, F. (2008)	42	High
A37	Simoni, A., Whitecross. R. W. (2007)	28	Medium
A38	Sivakumar, S. (2003)	27	Medium

A39	Stich, K. K. (2014).	29	Medium
A40	Vatuk, S. (2013)	35	High
A41	Waldorf, L. (2006).	30	Medium
A42	Wardak, A. (2011)	35	High
A43	Xavier, A. (2006)	26	Medium
A44	Zainulbhai, T. (2011)	33	High

Quality assessment parameters for included studies



6.12 APPENDIX 12 - CLASSIFICATION OF NSJS

Non state justice systems (NSJS) are similar to informal justice systems and customary justice systems in many aspects of justice delivery. Informal justice systems have similar characteristics: voluntary participation, relying on social pressure to ensure attendance and participation, informal process, basis in restorative justice, decision based on compromise rather than the rule of law and the central role of the disputants and community in the process (Connolly, 2005). It has been observed that customary justice systems (CJS) have the following common characteristics: viewing the problem from the community perspective with consideration for collective interests; decision process based on consultations; emphasis on reconciliation and restoring social harmony; arbitrators being appointed from within the community; high degree of public participation and flexible procedures. Further, it is often observed that there is very little distinction between criminal and civil cases in an informal justice system.

The risks in the informal systems include the lack of accountability at various levels, lack of appeal and absence of enforcement mechanism and in most cases the decision maker lacks formal education in dispute resolution making the system susceptible to corruption, bias and violations of human rights.

NSJS are extra-judicial structures which are witnessed predominantly in the non-western countries (Klock, 2001). Some of the NSJ systems prevalent in non-western countries include the panchayat, jirgas and shuras, shalish, barangay, Lok Adalats, gacaca and other local and regional arrangements.

Panchayat refers to the caste or village panchayat prevalent in India, which is a traditional system of settling disputes where men of the same caste or village gather and decide matters like a court. The primary function of the caste or village panchayat (traditional panchayat) is to settle disputes and administer justice.

Jirgas and Shuras are tribal councils in Afghanistan and Pakistan comprising of elders and community notables in each village to resolve day-to-day disputes (Ahmed, 2007). These councils apply their own sophisticated and historically evolved canons of law, often combining elements from Shari'a with local customary law (adaat) to solve community problems. They are traditional male-only institution composed of adult males who solve disputes by conforming to community norms. They are guided by the principles of restorative justice that seeks to maintain the social fabric of the community by resorting to apologies and forgiveness (Manganaro & Poland, 2012).

Shalish is a social system of Bangladesh for the informal adjudication of both civil and criminal matters by local leaders. The process of dispute settlement is largely conciliatory. Being an extra-judicial body, the decisions of the shalish are not recognised by state law as official and subsequent enforcement actions have no legal force, though the decisions are generally followed (Goresh, 2009). There are three versions of shalish: (1) traditional, (2) government-

administered, and (3) non-governmental organisation-modified (Gordon, 2010). Similar community mediation models called shalishi (in Bangla) exist in Kolkata, India (Basu, 2006).

India's Lok Adalats (people's court) are informal courts which provide ADR mechanisms to its citizens and has the potential of relieving the over-burdened dockets of the formal courts (Zainulbhai, 2011). Lok Adalats were established as informal and collaborative systems but in due course they have become more adversarial (Zainulbhai, 2011).

The Chittagong Hill Tracts (CHT) region of south-eastern Bangladesh has its own legal system which is different from that of the rest of the country. It also has traditional institutions like the karbari, where in the traditional head or chief of the village presides over social functions and administers traditional justice in accordance with customary law usually through informal hearings (Roy, 2004).

MODELS OF COMPLEMENTARITY BETWEEN NSJ AND SJ

Eckert (2004) notes that the process of the formal or informal devolution of judicial competencies of the state to alternative organisations can take at least three principal forms: (a) The devolution of state productive and distributive tasks to private organisations such as charitable organisations or commercial enterprises (b) The formal decentralisation and devolution of regulatory tasks in specific legal fields (c) The third process is the independent establishment of parallel centres of judicial authority that wield control over specific territories, specific groups of people or specific economic spheres and do not stand in a subsidiary, complementary relation to the state but in a parallel and autonomous one.

The issue of complementarity constantly comes up in cases where the NSJS is presented as an alternative to the justice system, especially when international crimes such as offences against humanity are involved. Studies are replete with the need to recognise, empower and harmonise relationships between state and non-state justice system (Forsyth, 2007).

Connolly (2005) identifies four models of relationship between state and non-state justice system: (1) the state abolishes the NSJ, (2) the NSJS is fully incorporated or given a formal role into the formal state justice system, (3) the NSJS coexists with the formal system without incorporation of the former structures into the latter, (4) a compromise between second and third model allowing the informal mechanisms to exist independently of the formal state structures while embedding low-level surveillance and accountability.

In a study containing a comparative analysis of the range of possible relationships between state and non-state justice systems based on the literature in twenty jurisdictions, seven different models of relationship emerged. At one end, there were state systems which outlawed and suppressed the non-state justice systems, while at the other end there were state systems which incorporated non-state justice systems into the state legal system. The first step towards complementarity is the step taken by the state justice system to formally recognise the legitimacy of the exercise of adjudicative power by the non-state justice system

(Forsyth, 2007). The typology of relationships between state and non-state justice systems can be noted in the following seven models identified by Forsyth:

1. Model 1: Repression of a non-state justice system by the state system;
2. Model 2: Formal independence between the systems but tacit acceptance by the state of a non-state justice system;
3. Model 3: No formal recognition but active encouragement of a non-state justice system by the state;
4. Model 4: Limited formal recognition by the state of the exercise of jurisdiction by a non-state justice system;
5. Model 5: Formal recognition of exclusive jurisdiction in a defined area;
6. Model 6: Formal recognition and the giving of state coercive powers to a non-state justice system; and
7. Model 7: Complete incorporation of the non-state justice system by the state.

In adopting a non-state justice system, countries should be warned against a one-size-fits-all approach or on exclusive reliance on one mechanism to the exclusion of others (Gordon, 2010). In criminal law, the ideal role of alternative justice mechanisms could be as a supplement to domestic criminal proceedings (Gordon, 2010).

HYBRID SYSTEMS

Some of the justice delivery systems defy classification. The predominant premise is that the NSJS should be customized to suit the custom, culture, economic progress and various other developmental factors.

In Bangladesh, the traditional shalish has given way to a hybrid Union Parishad-run shalish, which is headed by local elected officials who are accountable to the government but who are not part of the official criminal justice system (Lugo and Searing, 2014). As the Union Parishad-run shalish does not form a part of the criminal justice system, they are regarded as NSJS.

The Afghanistan Human Development Report, 2007, proposed a “hybrid model of Afghan justice”, by creating meaningful institutional links between state and non-state justice systems in Afghanistan (Wardak, 2011).

The state most likely has to choose between the complete or limited incorporation models and the numerous variations between the two. The policy to be adopted will depend on the circumstances faced by the state. The legal tradition of the state, resolution of particular types of claims, human rights concerns etc. can determine the model that will be adopted by the state. NSJS can play a critical role in post-conflict dispute resolution where the state faces challenges in its transitional justice efforts (Connolly, 2005).

The choice of arrangement between state and non-state justice systems should depend on the history, culture of the state and the local population and not on a generalised balancing

of pros and cons regarding the interaction between state and non-state systems (Connolly, 2005).

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 alternative dispute resolution which help in providing access to justice. The NSJ systems (NSJS) take a number of forms in South- Asia, from the Panchayats in India, to the Jirgas of Pakistan and Afghanistan, to the Shalish in Bangladesh. All these systems, even though they differ depending on the prevalent religion and customs of the region, have many commonalities. They provide access to justice in the rural areas where the formal courts are difficult to access logistically, where people do not have the money or because they find the formal courts too complicated. Hence the NSJS are expected to provide accessible, cost effective, and quick delivery of justice.

The earlier studies on NSJS 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 NSJS 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 exist 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 non-state justice 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 NSJS in Pakistan provide access to justice which is cost effective and speedy they are not free from drawbacks. There is some evidence that the prevailing NSJS have at times neglected the principles of human rights law, as well as indicated some gender bias. These issues could intensify 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 ADR, such as mediation and arbitration. The Shalish often creates physical access as sessions take place in the captain's home or 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 interventions 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 NSJS in South Asia brings about a complementarity with the state justice system. Although the NSJS 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.

- NSJS 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 NSJS.
- Creation of hybrid institutions incorporating the characteristics of formal justice systems and NSJS would serve better in handling special types of disputes. The focus of the NSJS should be to resolve conflicts in a way acceptable to the community.
- There exists a need to promote hybrid NSJS 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 in terms of costs and cultural beliefs.
- NSJS are expected to address the problem of access, as they should not be at the cost of human rights. In such circumstances 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.

LIST OF ABBREVIATIONS

ADR	alternative dispute resolution
AWPU	All-Women Police Units
CDC	Community Development Councils
CJS	Customary Justice system
FLO	Family Legal Order
NGO	Non governmental organisation
NSJ	Non-state justice
NSJS	Non-state justice system
SLO	state level order
VLO	Village Legal Order