

# Review of Formal and Parallel Legal and Illegal Systems



National Commission  
On The Status of Women

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## Introduction

The NCSW commissioned a nation-wide study in 2010 to examine these systems with a gender perspective in order to analyze whether these systems were cohesive, what problems plagued all of them and what advantages existed in them. In essence, the study was intended to provide an overall analysis on how well these systems operate and whether there is a need for all of them to exist, and if not, what measures could be taken to make the system cohesive, supportive and sustainable, while providing quality access to justice and redress for all the citizens of the State.

Parallel legal systems are not just the traditional social set ups presuming to provide 'justice' to the community. In fact, this term goes beyond just these informal structures and includes any structure or institution in existence that performs judicial and legal functions in a state in any manner and is parallel to the formal legal system. This results in three categories of systems, all of which exist in Pakistan with varying issues and with varying consequences:

- (i) The formal legal system;
- (ii) The parallel legal system; and
- (iii) The parallel informal and illegal system.

This nationwide study also includes the Federally Administered Tribal Areas (FATA) and Gilgit-Baltistan. The discussion is based positive and negative effect these systems and examines whether they should continue to exist or be removed. The study identified different forums that are being utilized for the dispensation of justice such as The Supreme Court, High Court (The Highest Court of Province), Court of District & Session Judge, Court of Additional District Judge, Court of the Civil Judge / Judicial Magistrate, Small Causes Court, Sessions Court and Courts of Judicial Magistrates.

In FATA, the justice sector follows what is laid out in the Nizam-e-Adl Regulation 2009, whereas, the system in Gilgit Baltistan is completely different. The Gilgit Baltistan Legislative Council has the freedom to form as many administrative courts or tribunals as are necessary. 2 courts are formed under the law, i.e. Gilgit Baltistan Chief Court and Supreme Appellate Court. However, different areas in Gilgit Baltistan also follow different informal systems such as Mir System, Aga Khan Arbitration & Reconciliation system and Shari System and also Shia Scholars.

At the federal level under formal legal system special courts and tribunals have been set up by the State usually relating to specific issues/topics like Federal Shariat Court, Accountability courts, Banking Courts, Anti-terrorism Courts, Drug Courts, Family courts etc.

In addition to these courts, the quasi judicial forums are also working under the cover of law but do not constitute formal parallel judicial forums. There are some parallel informal and illegal forums prevalent in the country which has not been codified by the law of the land.

For the purposes of this study, four focus group discussions were held in all five provinces with the intention of getting feedback from the community, their views on the advantages and disadvantages of the formal legal system, parallel legal and the illegal parallel systems.

The study examines the entire system from a gender perspective. The role of women within Pakistani society has always been an inferior role with little recognition and participation.

All three categories of systems have been examined in order to identify the role women play in these, if any at all and how women have been affected.

## **Forums for the dispensation of Justice**

The different categories of both legal and illegal systems operating within the country have been identified:

## **The Legal System of Pakistan**

- The Supreme Court
- High Court (The Highest Court of Province)
- Court of District & Session Judge
- Court of Additional District Judge
- Court of the Civil Judge / Judicial Magistrate
- Small Causes Court.
- Sessions Court
- Courts of Judicial Magistrates

### **In FATA only:**

In FATA, the justice sector follows what is laid out in the Nizam-e-Adl Regulation 2009

- Jirgas
- District & Sessions Judge as Zilla Qazi
- Additional District & Sessions Judge as Izafi Zilla Qazi
- Senior Civil Judge/Judicial Magistrate u/s 30 of Criminal Procedure code, 1898, as Aa'la Illaqa Qazi
- Civil Judge/Judicial Magistrate as Illaqa Qazi
- Court of Executive Magistrate

### **In Gilgit Baltistan:**

The system in Gilgit Baltistan is completely different. The region was granted political autonomy under Gilgit-Baltistan (Empowerment and Self-Governance) Order 2009. This sets up an independent Legislative Assembly and Council. The Gilgit Baltistan Council has the freedom to form as many administrative courts or tribunals as are necessary. 2 courts are formed under the law.

- Gilgit Baltistan Chief Court
- Supreme Appellate Court

## **Parallel Legal Forums established under codified laws**

Special courts have been set up by the State usually relating to specific issues/topics.

Listed below are important federal and provincial special courts.

### **Federal Special Courts**

Some of the special courts/tribunals set up by federal enactment are:

- Federal Shariat Court;
- Accountability courts;
- Banking Courts;
- Anti-terrorism Courts;
- Drug Courts;
- Special Courts for emigration offences;
- Labour Courts (currently suspended);
- Court of Special Judge (Customs);
- Income Tax Appellate Tribunal;
- Services Tribunal;
- Insurance Tribunal;
- Environmental Tribunal;
- Customs Tribunal;
- Revenue Courts;
- Family courts;
- Provincial Special Consumer Courts;
- Rent courts.

### **Quasi Legal Forums having the cover of Law**

The quasi judicial forums which have the cover of law but do not constitute formal parallel judicial forums are:

- Muslahat e. Anjuman constituted under the Local Government system 2001
- The Arbitration council constituted under the Muslim Family Laws Ordinance 1961

- Appointment of Arbitrators under Arbitration Act 1940
- The Office of Wafaqi Mohtasib created under Presidential Order 1984.

## **Parallel Informal and Illegal Forums not having the cover of codified laws**

Some of the most common forms of informal systems in the country are:

- Jirgas/Panchayats/Maraka;
- Sarkari Jirga;
- Qaumi or Ulusi Jirga;
- Shakhsi Jirga;
- Loya Jirga;
- Panchayat;
- Faislo.

## **Gilgit Baltistan**

Different areas in Gilgit Baltistan follow different systems

- Mir System;
- Aga Khan Arbitration & Reconciliation system;
- Shari System and also Shia Scholars.

## **Recommendations**

A different number of recommendations were collected across the country. Interestingly, it appears that the prevalence of formal legal system is inversely proportional to the prevalence of informal legal system. This means that more reliable the formal legal system is, the less attractive the informal legal systems will be; and vice versa. A large majority of the participants of the focus group discussions felt that if the formal legal system was strengthened to ensure speedy delivery of verdicts, low costs and easy accessibility across the country, there would be no need for parallel systems. Unfortunately, as this does not seem a possibility, other recommendations were given. These have been collected and are presented below:

- Number of judges should be increased in the formal court system to allow better dispensation of justice;
- Women should be part of decision making in all forums at all levels therefore women judges should be appointed in all High Courts as well as Supreme Court.
- Retired judges and retired senior lawyers should be appointed to assist sitting judges in judgment writing.

- More funds need to be allocated for judicial sector, the working conditions of the courts should be improved. There should be judicial complexes and all the courts must be situated in one premises
- The pay scale of judges and the court staff should also be increased.
- All the special courts, Tribunals and quasi judicial forums should be abolished (this is against Article 175 (3) of the Constitution, 1973 Article 25 thereof) and the cases should be entrusted only to the regular courts with full time judges at the district level at first stage. The parallel judicial forums lead to prolonged litigation as sooner or later the disputes are taken up at judicial forums. This leads to prolonged litigation and puts the litigants in a more adverse situation. Therefore, there should be no parallel judicial system and unification of judicial system is necessary in the long term judicial reforms;
- Special courts in the shape of parallel judicial system have proved to serve the interests of the groups for whom they are created instead special benches need to be established under the High courts.
  - As a short term measure, the quasi judicial forums needs to be strengthened in terms of enhancing their capacity such as the
    - Muslahat e. Anjuman constituted under the Local Government system 2001
    - The Arbitration council constituted under the Muslim Family Laws Ordinance 1961
    - Appointment of Arbitrators under Arbitration Act 1940
    - And increasing the scope and powers of Wafaqi Mohtasib created under Presidential Order 1984 by including the provincial departments as well and by providing an appeal to the High court instead of President by the aggrieved party from the order of the Wafaqi Mohtasib.
- An awareness campaign on laws and procedures through popular media may be launched to aware people to avoid jirga exploitation;
- Laws, rules and regulations affecting the status and rights of women should be reviewed and suggestion for repeal, amendment or new legislation essential to eliminate discrimination may be brought forward;
- To redress of violation of women's rights, individual grievances, and facilities for social care, the government should take appropriate actions for better management and efficient provision of justice and social services through concerned forums and authorities.
- Extend laws, especially family laws and other pro-women legislation to Gilgit-Baltistan and FATA and any other territories in Pakistan not under the cover of the Constitution and the law of Pakistan;
- Women Ministries and other relevant bodies should be set in Gilgit Baltistan and FATA and any other territories in Pakistan not under the cover of the Constitution and the law of Pakistan.
- Effective Implementation of laws needs to be done.



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