

A Critical Analysis of Family Dispute Resolution Practices in Pakistan

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ARTICLE INFO	ABSTRACT
<p>Keywords:</p> <p>Family; Dispute resolution; legal frameworks; Arbitration; Traditional practices</p>	<p><i>Informal practices that exist within family relations are as ubiquitous as formal legal mechanisms widely used to resolve family disputes in Pakistan. To achieve this, this study critically examined the FDR Practices in Pakistan in light of the existing legal framework highlighting its strengths and gaps and proffering recommendation to improve upon the same. Legal provisions under the Muslim Family Laws Ordinance of 1961 and the West Pakistan Family Court Act of 1964 exist, but operate in spite of these, obstacles like procedural anomalies and Jirga and Panchayat systems continue to exist and human rights violations are not rare. The study was done using a qualitative research methodology which used a review of legal provisions, court practices and alternative dispute resolution models. Moreover, results proved that current frameworks do not sufficiently take care of family related disputes and that informal methods are not fair and accountable. The results of this study suggest that the formation of regulated FDR centers promotes relatively efficient resolution of disputes, reduces the burden placed on courts and protects family relationships.</i></p>
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Introduction

Black's Law Dictionary (2009, p. 119) defines arbitration as a process of resolving a dispute by one or more impartial third parties, chosen by the disputing sides, whose decision is final and binding while mediation is a non-binding process with a neutral party helping the involved parties to reach a mutually acceptable solution (Black's Law Dictionary, 2009, pp. 1070–1071). Broadly speaking, alternative dispute resolution (ADR) is methods of settling disputes outside of court, including arbitration and mediation (Black's Law Dictionary, 2009, p. 91).

Spouses' conflicts are quite typical and can arise at different times: during the marriage, and after its termination. The early resolution of such disputes can be achieved, however, through an ADR mechanism, provided the traditional family courts are to be sidelined (Qu, 2019). An ADR is a way of settling disputes between individuals, groups and institutions through settlement reached in a discussion by the parties concerned. They either do it themselves or by involving a third party to act as mediator or arbitrator to settle the problem through a mutually enforceable binding agreement (Umar A. Oseni & Barkat Raji, 2015). Moreover, ADR has become a means of dealing with disputes quickly, less expensively, and securely and without the unnecessary rigmarole of conventional litigation (Umar A. Oseni & Barkat Raji, 2015).

Similar to family Dispute Resolution (FDR) is a process for dealing with parenting and other conflicts between spouses in the marriage or after separation. The means by which conflict is resolved is convenient and efficient (Cooper & Field, 2008). Traditionally, both ADR and FDR have been used by the Muslims to settle disputes amicably because ADR and FDR are supported and encouraged within Islamic law. Consequently, the Islamic religion itself stands for peace, love, harmony and compromise, not for confrontation and conflicts (Shah, 2009). Over the past ten years or so, developed countries have progressively moved towards the use of ADR to resolve family disputes. Practical tools such as mediation, negotiation, arbitration and reconciliation have been recognized widely as practical instruments in solving many types of conflicts (Paresh R Jani, 2014).

Analyzing legal framework for Family Dispute Resolution in Pakistan

Family dispute resolution mechanism in case of talaq (divorce) and polygamy (husband's second marriage) has particular mechanisms in the legal framework in Pakistan. Under the Muslim Family Laws Ordinance (MFLO) 1961 Muslim parties are required to apply to the Arbitration Council, which is chaired by the Chairman of the Union Councils (Ijaz, 2011). Not all of the disputes can be anticipated; only the disputing parties know all of the issues. Marital contracts (nikkah) are done through mutual consent; however, post nikkah minor conflicts appear where sometimes emotional differences lead to breaking of the marriage (Wadje, 2013; Asghar & Mumtaz, 2024).

The arbitration council, in accordance with the Muslim Family Laws Ordinance of 1961, in Section 7(4), proceeds to conduct mediation between the couple but the date of fixing the arbitration council commences by the time prescribed for the reconciliation of the couple by the head of the council. Section 10 (3) of the West Pakistan Family Court Act 1964 also requires the Courts to reconcile husbands and wife issues too, equally. Yet, there are no clear standards in the law governing who chooses council members or how their decisions would be enforced. Family Courts Act, 1964 tries to substitute better alternatives for women and children and has definite procedures for resolution of the spousal dispute and has not yet cut out a strong ground for the working of the arbitration council. There is arbitration after the family court judge's decisions and he judges are male in family courts serves as a peace keeper. However, because the council is led by political leaders who are simply not interested in, or involved in, the mediation process it leads to less effective resolutions.

The FDR typically occurs informally by negotiation using a neutral third party. This approach makes sense to resolve family conflicts this manner because the modern legal systems can resolve family conflicts without judicial intervention (Cooper & Field, 2008). In Pakistan, however, talaq and polygamy cases are still referred to an Arbitration Council under MFLO 1961 and family courts established on basis of West Pakistan Family Court Act (WPFCA) 1964. As Yilmaz (2014)

shows Sections 10 and 12 of this Act mandate that family judge's attempt at reconciliation, prior to the trial ending.

Finally like it is one of the primary issues as being a step in direction of navigate to the settlement of disagreements in peaceable style. As per WPFCA-1964, it demands judges to motivate the parties to conciliation before the termination of suit; this is the time where parties of dispute can resign without going into the full stretch of court process (Hasan Awais, 2017). If reconciliation fails the family court may pass a decree of divorce or separation. However, when using these provisions, the process is inconsistent as they token operate as part of the judge's discretion leading to different result (Munir, 2014). Some critics think that, because the lack of a structured, transparent because of approach to work on reconciliation leads to the consistently roofing at the true spirit of the Family Dispute Resolution (Tarar, 2018).

There are legal mechanisms, but even within legal systems, the family court system has trouble accounting for even minor matters that could be handled pretty much anywhere else but formal litigation. As a result, the family court largely neglects these family relationships in favor of procedural outcomes (Attaullah & Saqib, 2017). A classic successful mediation case settlement occurred in a case where without the mediation of the court a khula suit was settled amicably. After their mediating party decided that the wife would be divorced by the mediation, the husband and the wife reconciled as if they had worked out their issues without going to court.

Mediation is called an ADR, or alternative means of dispute resolution and it's a flexible, cost effect way to resolve family disputes without court involvement. This allows for parties to uphold relationships and avoid adversarial congruence of litigation (Armstrong, 2011). For example, Pakistan can follow the Family Dispute Resolution models of Australia and Malaysia where they have also been successful. The main objective of these models is to encourage amicably settling of family feuds using an informal and effective way of controlling family related conflicts.

The authors also suggests the creation of a Family Dispute Resolution Center, recognizing that there is strong constituency support for the creation of such a center, and that some of these constituency members would serve as mentors to children who move to the mall from inner city. Because the current legal system is extremely inefficient, it is of utmost urgency to introduce an FDR center in legal Pakistan. 'Funeral Divers' resolution institution would resolve family disputes and settle them in mutually acceptable manner in an efficient manner and lighten the burden on the family courts.' A study by Ahmad (2012) on the family dispute resolution in Pakistan finds that processes can be improved and the institution of the marriage can be protected by informal, mediation based solutions which international models can serve as opportunities for learning.

According to Younis (2017), opining from literature Jirga and Panchayat decisions are not only unlawful because of Islamic principles but they are also illegal due to violation of fundamental human rights. Therefore, there is the immanent demand for research on this issue and the production of a legislative draft to hold the Jirga and Panchayat justice system responsible (Shinwari, 2011). Several countries are now using family mediation, reconciliation, negotiation and other alternative dispute resolution methods to resolve family conflicts. In these countries, the use of the Jirga, Panchayat, and direct access to family court to resolve these type of disputes has been limited (Huan, 2013).

The FDR includes issues such as marital disputes, maintenance and other family disputes, which happen during or at the time of or after the marriage (Shabbir et al., 2019). The FDR by giving the cost effective and time taking process suggests that many countries have already adapted this system (Devi, & Latha, 2021). It is, however, an informal process which falls outside the formal

juridical system (Sardar, 2018). FDR is seeking a win solution that will end the relationship squabble and save the relationship for both sides. Pakistan must learn from this modern practice, which is now being practiced globally and steps must be taken for the prevention of unjust decisions for the Jirga and Panchayat systems, which generally perpetuate the malpractice and injustices (Brohi, 2017).

Traditional Methods for the Resolution of Family Disputes in Pakistan

Panchayat and Jirga have been playing its roles in Pakistani society on the basis of norms, value, customs and tradition that they follow (Khan, 2021). But like these subjects weren't smart enough to realize that fundamental rights and the states laws as well as its legal system were in place, they see this as something just, efficient, and fair way of doing justice in rural developmental areas (Usman, 2011).

Logically, there is no formal legal backing to informal justice system insofar as it is believed to provide justice cheap and fast. However, these systems do have some gender bias (Younes, 2017) and provide evidence that it does not keep the legal principles that provides for human rights in mind. This outcome proves that the availability of justice can never ensure equal justice administration. Punjab, Kashmir and Baluchistan implement decisions of panchayats, Jirgas and sulh and those in Sindh are Faislo (ibid. 2023); decisions of these institutions disproportionately target women (ibid.) This implies that it is needed at least hybrid justice systems; containing all advantages informally and the advantages of the formal justice systems.

According to the Supreme Court of Pakistan Jirgas and Panchayats are unconstitutional since they work outside constitutional and legal framework (Shaikh & Mohyuddin, 2021). Nijat Ali v. In Asmat Ara (2022) the Court declared that Jirgas were actually unlawful. Even with all these rulings, social justice and domestic disputes have been solved at the local forums if you go around the world. For centuries, these practices exist in Pakistan and contrast with equivalent systems existing in other developing countries (Tomaszewski, 2018).

In order to understand the customary method of dispute resolving through Panchayat and Jirga with the frameworks of Pakistan's customs, it is necessary to understand these functions of the Panchayat and Jirga. Deep rooted in tradition, justice system needs a legal framework formal/containing customary law for fair and equitable practices (Rummel, 2020). Jirga verdicts are great in themselves but barely (Rizvi, 2021) follow its verdicts. Baradari is an identity of the social status and social ethics. This deep ingrained practice is useful to rural areas in solving social disputes and family matters (Rubab & Usman, 2018).

Traditional means of bringing decisions and settling disputes through way of looking at opposing viewpoints are adapted by this mechanism. These informal institutions work to upholding social justice in solving family disputes effectively despite its traditional framework (Nasir et al., 2015). These customary practices, which are operating in Pakistan's rural and tribal areas like Jirga, Panchayat and Vani are in practice for a resolution of family's disputes without formal legal framework (Baxi & Rai, 2006).n that aforementioned subjects lack the awareness of fundamental rights and the state's legal framework, they view these practices as efficient ways to dispense justice in rural and underdeveloped areas (Usman, 2011).

Insofar as Pakistan's informal justice system is thought to offer justice cheap and fast, it lacks formal legal basis. These systems sometimes show gender bias, evidence that indicates that they fail to consider legal principles regulating human rights (Younes, 2017). The outcome of this emphasizes that accessibility to justice eventually does not accomplish equitable justice administration. Decisions of panchayats in Punjab, Jirgas in Kashmir, sulh in Baluchistan and Faislo in Sindh target women disproportionately. Therefore, hybrid justice systems that contain all of the formal ones' advantages and informal ones' advantages are needed.

The Supreme Court of Pakistan declared that since the operation of Jirgas and Panchayats does not take place within the constitutional and legal framework they are unconstitutional (Shaikh & Mohyuddin, 2021). Nijat Ali v. The Court declared Jirgas unlawful in Asmat Ara (2022). Even with these rulings, social justice and domestic disputes have always been handled by local forums throughout the world. These practices are existent in Pakistan for centuries, and are different from comparable systems in other developing countries (Tomaszewski, 2018).

These functions of the Panchayat and Jirga have to be understood to comprehend the customary method of dispute resolving through Panchayat and Jirga with the frameworks of Pakistan's customs (Nawaz et al., 2014). The justice system is deep rooted in tradition, but it needs a formal legal framework is containing customary laws—to enable fairness and equity (Rummel, 2020). Although Jirga verdicts have their advantages, they are rarely upheld by (Rizvi, 2021). Baradari is an indicator of social status and ties social ethics. Rural areas find this deep ingrained practice useful in the resolution of social disputes and matters of the family (Rubab & Usman, 2018).

This mechanism looks at opposing viewpoints, brings decisions and settles disputes through traditional means. In upholding social justice these informal institutions work to effectively resolve family disputes despite the limits imposed by their traditional framework (Nasir et al., 2015). The customary practices in Pakistan's rural and tribal areas such as Jirga, Panchayat and Vani are in action for resolving of family's disputes without any formal legal framework (Baxi & Rai, 2006). There are no established procedures, no regulations, and no authority: these are informal systems. However, many in the rural population have high confidence in such systems because they are affordable, quick and their impact is lasting on the people's lives, better than the formal courts (Tarar, 2018).

However, these traditional practises, being rooted in feudal system, usually consist of these traditional practises being controlled by landlords or tribal elders with unchecked power. For example an instance of the Panchayat justice system is a chosen questionable motive to represent tribes and duct out judgments with assorted castes and Baradari (Braja, 2022). Because of intervention and hindrance of these feudal powers in crime reporting, human rights violations, which include forced marriages and women and children exploitation, are violated (Maliha Gull Tarar, 2014).

The Mukhtar Mai case provides an obvious example of the failure of this system. In 2002 a 21 year old woman named Mukhtar Mai of Muzaffargarh in Punjab was gang raped on the orders of a Panchayat after her brother committed a violation. However, in this case the brutality and injustice of traditional justice practices that are both in violation of basic human rights and Islamic injunctions (Polymenopoulou & Rehman, 2010) were brought into focus. Though traditional family dispute resolution (FDR) methods are economically viable, expeditious alternatives to formal litigation, they offer no legal and procedural safeguards for the administration of justice. The decisions taken through Jirgas, Panchayats, Vani and Satt, are evaded of human rights and Islamic principles (Roy, 2005).

However, there is an urgent need to replace these customary practices with formal FDR centres, provided these limitations exist. Thus, such centers delivering justice based on the human rights as present in the constitutions and as per Islamic principles should be the part of conventional approaches of Alternative Dispute Resolution (ADR) present within the legal framework of Pakistan. Moving from traditional systems towards mediation would also help solve the injustices that each entailed and provide a fair and systemic opportunity for resolution to the family disputes (Nasir, et al., 2018).

Interaction of Local Government Laws with Traditional Methods of Family Dispute Resolution in Pakistan

The Islamic Republic of Pakistan operates as a federal system with three tiers of governance: It is national, provincial and local. The foundation of local government system is provided under the articles 32 and 140-A of the Constitution of Pakistan (1973). The right to legislate and institute the system of local government system was given to the provinces after the 18th Amendment. It is also, though in the study of the role of local government in countering the malpractices of informal judicial forums like Panchayats and Satt, there has been a number of a challenge in the history of local government in Pakistan.

The Punjab Local Government ordinance was promulgated in 2001 during the military regime to institutionalize informal forums as through provisions for Musalihat Anjuman – a body of representatives of three representing each Union Council elected from the Insaf Committee. The purpose of this ordinance was to settle the issues amicably in the presence of parties or on the direction of the court, which would be confirmed by Union Council Secretary. The lack of proper rules of business did not however cause Musalihat Anjuman, as such, to take root and the succeeding democratic government established with the Punjab Local Government Ordinance 2013, amended in 2017. Nonetheless, these efforts did not lead to successful implementation or sustainable implementation because little enforcement and poorly defined processes eroded it.

Given these practice gaps, the Punjab government formed a committee to determine rules for Musalihat Anjuman and make decisions regarding permitting and use of Musalihat Anjuman at the village or neighborhood level for informal dispute resolution. Additional amendments were proposed by the committee reducing the number of members to five. However, the political shift to a Pakistan Tehreek-e-Insaf (PTI) government brought a new legislative framework: It replaced existing laws and the Punjab Village Panchayats and Neighborhood Councils Act (VP&NCA) of 2019.

This legislation introduced, entirely different rural and urban governance systems, replacing the Union Council of rural areas with Village Panchayats, and urban areas with Neighborhood Councils. These councils were specified budgets and it worked in a system of multi-tier governance. The Election Commission of Pakistan (ECP) held elections to the councils with the councils composed of a chairperson, general members, women and minorities representatives, all elected for a four year term. Despite, the decisions in the system were made by government policies and had general seat candidates according to the highest number of votes.

But that hasn't silenced the controversies. Voting for nonparty based elections, hit upon by the VP&NCA eroded democratic representation at the grass roots. Contradictions also existed between the reduced representation for women and youth on the one hand and the spirit of Article 140A of the Constitution, on the other. Other criticisms were that there was the absence of legal integration of urban and rural local governments; and contradictions between the new legislations and the Representation of Peoples Act, 2017. The ECP further declared that the inclusion of villages with

population below 2,000 into Union Council would be a violation of the Land Revenue Act, 1967. This is why the ECP asked for advice from the Lahore High Court, proposing that the law is amended in consonance with the Elections of Act of 2017.

These legal discrepancies, procedural inadequacies and desperate need of enforcement in VP&NCA stand responsible for the insufficiency in ensuring justice through Panchayats. As these challenges cannot be ironed out, it is a need to inscribe Family Dispute Resolution Centers (FDR) in Pakistan legal framework. These centers will provide a systematic and an efficient platform, mutually acceptable as well to settle family disputes and to avoid the pranks of informal forums and to ensure justice and an equitable element.

Mediation as a Key Approach: Sets up such Family Dispute Resolution (FDR) Centers in Pakistan

They have determined, however, that the preeminent way to deal with those kinds of family disputes is by a procedure that they've decided to call 'mediation' because these family disputes, as a rule, don't raise many legal technicalities that need to be worked out by a judge. This concept gained prominence in June 1981, when the Supreme Court Committee for Matrimonial Litigation in New Jersey, led by Justice Morris Pashman, asserted:

No area of matrimonial litigation lends itself more readily to building a cooperative, conciliatory atmosphere applicable to the requirements of the mutually necessary parental relationship for the parents' and children's sake. What questions are the most pressing questions faced by court administrators and staff nationwide, posed directly, and then answer this question: Are these the type of issues that should best be decided in the courtroom itself, and is the adversarial approach most prevalent in the commons use the right way to go about it? The idea for introducing the notion of profession using profession trained mediator to solve the members problem is idea the time for which is come" (Sa'odah Ahmad, 2015)

Especially discourage litigation, encouraging private settlement with your neighbors, whenever you can. Normal winner is most often a loser on fees, expenses, cost and time, tell them (Bano, 2007). The judicial framework in Pakistan follows the natural principles of justice but the dispensation of the present judicial system is case specific and does not perform according to the well-designed time frame of the system. Litigation is characterized by inordinate delays; excessive costs, and an adversarial process that vexes litigants, erodes trust in our courts and, consequently, erects major barriers to the enjoyment of justice. This maxim implies that "Justice delayed is justice denied" that this maxim is inefficiency.

Due to judicial complications in Pakistan and with reference to the shortcomings of Informal Panchayat System for the resolution of family issues, an additional means is needed. However, these mechanisms FDR centres are not intended to replace traditional litigation but they provide the relief sorely needed by the court system from its burden and provide an amicable and cost effective resolution. In addition to this, centers such as FDR help to deal with the human rights related violations and the violations of Islamic sanctity that ordinarily characterize informal justice systems. (Attaullah & Saqib, 2017)

To take the advantage of the best international models, Pakistan will have to create a strong framework for FDR with strong rules and regulations. A FDR centre would mean couples in need of dispute resolution have a dignified way of ending the issue without destroying each other's standing in society and respect (Zaidi, 2016) Traditionally, the personal matters are resolved in the

current traditional family courts, therefore they are not considered ideal for such needs hence the need for alternatives.

FDR centres are a forward step for Pakistan in the main stream of family dispute resolution. The model is financial, expedient and affordable when compared to traditional litigation. FDR centres are complimentary to societal need of upholding and protecting the institution of the family; they ensure safe continuity of family institutions in an expeditious, dignified way, guaranteeing the future of future generations.

The highly impressive mediation services being offered by The Asia Foundation and Riphah Mediation Centre in Islamabad are not lacking in Pakistan as well. These services are regulated under state laws and based on international best practices combined with local needs to meet the current day. However, non-regulated and traditional form of mediations including jirgas, panchayats and mediation through local community leaders continue to exist in the country uninterrupted. But it turns out the constrictions and techniques can really do more damage than healing.

Alternative dispute regulations formalized by the state are recognized that it should be formalized and enacted to make these regulations by Altimate Dispute Regulation Act 2017. All these centers came to be associated with the spread of legislation that increased their scope and their importance in quickly resolving family conflicts. The development is expected to lead to an amicable and more accessible resolution process in the future, they said.

In order to come up with the conclusion that how the mediation centers are evolving in Pakistan as well as worldwide, we have to tackle the problems with the traditional litigation in Pakistan. In addition, this shows that family conflict resolution mediation needs to be promoted since it is an effective alternative to solving family conflicts.

The litigation process in Pakistan generally involves four key stages: Society's 'colouring' of police, lawyers and courts. None of these stages matter to deliver justice. Despite all that, there is also a great deal of challenges with the system. A lack of awareness of basic civil and political human rights at the earliest stages and systemic deficiencies in the next stages generally take disputes prisoner for a very long time and render the journey towards justice painful. In rural areas, old customs and traditions are still considered and used as excuses to not dealing with the situation for women. Challenge, or circumvent, such societal norms, however, must endure negative backlash by all four stages of the litigation process.

In such a difficult business environment, however, Alternative Dispute Resolution (ADR) processes are available as a practical alternative to these barriers. An important part of the effectiveness of mediation lies in the fact that millions of family conflicts related divorce, child custody or domestic abuse were successfully decided using it in a dignified and amicable way. Mediation helps constructively communicate between disputing parties, leading to humane and productivity resolutions that reduce a court's burden leading to winwin outcomes. Nevertheless, mediation does not respect emotional and personal aspects of family disputes and does not force rigid procedures so that it does not impinge of the privacy and sentiments but encouraged by litigation particular relevance to structured rules and ethical standards based ADR system are family disputes. Its chief purpose is to protect confidentiality and protect privacy so that personal issues of a very sensitive nature can be resolved honestly and respectfully between individuals. Compromising the individual, mediation is far less intrusive on the individual and does not violate her privacy as it would through open court litigation (Hamberger, 12). In a case where mediation

has had this impact, it has won a lot of public confidence from women, almost always the ones that have been going through all sorts of issues in the 'normal' litigation.

In addition, women participants find it easier and feel more secure to discuss personal matters with female mediators. Additionally, the mediation centers abide by strict confidentiality rules, unless disclosure is essential for life or welfare purposes such as safe guarding child safety. An additional appeal of mediation is that these safeguards are an attractive offer — to women who might otherwise never come to justice, especially women from marginalized groups.

In addition, mediation processes aim at dealing with issues such as domestic abuse and mental torture that are usually being left out of the traditional litigation processes. This argues that mediation is a practical solution to those problems associated with family law in Pakistan. An analysis of how family courts function brings out the centrality of these centres and underlines the importance of better mediations.

Case Study Analysis: Traditional Methods of Dispute Resolution

Marriage Dispute and Watta Satta Practices: A Case from Punjab

Background: Mudda e Sharait which is Marital problem in which a husband applied for the dissolution of the marriage on the basis of Khula before the Local Panchayat. His wife also had already filed a case in the family court for the dissolution of marriage and recovery of maintenance. The wife's father, an illiterate man, had agreed to the customary practice of Watta satta (exchange marriage) because his brother married the sister of the wife. Consequently, this system of Watta Satta, as traditional, had strained her marital life all along.

Issues and Context: 'That was Watta Satta marriage her uncle's marriage wasn't good, and both couples were childless,' she said. The woman was subject to domestic violence, and the other, including serious physical and mental trauma, of which her husband was aware and which contributed. Such a woman, therefore, had redress available in family court. Her husband did not agree with her decision to involve the formal system of law. When the matter came up in the family court, in a case ordered this way against the traditional pressures from her family, she withdrew her case from the family court to the Panchayat to decide the matter. These social expectations lead to discouraging a person, no matter who it is, from seeking justice, although if it is a woman, a part of society that already lives with systemic inequalities, it is worst.

Panchayat Decision: Still the husband wanted to be separated due to difference irreconcilable, but Panchayat ordered that couple must remain husband and wife, for the sake of the familial and societal relationship. It was insensitive to the disputants's emotional and physical wellbeing and concerned about family honor and property. Both parties came to this painful decision through huge pressure by all the family members.

Analysis: This decision was blatantly out of order in blatantly violating the Islamic principles which encourage compassion and separation from an unworkable marriage. And like Islam calls for peace and resolution of the good of the being, and not to tie the one to a hostile, warlike association. Further, it was misguided from Pakistan's standpoints when it comes to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The main objective is to eradicate customs and usages contrary to fundamental human rights and discrimination against women. Traditional methods such as the Panchayat do not settle matter like matrimonial dispute. Much of the time, they are upholders of patriarchy and they shall always see

to it that family interest supersedes that of the individual. The woman's right to justice and the right to be autonomous were interfered by social pressure and a malfunctioned traditional system.

The need for promoting the formal legal avenues and other ADR mechanisms, like mediation, is made very urgent when such practices are totality focused on resolving disputes. An ADR provides rights oriented more balanced approach to resolving family conflicts that preserves the dignity and wellbeing of all involved. The Panchayat system should be strengthened and communities should be educated about human rights so that they resort to other methods which are equally harmful (like the Panchayat system, family courts should be strengthened among other things).

Mansehra child girl force to marry with a mansehra family relative, ordered by Jirga

Background: An ideography of violence of human rights is painted in the context of traditional institution of dispute resolution like Jirga in Mansehra, Khyber Pakhtunkhwa through the painting of friends and family of rights who lost their lives. This form of Jirga was called to settle the object of the dispute, the 26 year old man was the accused and his father was a party to this dispute as was the father of this 8 year old girl.

Legal and Ethical Violations: The flagrant ways the verdict had violated Islam's teaching that assail coerce and protect a right of a minor "context. The child marriage, however, was also contrary to provisions of Pakistan's Child Marriage Restraint Act which says it is illegal for child marriages. At the very same time it violated Pakistan's international obligations including on Convention on the Elimination of all forms of Discrimination against Women (CEDA) and Universal Declaration of Human Rights (UDHR) which inter alia guarantee women and children the right to live free from exploitation and force.

Critical Reflection: Yet one example of decision by Jirga is full of such flaw of that traditional system under which justice is dispensed not only with being blind with legal framework but also individual rights. Child forced marriage denies the child their autonomy thus their childhood as they are subject to physical, emotional and psychological and other ills. In other words, it would be a ruling against national law, but also against international commitments, and this would not be allowed to happen without systemic reforms.

Need for Reform

Further, this case also additionally supports the necessity of further strengthening the awareness of rights of women and children and formal legal mechanisms for their protection, however, formal legal mechanisms for protection of women and children are in early development age. The reality is, this is not something being done by authorizing the legal sanction, it is not placed on the statutes but certainly the harmful customs against the human rights still remains in vogue besides the traditional dispute resolution forums like Jirga. Imposition of stricter penalties under the Child Marriage Restraint Act also can be conjunction with deterring until these people are held accountable. Such vulnerable citizens have to be protected through law enforcement efforts to dismantle such entrenched practices, as they cannot alone dismantle practices that have become so entrenched; hence public education campaigns have to complement such efforts. It opens the door, gives you a place to begin catching up systemically on gaps in the system that allow such injustices to continue and makes that possible for society to find the political will, the moral foundation all to promote justice, equality, dignity for all its citizens and especially its most vulnerable.

Compensation through Faislo in Shikarpur

Background: Take the case of Shikarpur, Sindh: the murder of two young sisters and the tragically repeated case of sisters (17 and 18 years old) being abducted, raped, and then killed. Faislo is a system of informal mediation through which all kinds of disputes are referred, just like under the Jirga and Panchayat system. However, they were not able to pursue justice through the formal legal process and instead chose to pursue justice by a customary way by which a Naikmard (community elder) acts as a go between (representative) of the two disputing parties. The accused were settled, however monetarily, the family of victims compensated.

Legal and Ethical Violations: What Islam preaches what the Constitution of Pakistan prescribes and what international human rights command is the very antithesis of this. Key violations. Islam repents the authorization of very wicked crimes such as raping and killing, but does not advise that criminals receive compensations in terms of Money. We need to live with dignity and the protection of the law, and that it is a constitutional right. The rights fail with customary practices such as the Faislo obligatory must. Informal forms of Faislo do not provide victims with the proper trials they are due, nor give perpetrators what they deserve in the form of real accountability. Yet, unless you are a child and have an abusive father, or have resources to exploit loopholes in the law, the Convention on Elimination of all Forms of Discrimination of Women (CEDAW) and the Universal Declaration of Human Rights (UDHR) demand access to justice for victims of gender based violence and Faislo's court didn't.

Analysis: It is determined by the traditional practices how Faislo is applied in the serious crime cases. But their mechanisms are fast, culturally endorsed and, while promising closure for the victim and family, are ineffective because compromise is the highest value they prize, clearing criminals of crimes that should put them in jail. Money goes a long way in ignoring that a traumatic, devastating loss was suffered by the family of the victim, and preventing the future crime. It happens in secret and does this with women often enough for too.

Customary Practices and Razi Nama in Baluchistan

Background: In one reported incident, in Baluchistan the woman was called Kari and she was killed brutally. But the people the police let get away with murder Razi Nama (reconciliation agreements). They are monetary compensation or the promise to oblige the men of the criminal's family to marry the girls of the aggrieved party while criminals get off free. These indicate how such systems depend on informal means for example, the Jirga and Panchayat until their failures force them to abandon the formal adjudicatory process and perpetuate the systemic inequities.

Customary Practices, Criticism and Judicial Precedents

Sajed Ullah v Mst. Shakeela Naz (2016): Justice Qazi Faez Isa further warned that decisions of jirga and panchayat cannot annul Islamic laws. He said specifically that law of inheritance under Islam is final and whatever compromise or arrangement is done through these informal ways are without legally force.

2021 Case: Sakeena Bibi v Secretary Law GOP: Also, if there is any fight or conflict and women or girl are married off as custom for compensation in Swara (or Badal-i-Sulh), then the Federal Shariat Court declared it unconstitutional and un-Islamic. Such practices contravene the injunctions in the Quran and Sunnah and contravene the Constitution of Pakistan, the court ruled.

Zahid Hussain v Mst. Farhana (2019): The court addressed the child marriage with Swara as a matter of family, that is as a 'forced or arranged child marriage.' The court maintained that the customs took place in violation of constitutionally guaranteed fundamental rights.

GOP v National Commission on the Status of Women (2019): The decision has further fuelled the belief that customary practices such as Jirga and Panchayat infringer fundamental rights and the international human rights provisions.

Conclusion

Mediation practices in Pakistan's family dispute resolution show a combination of formal legal methods and cultural tradition based informal methods. Presently, Muslim Family Laws Ordinance 1961 and West Pakistan Family Court Act 1964, both of which are the extant legal framework, give emphasis to conciliation, either by way of arbitration council and pretrial conciliation efforts. But these mechanisms are usually inconsistent, transparent, and least adaptable to the resolution of the conflict amicably. Mediation, an informal practice for dispute resolution, holds great promise for cost effective resolution of family disputes while preserving relationships. Although these methods are recognized worldwide as cost effective and family harmonious, Pakistan's reliance on old forums like Jirga and Panchayat has worried about human rights aberration and legal fairness. The analysis supports a paradigm shift towards structured and regulated FDR practices employing mediation and negotiation as the major means for resolving legal disputes. Family Dispute Resolution Centers would be set up to fill the gap between formal litigation and informal methods of resolution by following known successful practices in countries such as Australia and Malaysia. They would also offer centers to provide a neutral, accessible, and efficient forum in which families might resolve these disputes without the overburdening of courts and the potential effects to the integrity of the family unit. At last, a comprehensive overhaul of Pakistan's family dispute resolution regime is due to guarantee justice, efficacy and concord in conflict resolution within these relations. The success of Pakistan in aligning its mechanisms for the resolution of dispute with international standards and ability to trouble with the needs of its citizens can be achieved by the integration of modern mediation practices while elevating the protection of family relationships.

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