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**Women accessing rights:
Constraints and benefits of non formal legal systems¹**

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Abstract

Women's empowerment is a common feature of development discourse in developing nations such as Pakistan. Strategies employed to promote the concept vary in nature and focus. The success of any given strategy depends not just on how well it is implemented, but more importantly on the stability and nature of power structures of the judicial, political and social systems in question. This paper examines the complex nature of Pakistan's non formal justice mechanisms and women's access to these forums to determine relevant obstacles and actions which may affect women's empowerment initiatives. The research sought to explore the legal arena as a means of empowerment by covering state sponsored institutions, private bodies providing aid and access to the formal legal system, and informal means of resolution. Each forum comes with its own set of functional and bureaucratic problems which are detrimental to the general population, but some of these concerns can further be categorized as gender and class specific. Social pressures, cultural biases and women's economic standing are also factors which fit into this compound equation. However, the most critical problem seems to be the power structures which women inhabit. Although many development strategies make use of the legal arena in the hopes of providing more control to the socially disenfranchised over their lives, it seems most are ill equipped to tackle power dynamics at play. The assertion is, that without recognizing how power is socially constituted, efforts towards providing access to justice will not translate into meaningful transformation in women's lives.

ACRONYMS	
ADR	Alternate Dispute Resolution
ADR	Alternate Dispute Resolution
BNN	Behbood-e-Niswan Network
CBO	Community Based Organization
CSO	Civil Society Organization
DCO	District Coordinating Officer
GJTMA	Gender Justice Through Musalihat Anjuman
MA	Musalihat Anjuman
NGO	Non Governmental Organization
NWFP	North West Frontier Province
PN	Panchayat-e-Niswan
UNDP	United Nations Development Project
WEMC	Women's Empowerment in Muslim Contexts

GLOSSARY	
Wali	Muslim Saint or Holy Person
Darbar	Holy Shrine
Quran	Muslim Holy Book
Watta Satta	A phenomenon where siblings of one family are married off to the siblings of another family. This ensures a mutual hold on the children of both families
Nazim	A chairman of a local government institution, in this case responsible for the administration of the union council.

Introduction

The following, admittedly extreme case highlights the difficult situation of women who are denied rights to which they are legally entitled because of micro to meso-level actors and factors that help keep women disempowered. It also raises the question of which institutions or persons women can approach for justice - the subject of this paper.

16 year old Allah Wasai resides in a small area of Cholistan² called Lal Patel. After her father's demise, her brother, Allah Rakha, having taken his father's place as the head of the family, took on the role of her guardian. Relatives began pressurizing Allah Rakha to think of his sister's marriage just the way his father would have.

One morning Allah Rakha announced that he was visited by a saint in his dream who had asked him to find a *wali*³ for his sister to marry. The futile search for such a suitor for his sister continued for a week before Allah Rakha, once again, proclaimed that he had another dream, only this time the saint informed him that as there was no *wali* left in the world Allah Rakha should find a pigeon sitting on top of a *darbar* (shrine) and marry Allah Wasai to the pigeon because a *wali*'s spirit would be trapped in the pigeon's body. Since there was no living *wali* left, this was Allah Rakha's only option.

Following this second dream, Allah Rakha started making arrangements: distributing sweets as for a regular marriage and of course, capturing a 'suitor' for his sister. Allah Wasai pleaded with her brother not to go through with the wedding but to no avail. On hearing about the peculiar 'marriage', a local organization, Cholistan Development Council (CDC), attempted to intervene and approached the District Coordinating Officer (DCO) but their complaint could not be lodged because there is no law governing such 'marriages'. Allah Rakha, on the other hand, began promoting his sister's nuptials as a holy bond thanks to which his sister had also attained a saint's status. Locals started pouring in, bearing money and gifts for Allah Wasai, asking her to pray for them. For years Allah Wasai remained trapped at home married to a pigeon. However, CDC's unrelenting efforts of trying to convince Allah Rakha to do right by his sister finally paid off in early 2010. Allah Rakha admitted that the marriage was an unfair family tradition and in April 2010 he found a suitable match for his sister and arranged for the two to be married.

International donors, civil society organizations (CSO), women's rights proponents and the government have all proposed/implemented programs and policies focusing on legal reform and the justice system, and have done so in a variety of contexts such as poverty

²Cholistan is the largest of four major deserts in Pakistan
http://waterwiki.net/index.php/Facing_Water_Challenges_in_the_Cholistan_Desert,_Pakistan:A_WWDR3_Case_Study

³ Wali refers to a Muslim saint or holy person although it is also used for guardian.

alleviation, good governance, violence and empowerment. Some have also suggested that poverty alleviation, for example, can be addressed through strengthening legal processes as a means to help increase power and control of the marginalized over their lives. However, most plans/policies engaged in the legal sphere do not have a specific women's empowerment agenda. While some strategies take a top down approach by focusing on amending laws, training lawyers, strengthening state institutions⁴ and increasing women's representation in the political sphere, other initiatives, centered on prioritizing civil society support, work at the grassroots. Using case study analysis this paper attempts to see how, if at all, women access state and non-state channels and forums to assert rights and make decisions for their individual and collective empowerment⁵. Women's experiences of interaction with mechanisms of redress capture the inadequacies of development strategies which overlook critical power structures at micro and meso levels.

Much of the discourse on women's empowerment revolves around the political sphere and the economic field while the legal arena is often neglected⁶. Development strategies mostly focus on the legal arena as a means of achieving economic or governance ends; few intend to empower women. Even when agendas are more centered on increasing control or power, projects tend to be substandard or be poorly implemented for example, the Gender Justice Through Musalihat Anjuman Project in Pakistan. Additionally, legal reforms focusing on development can be problematic because "There is surprisingly little conclusive evidence that reforms in particular substantive areas of law such as property law, contract law and human rights law have been effective in furthering development, however conceived"⁷. The contention of critics is that while some projects may be more beneficial for women than others, they still fail to address the root causes of women's disempowered state. An analysis of women's lived realities in the context of approaching conflict resolution forums, helps to explain women's disempowered condition and illustrates why strategies merely focusing on access to such forums or reforms are insufficient to galvanize change.

Resolution Through Jirga: Swabi

This part of the study was conducted in Swabi, Khyber-Pakhtunkhwa (previously North West Frontier Province), a mere two hours' drive from Peshawar.

⁴ Golub Stephen, Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative, Paper for Carnegie Endowment for International Peace, 2003, p. 5

⁵Wee Vivienne and Shaheed Farida, Women Empowering themselves: A framework that interrogates and transforms, Research Programme Consortium on Women's Empowerment in Muslim Contexts: Gender, Poverty and democratization from the inside out, 2008, P 41

⁶ References can be found in the works of, for example, the United Nations Population Fund @ www.unfpa.org/gender/empowerment.htm, and Stromquist Nelly: The Theoretical And Practical Bases For Empowerment, p. 16.

⁷ Davis E Kevin and Trebilcock J Michael, 'Legal Reforms and Development', *Third World Quarterly* Vol. 22, 2001, P. 21

A *jirga* is essentially a medium of alternate dispute resolution operating at the community level, with local male elders, religious leaders or influentials at the helm. The forum largely exists in the Khyber-Pakhtunwkh (K—P) province of Pakistan. The *jirga* takes cognizance of civil and criminal disputes and decides them by applying the customary laws of the area. ‘Tribes had recourse to the *jirga* to solve their multifarious problems and hence it is now commonly known as the tribal justice system. These problems covered a broad spectrum of subjects from an informal, community-based body that was meant to settle small claims, the ‘*jirga*’, or council of tribal elders, has in Pakistan been allowed to emerge as a powerful force protecting the interests of the powerful.’⁸ A recent report by the Human Rights Commission of Pakistan (HRCP) traces the history of *jirgas*, citing several published sources according to which a British officer, Lt Sandeman, introduced this system of resolving disputes among the Baloch tribes, although it already existed in the Peshawar area. On April 24, 2004, the Sindh High Court imposed a ban on *jirgas* in the Sindh province, but government functionaries, ranging from chief ministers to union council heads or *nazims*, continue to participate in these meetings, according to the list compiled from newspaper reports by the HRCP.⁹ The *jirga* is akin to other forums commonly found across Pakistan that operate under various names such as *faislo*, *panchayat* as well as *jirga*. Unlike the formal criminal justice system, these forums consist of “a settlement and not a trial to prove anyone guilty or innocent”¹⁰ and are fairly infamous due to notorious decisions meted out especially in the name of culture/religion. These forums have a number of fundamental flaws varying from being an illegal adjudicative mechanism¹¹ to condemning defendants unheard.

Research shows that despite its inherent defects the *jirga* remains a popular choice of forum for resolution in Pakhtun communities. Women give preference to the forum because of it is accessible, cost effective and is akin to resolving a dispute at home. With regard to accessibility, it must be clarified that women themselves do not approach the forum however; instead it will always be a male intermediary. So, although accessibility is forwarded as a reason for giving preference to the *jirga*, in reality women almost never approach the forum directly. Similarly, WEMC research conducted in Baluchistan also shows that women are not allowed to directly participate in the resolution process involving the *wadera*, or tribal leader, to get a problem resolved unless a woman’s husband allows her to participate¹². For women, resolution is dependant upon a willing male family member to table her dispute in a forum falling out of her reach. An earlier study on women, state and politics¹³ that looked at women’s views about non-formal institutions supports the findings of the WEMC case study. The study points out that if and when women share their problems with someone, it will most likely be a family

⁸ Omar Sial and Sahar Iqbal, A Legal Research Guide to Pakistan @

<http://www.nyulawglobal.org/globalex/pakistan.htm>

⁹ Omar Sial and Sahar Iqbal, A Legal Research Guide to Pakistan @

<http://www.nyulawglobal.org/globalex/pakistan.htm>

¹⁰ Shaheed Farida et al, Shaping Women’s Lives; Laws, Practices and Strategies in Pakistan, Shirkat Gah Lahore, 1998, P.227

¹¹ Talibanisation and Poor Governance; Undermining CEDAW in Pakistan, Shirkat Gah Lahore, 2007, p.5

¹² WEMC FGD on Family laws conducted in Baluchistan; Female Report dated 04-09-07

¹³ Shaheed Farida, Imagined Citizenship: Women, State and Politics in Pakistan is a report published by Shirkat Gah

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member, such as the husband or parents in law. In the event that this fails, a wider circle of family authority may be consulted¹⁴. One group of women specifically stated that men take the dispute forward and if they are unwilling to do so, there is nothing a woman can do about it¹⁵. “For many women this demarcates the outer limit of approachable forums.”¹⁶

Members of community based organizations (CBOs) point out that women’s mobility is circumscribed by cultural pressure to maintain ‘honor’. The impact of this circumscribed mobility is that women not allowed access to institutions of education, health and law tend to view these spheres as having little relevance in their lives. It is interesting to note that research in other field sites indicates that religious schooling for women seems to be socially acceptable and religious institutions are more accessible to women than regular schools¹⁷. Women who were forced into marriage were particularly subject to stringent restraints. For example, after her parents’ divorce, Yameen¹⁸ who was 16 years old at the time of interview, had moved into her maternal uncle’s house with her mother and sister. In a series of tragic events Yameen’s mother and sister were sold into marriage by her uncle to men in Punjab for the equivalent of USD 1,242 and USD 621 respectively. At the age of 15, Yameen was also forced by her uncle to marry a Punjabi man old enough to be her father. Not only did her husband beat her every chance he got, he did not allow her to leave the house because he thought she was having an affair with someone. Effectively this meant that Yameen was completely cut off from all resources which, potentially, could have been of any use to her.

Importantly, is even where women break through existing control mechanisms they do not approach legal or adjudication institutions directly or by themselves. For instance, when Yameen’s circumstances became unbearable she did somehow manage to run away from her marital home in Punjab and find her way back to her natal family in Swabi, KP. Reunited with her father, she asked him to take her case to the Jirga to obtain dissolution of marriage. Only when this forum failed to rule in her favor did her father approach a CBO to help him take his daughter’s case to the formal court system. Yameen’s action of running away must have taken immense courage, but even after having taken such a drastic measure she depended on her father to take her matter forward.

While women’s access to resources is obstructed for the most part, in many instances women themselves refrain from taking action turn to men for help. Additionally, another reason for inaction is the opportunity cost involved. Development approaches such as Legal Empowerment stress on ‘enhancing people’s knowledge and skills through

¹⁴Shaheed, Farida, *Imagined Citizenship: Women, State and Politics in Pakistan*, Shirkat Gah Women’s Resource Center, 2002, p.81

¹⁵Shaheed, Farida, *Imagined Citizenship: Women, State and Politics in Pakistan*, Shirkat Gah Women’s Resource Center, 2002, p. 81

¹⁶Shaheed, Farida, *Imagined Citizenship: Women, State and Politics in Pakistan*, Shirkat Gah Women’s Resource Center, 2002, p. 81

¹⁷ WEMC Research conducted in Baluchistan, Final Roman Urdu Documents, 2010

trainings,¹⁹ but ethnographic data shows that even where women are aware of rights they may not claim these because the projected cost of doing so is deemed to be far too high. During the course of research, a woman who had attended legal awareness trainings boasted about her legal knowledge. However, when it came to taking a decision between helping one daughter escape a violent marriage and another daughter's possibly unhappy future as a consequence, she chose the former. This relates to the custom of exchange-marriages when two people of a family are married to people of another family (watta-satta). The case was that of Basera, a 15-16 year old, who was married to her elder sister's brother-in-law because her parents feared that, if Basera's nuptials did not take place, their elder daughter would be sent back home. The 'sending back' of a daughter is considered a serious social stigma. Under constant threats from their elder daughter's in-laws, Basera's parents gave in so as to save their elder daughter's marriage.

Access to the justice sector in Afghanistan displays similar problems to those confronted by women in Pakistan in terms of dominant traditional dispute resolution forums and women's inaccessibility to justice mechanisms. UNIFEM states that, "Despite many efforts, legal services have remained difficult to access in the particularly remote areas of Afghanistan. It is in these rural areas that a lack of legal knowledge and access to legal aid exacerbates the conditions where violence against women occurs. The Women's Access to Justice unit promotes women's empowerment by ensuring that women have equal access to the law. This is done through advocacy on policy and legislative issues within the government."²⁰ Legal aid is provided through Legal Aid Referral Centers and through Non Governmental Organization (NGO) partners. This approach illustrates a major flaw in access to justice policies. Women cannot have equal access to the law when their mobility – which would enable such access - is restricted by players in the private sphere.

The research showed that women's cases taken to the Jirga involved women being subject to varying degrees of physical and psychological violence but that the verdict in each case was the same, i.e. that the concerned women were not to be a burden on their parents and must return to their husbands at all costs. The Jirga unrelentingly insisted on reconciliation regardless of whether the case involved a 13 year old married to a man her father's age, or an underage girl forced to raise stepchildren older than she. Curiously enough, despite such decisions, women interviewed insisted that the Jirga is an effective and useful forum. Shaheed (2002) points out that systems/institutions which are seen to operate are considered to be useful because such forums are familiar, accessible and relatively cheap in terms of finance and time. Accessibility is a primary concern for 'litigants' i.e. those approaching non-formal institutions. Hence the Jirga may be considered as an effective forum because it is the most easily accessible forum, even if such access is via the medium of male representatives. It is interesting to note that Shaheed mentions that although the Jirga is still "generally viewed positively", during discussions women underscored that it was discriminatory in character according to both

¹⁹ Golub Stephen, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Paper for Carnegie Endowment for International Peace, 2003, p. 26

²⁰ <http://www.unifem.org/afghanistan/prog/GJ/justice/index.html#group>

gender and class²¹. In the present study, women expressed similar sentiments by stating that the formal legal system was more beneficial for women than the Jirga because the judges are not biased all while defending the Jirga and praising its effectiveness and importance as an institution. It appears then that although women recognize the intrinsic flaws of these forums, they are defensive about cultural apparatuses, especially when outsiders call into question its value.

In the event that a Jirga fails to provide a desirable solution, aggrieved parties may turn to the court. Provided there is sufficient support from the family, those without sufficient funds approach CBOs providing legal aid. Women's views about the formal legal system were consistently positive because they had obtained decrees in their favor. However, women were still excluded from the resolution process because legal cases were handled by male family members. Even approaching the CBO on their own is difficult, if not impossible, for women. Although it is unclear from research, it can not be ruled out that approaching courts or CBO's could prove to be important opportunities for women to enhance their reflective capacities. The WEMC framework recognizes and highlights the significance of opportunities where such capacity can be exercised so that eventually action for empowerment can be taken²². However, formal/informal legal spaces are beyond women's reach. Although there is no guarantee that women will use these opportunity to reflect, there is a possibility that engaging in the resolution process can be the catalyst that triggers questioning and challenging power dynamics. Unfortunately, control over women's mobility and access to resources by actors with power is so strong that most women are unable to make use of the legal arena as a space which can enhance their reflective capacity and direct actions for empowerment.

Post-resolution of the immediate problem at hand, women's lives mostly remain unchanged. Women said they feel empowered now that they are in control of their lives and can make their decisions on their own. Curious to know more about the parameters of such empowerment, we asked one respondent whether she could choose her own spouse, for instance. Her response was to break into laughter and say "never". An adult woman's right to decide who she marries is recognized in landmark cases in Pakistan, but ethnographic field data from WEMC research in Punjab, Baluchistan and KP (NWFP) consistently indicate that decisions pertaining to marriage are taken by the head of the family or elders, and the bride to be is rarely consulted²³. FGDs conducted in KP(NWFP) show that non-compliance with parents' desires leads to threats of violence.

Admittedly this research is a first exploration of the issues at hand. It is not possible to make any conclusive statements about women's empowerment through the jirga based after a review of only a few cases. What is clear, however, is that women's direct access to this forum is usually obstructed. This raises questions about those cases where women

²¹ Shaheed, Farida, *Imagined Citizenship: Women, State and Politics in Pakistan*, Shirkat Gah Women's Resource Center, 2002, p. 89

²² Wee Vivienne and Shaheed Farida, *Women Empowering themselves: A framework that interrogates and transforms*, Research Programme Consortium on Women's Empowerment in Muslim Contexts: Gender, Poverty and democratization from the inside out, 2008, p. 19

²³ WEMC Research conducted in Punjab, Baluchistan and NWFP, Final Roman Urdu Documents, 2010

do participate directly in the resolution process as ‘litigants’: Does personal participation lead to initiatives for women’s empowerment? Would women’s participation in non-formal decision-making forums such as jirgas enhance women’s reflective capacity? Of course participation is separate from the issue of whether the jirga eventually decides a case in a woman’s favor or not. Is it possible that women’s direct contestation in this arena could ignite initiatives of empowerment?

Another area that needs further research is people’s faith in informal adjudicative bodies and possibly changing tribal systems. Research shows that women perceive the formal court system to be unbiased and feel that they can only get justice from this system. This and the fact that more people are now turning to courts may be an indicator of a weakening faith in informal resolution mechanisms and a desire for something more than just reconciliation. A research participant in a focused group discussion in Balochistan explained that tribal systems were slowly changing because people have stopped approaching the local Sardar²⁴ because they no longer trust him²⁵. Research in different field sites shows that all informal resolution forums (e.g. Jirga and Musalihat Anjuman) focus on reconciliation but altering perceptions towards these forums signals a shift: Do people now seek justice rather than merely dispute resolution or reconciliation?

Musalihat Anjuman: Bahawalpur

A fairly recent venture in Pakistan, called Gender Justice Through Musalihat Anjuman, supported by the United Nations Development Programme (UNDP) aims to provide informal dispute resolution at the community level through negotiated settlements through the consultative Musalihat Anjumans (MAs). The MAs are intended to provide free and easy access to a resolution mechanism because the formal legal system is overburdened and weak. The project has the following key objectives: (1) to provide women victims of violence and alternate mechanism, whereby they can obtain gender justice; (2) to build the capacity of Musalihat Anjumans for dispensing gender responsive justice; (3) to enhance public engagement with utilization of the services of Musalihat Anjuman; (4) to promote women’s awareness of their legal rights and men’s active participation in ending gender-based violence²⁶. The mandate of these alternate dispute resolution (ADR)²⁷ forums includes resolving disputes pertaining to domestic violence, child abuse, marriage to the Quran, watta satta²⁸, forced marriages, forced labor etc. as well as other small issues, e.g. disputes over water allocations. This study particularly focused on the MAs in Bahawalpur where the project was piloted and is also claimed to be the most successful project site by those implementing the project.

²⁴In India, Pakistan and Afghanistan, a military chief or leader. @ <http://dictionary.reference.com/browse/sardar>

²⁵ WEMC Research conducted in Punjab, Baluchistan and NWFP, Final Roman Urdu Documents, 2010

²⁶ Gender Justice through Musalihat Anjuman @ http://www.gjtmap.gov.pk/project_brief.php

²⁷ The term “alternate dispute resolution” or “ADR” is often used to describe a variety of dispute resolution mechanisms that are short of, or alternative to, full scale court processes.

²⁸ This is a phenomenon where siblings of one family are married off to the siblings of another family. This ensures a mutual hold on the children of both families

ADR services are an integral part of some development approaches such as Legal Empowerment²⁹, and although such programs are beneficial for a number of reasons including low costs and the informality of the legal process, they can prove to be ineffective and even counterproductive where the community which they inhabit and institutions they form part of, suffer from deficiencies which macro level policies and development strategies do not take into account.

The WEMC research framework stresses on the importance of acknowledging the role of the meso level and the disempowering power dynamics at play at this level because:

‘While excluding women from decision making, their workings have repercussions for women’s lives and potential empowerment initiatives. Located between women and the state these systems have a more immediate control over women’s lives than the more distant state institutions’³⁰.

The framework explains that there is a presumption that macro level policies/programmes automatically flow through the meso level unimpeded. This belief fails to recognize the obstruction caused by actors and factors at the meso level that can render policies/programmes ineffective. The Musalihat Anjuman is one such programme functioning at the meso level which, as research indicates, is not only failing to deliver but also shows a potential for perpetuating and reinforcing archaic norms disadvantageous for women.

The MA comprises of a panel of three Musaleheen, including a woman, notified at each Union Council level after nomination from the Insaaf Committee. These MA’s are constituted to resolve issues through mediation, arbitration or reconciliation³¹.

Research looked at members of the MA committees and women from the community in which was operating. Discontented committee members spoke about their experience of working with the body and impugned it with allegations of being weighed down by internal politics. The selection process for the Anjuman and appointments have become a source of discord in the committees. While technically, members should be nominated by the Insaaf Committee, appointments are in fact made by the Union Council Nazim³². One member of the committee explained, “All these selections are political. The Union Council Nazim always brings in his people. Whichever party enjoys majority will form its committees and appoint its own people. None of this is done on merit.” One committee was dissolved six months after its inception because the Nazim’s selection to head the committee was opposed by other members. Respondents were of the view that appointments were political and unqualified. In district Yazaman, however, respondents claim that the power the Nazim exercises is unlike anything they have ever seen before.

²⁹ Wee Vivienne and Shaheed Farida, Women Empowering themselves: A framework that interrogates and transforms, Research Programme Consortium on Women’s Empowerment in Muslim Contexts: Gender, Poverty and democratization from the inside out, 2008, p. 26

³⁰ Shaheed Farida, Empowerment and Development planning: forced South Asian marriage?, 2009, p. 17

³¹ http://www.gjmap.gov.pk/about_project/index_about_project.php

³² http://www.gjmap.gov.pk/about_project/index_about_project.php

He has even been able to manipulate MA decisions which were not to his liking because, as explained by a panel member, “The Anjuman is under the Nazim’s complete control and many issues go unresolved because the Nazim asks us to let the issue go.”

The MA rules state that the committee is to comprise of a panel of three including a woman. Research suggests however that although women are being recruited to the committee their participation is negligible. When an advocate, also a member of the MA, asked his female co-panelist for her opinion in a particular case, her reply to the lawyer on the panel was, ‘you are a lawyer, you know better’. Additionally, with only one woman and two men on the panel, the likelihood of the voice of the single woman being drowned out by the men increases. Also, it is unclear how the project ensures that committee members are proponents of women’s rights and have not internalized stereotypes which deny women the very liberties the Anjuman is meant to protect.

Although MA committees were formed after a social audit³³ indicated that violence against women was a serious problem, those interviewed say committees do not receive cases of violence. In fact, committee members claim that the MA entertains an insignificant number of cases each month and, that cases received are usually divorce cases referred to them by the secretary of the Union Council when a party files for divorce since a reconciliation process is required³⁴. However, the Gender Justice Through Musalihat Anjuman (GJTMA) says otherwise. According to a CBO member in Multan who has conducted research on MA’s, despite having sufficient means, the program seems to be wasting resources and has been unable to reach disadvantaged groups. One of the reasons why the committee may be underutilized is the fact that its services are not publicized in its respective constituencies. However, this fact is immaterial when considering the actual reasons why women, in specific, do not approach this forum.

The GJTMA claims the MAs to be an important forum for women because women do not resort to courts out of fear of violence for taking action. However, there is no system in place at the Anjuman which guarantees protection to women so that, in this regard, approaching the Anjuman is no different from approaching the formal court system. Although direct participation and communication between participants may seem to be an obvious feature of this program, in reality women rarely come to the negotiating table. They are mostly negotiated for. This may not necessarily mean that women are forced to stay away, but that they themselves choose not to become a part of the conciliation process, possibly as a result of internalization of suppressive cultural norms. It has been noted that it would be counterproductive to use such programs where cultural norms are

³³ The Anjuman was founded after the Social Audit on Abuse Against Women (SAAAW) identified violence against women as a serious problem and recommended the formation of an “alternate mechanism where they can obtain gender justice”

³⁴Section 7(4) of the Muslim Family Laws Ordinance 1961 states that within thirty days of the receipt of notice (of pronouncement of divorce) to the Chairman of the Union Council, the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

discriminatory or biased and would be perpetuated³⁵. Brown, Cervenak and Fairman for example state that:

“Before developing an ADR program it is critical to determine whether ADR is appropriate for meeting development objectives or whether establishment of rights, strengthening of the rule of law, and/or creating a more even balance of power among potential users should precede the use of ADR. If ADR is appropriate in principle, program designers must assess background conditions to ensure that ADR will be feasible in practice. These conditions include political support, institutional and cultural fit, human and financial resources and power parity among potential users”³⁶.

Watta Satta³⁷ is a cause for concern in the Bahawalpur area. Women complain that such marriages are complicated and coercion or even violence is used on one couple because the other couple is unhappy. Sometimes a happy couple is forced to get a divorce because the other watta satta couple is unhappy. Women say that they can't complain because they are pressurized in the name of honor. Research indicates that before taking action women assess opportunity costs which might include upsetting the family structure and jeopardizing their place within the household or society. One woman from Bahawalpur stated in a focus group discussion that no matter how violent her son in-law might be, she would not allow her daughter to come back home because society would not accept her. Such considerations are major contributing factors to women's inaction. No amount of trainings or availability of resolution forums and administrative agencies or local governments or law reform will be enough if women continue to feel that the inevitable result of claiming rights is social rejection.

Community members are mostly unaware of the committee's existence. Those who found out about it in the course of the research process were of the view that because it was operating at the Union Council level, it was probably controlled by the Nazim and so, would be useless. Committees working for, or under the Nazim are tarnished with allegations of being biased, corrupt and ineffective. In contrast, the formal court system is viewed positively: women feel that they can only receive justice from the judiciary because that is the only forum where their voices are heard. This view was common across field sites in this case study. A recent survey conducted by Transparency International Pakistan on national corruption perception shows that in 2006 the judiciary ranked number 3 on the list of the 10 most corrupt sectors, whereas in 2009 there has been an improvement and it is now ranked at number 7³⁸. This perception seems compatible with women's perception of the judiciary. Nevertheless, it should be noted that no matter which forum of dispute resolution is under discussion, women do not feel

³⁵ Brown Scott, Cervenak Christine and Fairman David, *Alternative Dispute Resolution Practitioners Guide*, Center for Democracy and Governance, Washington, USA, 1998, p. 12

³⁶ Brown Scott, Cervenak Christine and Fairman David, *Alternative Dispute Resolution Practitioners Guide*, Center for Democracy and Governance, Washington, USA, 1998, p. 6

³⁷ This is a phenomenon where siblings of one family are married off to the siblings of another family. This ensures a mutual hold on the children of both families.

³⁸ National Corruption Perception survey: TI Pakistan, Transparency International Pakistan, 2009, p. 37

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they have access to these mechanisms because of the strains put on their mobility by cultural/social pressure.

Research uncovered that committee members have received either none or only one of the mandatory legal trainings supposed to be carried out under the programme. As a result, the Anjuman often functions in a manner that is no different from a local Jirga adjudicating as it wills. Another manifestation of the MAs' Jirga-like character is the power of Nazims to influence decisions. Respondents stated that in some spousal disputes, the Nazim intervened demanding that the panel members send the woman back to her marital home. This was done at the behest of the husband who has contacts within the Union Council and levers political muscle to force his wife to return to him. The committee primarily focuses on reconciliation despite the fact that its mandate is to negotiate and mediate rather than merely reconcile. Perhaps this is not surprising seeing that the word 'musalahat' itself means 'compromise' and that is what members of the Anjuman center on. In the interviews, on being probed by the research team, only one member of the committee very reluctantly said that should violence at home be persistent then the committee would not send the victim back home.

Stephen Golub proposes the Legal Empowerment³⁹ model as a more holistic approach for integrating law and development than the Rule of Law orthodoxy⁴⁰ model commonly used by international aid agencies. Aside from its focus on civil society, the Legal Empowerment model pays attention to administrative agencies, local governments and informal justice systems instead of just reforms in law or the judiciary alone. However, investing in projects such as the Anjuman comes with its own set of problems. Within the project corruption, biased judgments and lack of commitment render it weak and ineffective, while external problems include women's restricted access to the forum. Ultimately, the project proves to be a disappointment because its design is ill-equipped to tackle these problems.

Addressing the issues of legal reforms and development, Kevin Davis and Michael J Trebilcock believe that "evidence supports the notion that reforms designed to improve enforcement and administration of laws are likely to achieve positive and significant results"⁴¹. They quote aggregate studies conducted/sponsored by, for example, World Bank on the importance of predictable judicial enforcement, to support their claim and conclude that "the moral seems to be that the most critical reforms are those that address defects in the enforcement and administration of law as opposed to the contents of substantive legal rules"⁴². The significance of effective enforcement and administration of law can not be denied, but even this approach does not account for power structures in women's lives which deprive them of institutions that enforce and administer laws.

³⁹ The use of legal services and related development activities to increase disadvantaged populations control over their lives.

⁴⁰ Rule of Law Orthodoxy is a top down, state oriented approach through which development agency personnel design and implement law oriented projects in cooperation with high government officials.

⁴¹ Davis E Kevin and Trebilcock J Michael, Legal Reforms and Development, Third World Quarterly Vol. 22, 2001, P.30

⁴² Davis E Kevin and Trebilcock J Michael, Legal Reforms and Development, Third World Quarterly Vol. 22, 2001, P. 32

A guide on ADR published by the Center for Democracy and Governance notes that while ADR can be useful and satisfactory to overcome the high cost and long delays involved in the formal process, it would be counterproductive to use the program where cultural norms are discriminatory or biased and because these are likely to be perpetuated by such a system⁴³. Research suggests that the Anjuman merely increases the chances of perpetuating existing oppressive norms. Because these practices and ideas are embedded in the community, the Anjuman operates according to these principles, especially since the formal training members were to receive in the law seems has either been very cursory or not carried out at all.. The dynamics operating in women's lives at the meso level in the private and public spheres need to be fully assessed and taken into account before formulating macro level programs such as this, for . "Without acknowledging and addressing these power structures and dynamics, it is insufficient, even futile, to direct efforts at formulating ever more perfect policies at the macro level"⁴⁴

Panchayat-e-Niswan: Faisalabad

Behood-e-Niswan (BNN) is a community based organization (CBO) operating in Faisalabad, Punjab. Over the years, BNN has launched various women's rights campaigns, a legal assistance unit and an alternate dispute resolution program. Their combined legal aid and resolution services have been a success. When the organization initially expanded its work to cover the legal arena more people began approaching them. Women found it easier to access the all-female BNN. Men who had opposed the organization initially later became more tolerant because of the usefulness of BNN's assistance unit which provides conciliatory and legal services. BNN's success can also be credited to the popularity of its founding member, Shazia Ghulam Nabi. Being well-respected in the community and also well-connected, Shazia has been able to achieve a lot that others could not have .

While most of its work is conventional in nature, BNN's introduction of a local adjudicative body for women, known as Panchayat-e-Niswan⁴⁵, made it stand out. This body is forwarded as the polar opposite of the traditional Panchayat run by a committee of 'five men' because the PN is run by women, for women. BNN's successful institution of the Panchayat-e-Niswan as a dispute resolution forum run by women is all the more noteworthy given an environment where there is immense hostility towards women desiring to work outside their homes or even to leave the home to receive assistance. BNN members recall that they faced opposition from their families and their community when they first started out. Each time they left for work people would pass comments about how they were dressed up in new clothes and were probably having an affair. Their husbands also questioned them about the kind of work they were getting involved in.

⁴³ Brown Scott, Cervenak Christine and Fairman David, *Alternative Dispute Resolution Practitioners Guide*, Center for Democracy and Governance, Washington, USA, 1998, p. 12

⁴⁴Wee Vivienne and Shaheed Farida, *Women Empowering themselves: A framework that interrogates and transforms*, Research Programme Consortium on Women's Empowerment in Muslim Contexts: Gender, Poverty and democratization from the inside out, 2008, p. 23

⁴⁵ A Panchayat is a local adjudicative body run by male tribal elders. Niswan in Urdu means women.

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Many women would simply lie and say that they were headed to Shazia's to talk about household problems. Despite these obstacles women were determined to work with Shazia and they did. However, probing revealed that BNN was already operating an informal dispute resolution mechanism and all it was missing up till 1999 was a name. The Panchayat follows the same procedure which the organization used to previously and their primary focus remains reconciliation.

As observers, a serious cause for concern amongst the research team was that traditional Panchayats that form part of the parallel legal system have been opposed by women's rights advocates for passing arbitrary anti-women decisions and dispensing their own 'laws' over and above the state laws. The name of the forum is misleading however because the PN operates very differently from traditional Panchayats. The PN does not apply its own law or dispense arbitrary decisions. Rather it operates as a system of alternate dispute resolution, providing negotiation, mediation and reconciliation for women in accordance with the state laws and with a perspective of women's rights. As the forum's popularity increased, the BNN even appointed lawyers to represent their 'clients'. Further, the PN focuses primarily on reconciliation and local remedies. Should a mediated settlement fail to take place, the case in question is taken to the formal court for resolution. This is may be one reason why there was no resistance to PN in the community. However, the main reason seems to be that BNN has been extra careful about not using the name "Panchayat" in the community so as not to be rejected, slandered and ridiculed. They do, however, use the name Panchayat-e-Niswan to describe their work to other CSOs.

Regardless of the name it may be known as, the PN has proved to be an important forum for the community. Women do not hesitate to approach BNN because they are comfortable dealing with women and can discuss their problems openly. Men also see the benefit in getting a resolution through BNN/the PN because, not only are services free of cost but confidentiality is also ensured. The drawback of approaching the PN is that it, like other informal resolution forums, primarily focuses on reconciliation. That being said, the organization does not force reconciliation and it always takes what the woman desires into account. It should be noted that 'reconciliation', even if forced, is a common theme across field sites and research suggests that this is not just limited to Muslim communities. WEMC research in Punjab⁴⁶ and Balochistan⁴⁷ shows similar patterns. FGDs in Punjab show that reconciliation is valued and promoted as a solution amongst both Christian and Muslim communities.

BNN's Panchayat-e-Niswan can be contrasted with the Musalihat Anjuman which is also an ADR mechanism but has been unable to meet with the same kind of success. A couple of factors seem to be important. First the environment is different: BNN works in the city of Faisalabad, Pakistan's third largest industrial centre, where women have greater mobility than in Bahawalpur. At a basic level this means women have easier physical access to the PN. Second, the BNN has a strong reputation for positive action. Evidence of PN's success is in the fact that even the Union Council Nazim sends the committee

⁴⁶ WEMC Research conducted in Punjab, Final Roman Urdu Documents, 2010

⁴⁷ WEMC Research conducted in Baluchistan, Final Roman Urdu Documents, 2010

cases for resolution. The organization has made a name for itself not just in the community, but even at court where members claim they do not face problems because they are taken more seriously by everyone once they find out that BNN is backing a case. In contrast the Anjuman is essentially a state forum and because local governments are perceived to be corrupt and ineffective, people refrain from approaching it. Third, for women in specific, accessing the PN is less problematic because, unlike at the Anjuman, they do not have to deal with men here.

Discussions with women from the community show that women view BNN as a space where they can meet, discuss their problems and find solutions. The significance of opportunities to reflect collectively as an important ingredient for enhancing cognitive ability and the capacity of such ability to catalyse empowerment initiatives has been underscored in the WEMC research framework (RF)⁴⁸ which notes that the journey of empowerment is one that women must undertake themselves for there to be a transformation of unfavorable power relations⁴⁹. Research indicates that in most cases undertaken by BNN's PN, parties had been able to reach an agreement but that when reconciliation was affectuated and even in instances where legal resources had been accessed and legal battles against adversaries won, those concerned interviewed were unable to disrupt power relations. Causing a shift in power relations was never on the agenda. All that claimants hoped for was a resolution to the immediate problem at hand. Research suggests that while in some cases this may emanate from an internalization of societal norms, in others women had considered the opportunity cost of taking action and decided against it. Hence on the one hand the sentiment among most women interviewed was that claiming rights was disrespectful and anyone who did so would be unable to face God in the afterlife⁵⁰; on the other were women who were of the opinion that because women have no one to turn to or no place to go, demanding rights or expecting change in the household was impracticable. Thus, even the most successful informal dispute resolution forum in the community has been unable to galvanize empowerment initiatives. Consequently, even where a resourceful space is made available and utilized, it does not necessarily inspire or enhance reflection which may subsequently lead to transformative initiatives. The internalization of norms and/or considerations of consequences are further obstacles which remain unaddressed by projects and strategies prioritizing access to legal services, judicial restructuring or legal reform.

Conclusion

Various studies highlight 'the dilemma of a people caught between disintegrating traditional forums and ineffective and often corrupt state institutions. Failing a resolution within the family, a hierarchy of decision making and dispute resolution forums comes

⁴⁸ Wee Vivienne and Shaheed Farida, Women Empowering themselves: A framework that interrogates and transforms, Research Programme Consortium on Women's Empowerment in Muslim Contexts: Gender, Poverty and democratization from the inside out, 2008, p. 19

⁴⁹ Wee Vivienne and Shaheed Farida, Women Empowering themselves: A framework that interrogates and transforms, Research Programme Consortium on Women's Empowerment in Muslim Contexts: Gender, Poverty and democratization from the inside out, 2008, p. 19

⁵⁰ WEMC FGD on Legal Empowerment conducted in Faislabad; Female Report dated 19-03-09

into play in which women progressively get left out'⁵¹. Much too often development strategies, even those proposing legal empowerment, overlook the role played by the power dynamics that disempower women. Even frameworks analyzing 'power' can fail to address/consider its distribution within society⁵² and the power dynamics of gender, or of race, class, or any other force of oppression⁵³. Ultimately, efforts to increase power and control of the marginalized over their lives through judicial development, legal reform and access to legal services coupled with development activities yield less than desired results.

Development projects engaged in the legal sphere, more often than not, have economic objectives as their overarching goals. Institutions such as the World Bank promote market based development which includes reforms such as training lawyers and judges, formulating contract and property laws⁵⁴. Although independent judiciaries and functioning courts are important for human rights, these reforms are implemented basically to facilitate the functioning of markets rather than in support of rights. Golub criticizes the Rule of Law agendas for excluding support to civil society institutions and building the legal capacities and power of the poor⁵⁵. Others say that using the ROL agenda to further the functioning of markets is an opportunistic application of the Rule of Law reform⁵⁶. The problem with such programmes is that they do not address the heart of the problem. Creating perfect legal systems or introducing flawless legislation does not help to transform power structures at the meso and micro (i.e. family) levels. Even projects specifically focusing on legal empowerment, for example proposed by the Asian Development Bank⁵⁷ aimed to assist marginalized groups to increase power over their lives or those proposing land adjustments and land reforms⁵⁸, fail to adequately deal with hurdles caused by power structures which essentially keep women from utilizing this space to their benefit. So the question is, are these wasted spaces or can their use by women facilitate empowerment? The answer to this question is unclear at this point but what research does suggest is that women have far more faith in the formal legal system than they do in informal forums. Women claim that they can only get justice from the judiciary because it is unbiased. Pakistani society is dominated by the nuclear family and this concept has proved to be remarkably resilient. The kinship system dictates that family disputes be resolved at home, and matters be settled by male members of the family. But the fact of the matter is that women are increasingly beginning to believe that they're only hope for justice is the formal court system and this may just be an indicator of their weakening faith in relational organization which has always been around to

⁵¹Shaheed, Farida, *Imagined Citizenship: Women, State and Politics in Pakistan* Shirkat Gah Women's Resource Center, 2002, p. 81

⁵²Rowlands Jo, *Empowerment Examined*, Oxfam UK and Ireland, 1995, p.101

⁵³Rowlands Jo, *Empowerment Examined*, Oxfam UK and Ireland, 1995, p.101

⁵⁴Harris Victoria, *Consolidating ideology in law? Legal and Judicial reform programmes at the World Bank*, 2007, p1

⁵⁵ Golub p.5

⁵⁶Harris Victoria, *Consolidating ideology in law? Legal and Judicial reform programmes at the World Bank*, 2007, p.1

⁵⁷ <http://www.adb.org/Documents/Reports/Legal-Empowerment/chap04.pdf>

⁵⁸ Ghani Ashraf, *Commission on the Legal Empowerment of the Poor; Economic Development, Poverty Reduction and the Rule of Law*, p 2-3

provide them with dispute resolution. The question is, is it possible that women want more than reconciliation? Is it possible that they now seek justice?

WEMC's Research Framework points out that women's access to and control over resources, which it suggests are building blocks of power, is blocked by disempowering forces⁵⁹ and that 'Deprived of these, women are severely hampered when they wish to exercise agency as autonomous persons'⁶⁰. Although legal forums are not explicitly identified in the WEMC framework as a resource, there is every reason to view them as such. Research suggests that women are denied access to this resource due to restrictions on mobility and, excluded from direct participation, are obliged to rely on being represented by intermediaries. Even where legal forums are used 'for' women, they are not used 'by' women because of hindrances caused by power structures. While grievance mechanisms may be available, women are unable to avail these services on the one hand while development/empowerment strategies do not take into account these barriers. The intention here is not to suggest that removing or sidestepping these barriers will lead to empowerment, instead the assertion is that only if these dynamics are dealt with, will the environment become conducive to empowerment. In conclusion then,

"The abilities ascribed to a particular set of people are to a large degree socially constructed. Empowerment must involve undoing these negative constructions, so that the people affected come to see themselves as having the capacity and the right to act and have influence."⁶¹

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