

APPRAISAL OF INFORMAL JUSTICE MECHANISM IN PAKISTAN: CASE STUDY OF DISPUTE RESOLUTION COUNCILS IN THE DISTRICT CHARSADE AND DISTRICT NOWSHERA, KHYBER PAKHTUNKHAWA

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Abstract

This study is aimed at to appraise the effectiveness and working of informal justice mechanism in the two districts of Khyber Pakhtunkhwa, Pakistan. Therefore, an effort is made to study the working of Dispute Resolution Councils (DRCs) in the District Nowshera and the District Charsadda as an alternate justice system. The main aim of the study is to assess and check the intervention level of informal structure of DRCs and it also identifies areas for improvement in access to justice and gaps in the justice delivery. By using Restorative Justice Theory, it argues that informal justice mechanisms in traditional societies repair, restore, reconcile, and reintegrate the offenders and victims to each other and to their shared community.



INTRODUCTION

Research Question

How affective are the alternate justice mechanism in the conflict-ridden Pakhtun society?

Methodology

To understand the working and effectiveness of Dispute Resolution Councils as Alternate Dispute Resolution mechanism, it has employed a combination of qualitative and quantitative approach for the evaluation of DRCs' performance. Primary data is collected from qualitative technique of using interview tool and compiled quantitative data of cases resolved to assess the performance of seven (7) Dispute Resolution Councils (DRCs) in the Charsadda and Nowshera districts of Khyber Pakhtunkhwa (KP). For interviews, a purposive sampling technique is used, hence face-to-face interviews with seven DRCs' Chairmen and

Secretaries, Deputy Superintendent Police Charsadda and Additional Superintendent Police Nowshera is conducted. Thematic analysis of the interviews conducted is done to gauge the effectiveness of DRCs in respective districts and identified lacunas and challenges to the alternate dispute resolution mechanism. In addition, to assess the current state of the DRCs, data available with DRC offices, information shared by the members of civil society and academia is reviewed. Moreover, interviews with several recipients of the DRCs' services are also conducted and it is stopped at tenth respondent on reaching the saturation point. These two main districts of Khyber Pakhtunkhwa are selected as model districts while looking at the area of coverage in terms of the province.

Interview Tool

Questions for Police/DRCs Members/Service Provider

How far the councils in your area are effective in resolving disputes?
 How many cases and what kind of cases have been referred to forum for dispute resolution?
 How many cases are successfully dealt by the DRC? And what type of cases have higher success rate?
 What mechanisms have been put in place for the referral of cases to the DRCs and how can they be improved?
 To what extent do you think litigants are content with the resolution of their disputes?
 Are women and minorities are adequately represented in the district's DRC?

What types of cases are left unresolved by DRCs and what are the hurdles faced in the implementation processes?

Questions for Beneficiaries and Complainants

How effective are the councils in resolving disputes at the local level?
 What other types of alternative resolution forums exist in your area/locality?
 Are you satisfied with the resolution of your dispute?
 Are the DRC members neutral and impartial to both parties?
 How trustworthy are the DRC members in guarding the intimate details of your case?
 Are the members qualified enough to handle your cases?
 Are you happy with this speedy justice system with no cost?

Details of Interviews				
Police officials	Chairmen DRCs	Secretaries DRCs	Members DRCs	Recipients of DRCs Services
2	7	7	7	10
Total Interviews				33

Findings and Hypothesis

It is found out that DRCs are very effective in resolving disputes referred by the police due to impartial setup and the provision of equal opportunity to parties involved in any case. Therefore, 80% of cases referred are resolved successfully by the districts' DRCs. In DRCs, proceedings are not protracted on account of adjournments, absence of lawyers, legal and other technicalities. The procedure in DRC is designed for a common people to place before the council their grievance as it affects them. There is no concept of miscellaneous applications with multiple rights of appeals. The procedure is simple, efficient and cost effective. These Councils are also working as a filter and performing excellent gate keeping function by taking care of local people grievances and sometimes are too petty to waste money and time on it in the courts. As discussed by Braithwaite, in conflict-ridden and traditional societies, informal justice is restorative in nature, thus restoring victims, offenders and communities' consequent of plurality of stakeholders (Braithwaite, 1999).

However, the people working in DRCs are facing numerous challenges such as poor documentation, inadequate infrastructure, and lack of training and most importantly the absence of any enforcement mechanism of their decisions. DRCs are established under legal authority but function under informal arrangements hence they cannot enforce decision. The parties are at will not to accept decision and opt for any other Alternate Dispute Resolution mechanism or resort to the courts to have recourse. In DRCs, procedure is kept simple and easy to rule out political economy developing around it. However, rules as and when drafted can take care of implementation mechanism and other operational bottle necks. Thus, if these hurdles are addressed, it will be able to improve its working and justice delivery. Besides these logistics and other challenges, it is found out that in DRCs women are under-represented because of cultural barrier and lack of awareness in traditional society of Pakhtuns, while minorities and transgender are absent from these councils in Charsadda and Nowshera Districts too.

Introduction

In 2014, the newly appointed Inspector General to Khyber Pakhtunkhwa, Nasir Khan Durrani launched a pilot project of Dispute Resolution Councils (DRCs) following the pattern of Alternate Dispute Resolution (ADR) with the consensus of KP Police Department (Government of Khyber Pakhtunkhwa, 2015). Recognizing the significance of these councils, they were formally inducted in the criminal justice system in 2015 in the KP assembly, which passed the "Police Order 2002 Amendment Act 2015." According to the Act, only non-cognizable offences shall be referred to the DRC by the police. Thus, the Council will take up only those applications which are referred to it through Police and no member is authorized to take the case on his own, however, he may recommend the applicant to the police. If any party has any reservation on decision of the DRC it may apply to the police for review. Further revisions and amendments were made in the law in 2017 to extend affordable and impartial justice via the DRCs. Currently they are functional in 24 districts across the province and settling both civil and minor criminal disputes across the province. The members of the DRCs are chosen by the Police and Intelligence Agencies of KP and they are required to serve their communities voluntarily without any salary and fringe benefits. The space and facilities are provided by the local police and there is no separate fund allocated for them. They have no power to hear, decide or implement cases independently of police approval and referral (Government of Khyber Pakhtunkhwa (2015), Dispute Resolution Council). Their aim is to facilitate people in provision of speedy justice system and preserve peace in the conflict-ridden society of KP.

Literature Reviewed on Utility of Alternate Dispute Resolution Mechanism

The utility and effectiveness of Alternate Dispute Resolution in its various manifestations is widely acknowledged and appreciated by both the theorists and practitioners. However, it is argued that in the South Asian traditional societies' jirgas, panchayats, and faislo decide in the favor of the powerful and influential people but it still are favored over regular courts due to accessibility, speedy and low cost. Thus,

in highlighting the challenges to modern justice system, McManus and Silverstein pointed out that due to exorbitant and lengthy processes, modern justice system was found to be less effective (McManus & Silverstein, 2011). Ramzan built his argument on ADR as speedy, and effective in clearing the backlog of cases (Ramzan & Mahmood, 2016). In that respect, Nutkani, Zehr and Gohar explored that Muslahathi Committees served a vital role by acting as platforms for providing restorative justice and policing local communities (Zehr with Gohar, 2003; Nutkani, 2018). Despite limited contributions, this form of "deliberative democracy" reduced retributive acts of violence and helped the police in gaining credibility, with the potential to become a model of legal pluralism and efficacious hybrid institutions.

While examining the effects of the Local Government Ordinance (LGO) in KP province, Durrani et. al. argued that the indigenous cultural norms of Pushtanwali and Jirgas shall be included in local governance structures to facilitate state and its citizens. Thus, the UNDP assisted in setting up Musalihati Jirgas at the Union Councils level in KP as people have greater trust in conventional dispute resolution forums (Manzoor, 2020). Ramzan and Mahmood mentioned that ADR can be effective at providing justice at the lower level. Similarly, Iqbal (Iqbal, 2016) in his work mentioned that conflicting parties in KP often choose to seek legal remedy from ADR mechanisms. Hence, the Dispute Resolution Councils (DRCs) are only meant to support the conventional legal system (Overhauling Justice System, 2017).

Carrie Menkel-Meadow discuss ADR as Restorative Justice by exploring the foundational concepts of re-integrative shaming, acknowledgment and responsibility, restitution, truth and reconciliation, and sentencing or healing circles for their transformative and theoretical potentials and for their actual practices in a variety of settings such as family abuse, juvenile delinquency, criminal violations, problem-solving courts, indigenous-colonial-national disputes, ethnic and religious conflicts. She establishes that Restorative Justice, which began as an alternative model of criminal justice is now seeking healing and reconciliation for offenders, victims, and the communities in which

they are embedded, and has moved into larger national and international arenas of reintegration in political and ethnic conflicts too (Meadow, 2007).

Conflict Ridden Khyber Pakhtunkhwa and Need for Restorative Justice System

In post 2001, disputes in KP emanated from a 'configuration of factors relating to the state system, unstable regional setting, and global system at large' needed special attention. It is observed that police and judiciary burdened by terror related crimes, the number of civil and petty criminal cases pending in the Khyber Pakhtunkhwa's district and session courts amounted to 240,436 (Peshawar High Court (2021), Cases List and Details). It is examined that justice system in KP, stressed for a number of reasons failed to deliver. Besides unstable regional setting and geo-political instabilities, there is also lack of human and material resources to dispense speedy justice. In addition, there is absence of speedy evolution of society vis a vis evolution of legal framework such as laws and rules, corruption, nepotism, sub-standard legal education, and ill-equipped lawyers who lack practical skills and training opportunities. As a consequence, justice is often delayed or inaccessible, particularly for the poor and marginalized groups. Further, the legal system is more often used for retribution rather than for justice. Delays and pending cases also created stress, intolerance, and tension between the parties, which often escalated into further violence at the community level (Country Report Pakistan, 2021).

It is a fact that the formal justice system as it exists today cannot provide adequate justice to individual citizens and under-scores the need for a less expensive and time-consuming Alternate Dispute Resolution (ADR) as a Restorative Justice process could fill significant gaps. ADR is used to describe a variety of means for resolving disputes outside of litigating in the courts, and is widely practiced around the globe and increasingly used in South Asia to promote speedy access to justice. Still many disputes are resolved through traditional methods of adjudication, such as jirgas (councils of elders); however, it is observed that these traditional methods can be captured by power elites against the vulnerable. While it is noticed that in case of DRCs, legislative and executive support does exist to

promote the use of restorative justice of ADR in conjunction with these other methods to reduce the backlog and burden on the courts and police.

Thus, it necessitates mainstreaming the restorative justice processes by arranging specialized training programs, awareness campaigns, and consultative workshops on DRCs to garner greater buy-in from the stakeholders/community. There is also a need to carry out an outreach campaign via media groups and departments of Social Welfare, Human Rights and KP Commission on the Status of Women on such restorative justice mechanisms throughout the province to sensitize people for reducing inequality and expand rights to the marginalized segments of the population.

Legal Status of Alternate Dispute Resolution Mechanism/DRCs

The Civil Procedure Code of 1908 (CPC) contains rules relating to dispute resolution and makes mediation a contemporary subject. The following provisions are described (Code of civil procedure, 1908 (Pakistan) :

1. Section 89-A: "The Court can, when it finds appropriate, having respect to the facts and circumstances of the case, follow with the agreement of the parties an alternative conflict settlement process, including mediation and conciliation, to obtain expeditious disposition of a case, in or to a suit."
2. Order X Rule 1A: The Court may: (i) conduct preliminary proceedings and issue orders for speedy processing of the case; (ii) issue, with the consent of the parties, commissions to examine witnesses, admit documents, and take other steps for trial; (iii) adopt, with the consent of the parties, any alternative method of dispute resolution.

There are many other Acts other than CPC that encourages the use of ADR in Pakistan i.e. the Arbitration Act, 1940, the Probation of Offenders Ordinance, 1960, Sections 10 and 12 of the Family Courts Act, 1964, Section 195C of Customs Act, 1969 and Chapter XVII of the Customs Rules, 2001, Article 163 of the Qanoon-i- Shahadat Order, 1984 (decision on oath), Plea Bargaining (sec. 25 of National Accountability Bureau Ordinance, 1999), Section 134A of the Income Tax Ordinance, 2001 and Rule 231 C of the Income Tax Rules, 2002. The

Small Claims and Minor Offences Courts Ordinance, 2002; Sections 96–99 of the Local Government Act, 2013. It means that DRCs neither are illicit nor out of the ambit of the constitution and law.

Restorative Justice and Dispute Resolution Councils

In Pakhtun society, jirga (council of elders), was, and in some areas functioned as an informal mechanism for the resolution of civil and criminal disputes. It was a kind of restorative justice mechanism without incurring loss to the individuals and communities (Shinwari, 2011). With settlement and introduction of judicial system in Charsadda and Nowshera, the old traditional mechanism of jirga faded out. However, post 9/11, disputes in Pakistan, and especially in conflict-ridden erstwhile FATA, the spillover of militants to Khyber Pakhtunkhwa's settled districts intensified and it needed immediate attention. Hence, to make justice speedy and accessible amid various conflicts and disputes, a review of the Arbitration Act 1940 has been initiated by the federal government to promote effective mediation in Pakistan under the Access to Justice Program funded by Asian Development Bank. In 2013, the institution of Musalihat Anjuman Act provided conciliation forums at the level of Union Councils for dispute resolution through Alternate Dispute Resolution (ADR) in Punjab (Nutkani, 2018). These conciliation forums provided alternate judicial mechanism without involving the long processes of litigation in Punjab. Thus, Khyber Pakhtunkhwa's police with DRCs tried to revive old traditional mechanism of alternate dispute resolution to heal the communities without any further harm.

It is interesting to state that John Braithwaite, founder of Restorative Justice Theory borrowed the notion of informal mechanism of justice to settle disputes from tribal Arabs, Greeks and Roman civilizations. To Braithwaite, informal justice is restorative in nature, thus restoring victims, offenders and communities' consequent of plurality of stakeholders (Braithwaite, 1999). In Restorative justice, major concerns are how should societies respond to wrong doing; when a crime occurs or an injustice is done, what needs to happen and what does justice require (Zehr, Gohar, 2014).

Restorative justice seeks to offer an alternate framework or lens for thinking about (minor/petty) crime and justice. Hence, it focuses on harms and consequent needs of not only victims but offenders too. It addresses obligations resulting from harms of not only offenders but also their families, communities and societies. To deal with harms, disputes and problems, it uses inclusive, collaborative processes, and involves all those with a legitimate stake in the situation (victims, offenders, families, community members, society) with an aim to put right the wrongs (Zehr, Gohar, 2014).

Restorative justice practices are aimed to mend at both the individual and group or social level. It is observed that both theory and practice is placed on healing those directly impacted by a crime or bad act. Thus, restorative justice has been seen as a potentially transformative social practice that could, under the right conditions, preclude the need for callous criminal penalty and imprisonment (Meadow, 2007). It is a "process that brings together all the parties affected by an incident of wrongdoing to collectively decide how to deal with the aftermath of the incident and its implications for the future" without involving police and courts. Though some think restorative justice is appropriate mechanism in settling of small, interpersonal wrongful acts, such as petty thefts, simple assaults, drug or alcohol related crimes, minor land and money matters and family abuse, however some studies revealed that restorative justice has been adapted for cases involving murder, rape, genocide, and serious transgressions against large groups or even a whole society (Umbreit et al. 2005, Wellikoff 2004).

The idea of restorative justice is embedded in the definition, aims and objectives of ADR/DRCs. The Act defines DRCs as "tool of Alternate Dispute Resolution", means a process in which parties "agree to resolve a dispute" other than through formal adjudication by courts, and includes but not limited to negotiations, mediation, conciliation and evaluation (Government of Khyber Pakhtunkhwa, 2020). The Dispute Resolution Councils (DRCs) of Charsadda and Nowshera comprise apolitical and reputed people of civil society. The aim is to heal the victims and offenders including their families by the local members of the community. These local notables are mandated to undertake the primary

function of amicable dispute resolution along with secondary role of fact finding and supervising contested police investigations through an elaborate code of ethics to ensure impartial and non-partisan behavior. Thus, these well reputed members of the society in Charsadda and Nowshera use their collective wisdom of restorative justice and settle issues amongst aggrieved parties without resorting to aggressive and brutal means.

Study of District Charsadda

District Charsadda shares a boundary with Malakand District in the north. Towards its east is located Mardan District, Nowshera and Peshawar Districts are in the south while Mohmand of Newly Merged District is on the west. It has fertile land that covers an area of 996 sq km. Its total population is 1,616,198 inhabiting 3 tehsils of Tangi, Charsadda and Shabqadar and 204 villages. For maintenance of law and order, Charsadda has 13 police stations and local courts are in the tehsils to facilitate people (District at a glance Charsadda). The conflict-ridden KP's police and judiciary are overburdened with cases, and thus need alternate mechanism to resolve local people disputes.

Interviews and Cases Data of District Charsadda

To facilitate judiciary and police, three DRCs are formed in tehsils of Charsadda, Shabqadar and

Tangi. In Charsadda, each DRC is headed by the Chairman and Secretary assisted by police diarists to keep record of the cases. They have approximately 10 to 21 members in each council, comprising men and few women due to cultural constraints. The proposed member goes through several checks and is then allowed to work voluntarily for the local community (DSP Charsadda, personal communication, October 14, 2021). In these DRCs, there was no member from minority or transgender; although it has settled a few cases of minority. The DRCs in Charsadda lack facilities such as a conference room, retiring chamber and rest rooms and they have no funds for telephonic calls, transport and stationary. Despite dearth of facilities and meager resources, their record shows that they have settled a maximum number of disputes successfully. For advocacy and awareness, the members are using a local Dilbur Radio and Charsadda News (Chairman DRC, personal communication, October 12, 2021).

The DRC in Charsadda is stationed at local police station; it is headed by Chairperson and Secretary with 14 other male members. They have decided cases referred by the police to them (Chairman DRC, personal communication, October 12, 2021). Data below is shared by the Secretary of DRC. These cases were referred by the police and each case was resolved in a span of three months.

Year	Total Cases	Land Disputes Resolved	Family Cases Resolved	Enmity Cases Resolved	Rent Issues Settled	Money Disputes Settled	Under Process	Refer to Courts
2015	230	30	73	14	40	22	none	51
2016	290	21	95	21	32	40	none	81
2017	280	23	63	30	50	51	none	63
2018	350	58	79	45	62	39	none	67
2019	180	15	52	12	40	30	none	31
2020	300	30	70	50	45	59	none	46
Oct 2021	210	21	34	20	40	55	10	30

The office of DRC Shabqadar is located in the premises of Shabqadar Police Station; it is headed by the Chairman along with 13 male members and 1 female member. They are actively working in a very shabby condition and without any facilities (Chairman DRC, personal communication, October

12, 2021). The list of cases below is shared by the Secretary DRC and each case was decided in one month time and some of the petty cases took one week without any cost to parties involved. Unresolved cases were referred back to police and formal courts.

Year	Total Cases	Land Disputes Resolved	Family Cases Resolved	Enmity Cases Resolved	Rent Issues Settled	Money Disputes Settled	Under Process	Refer to Courts
2015	200	30	60	19	37	51	none	03
2016	230	24	70	20	28	70	none	18
2017	274	25	70	20	67	45	none	47
2018	300	31	90	31	60	48	none	40
2019	190	15	60	26	41	30	none	18
2020	200	20	56	18	39	41	none	26
Oct 2021	190	15	60	15	41	39	10	10

Tangi DRC is stationed at the premises of Tangi Tehsil police station. Presently, it has 12 male members with 1 female member headed by a Chairman. They also resolve all types of issues referred by the police department in a span of

maximum three months and minimum two weeks (Chairman DRC, personal communication, October 12, 2021). The lists of cases were shared by the Secretary DRC.

Year	Total Cases	Land Disputes Resolved	Family Cases Resolved	Enmity Cases Resolved	Rent Issues Settled	Money Disputes Settled	Under Process	Refer to Courts
2015	116	09	27	14	19	22	none	25
2016	127	11	43	21	13	23	none	16
2017	153	12	32	26	14	30	none	39
2018	169	09	50	30	11	41	none	28
2019	109	05	27	13	09	31	none	24
2020	139	06	33	21	06	47	none	26
Oct 2021	117	02	41	11	17	23	10	13

Study of District Nowshera

District Nowshera is bordered by District Peshawar to the west, District Mardan to the north, District Charsadda to the northwest and District Attock to the east. Its total area is 1,748 sq. km having population of 1,518,540 living in 3 tehsils and 129 villages. For maintenance of law and order situation, there are 9 police stations, and for the provision of justice, local district courts are available (District Nowshera, 2019). However, despite the presence of police and judiciary, hundreds of litigants suffered due to too many administrative, legal formalities and terrorism in the province. Thus, the need for speedy delivery of justice arose in District Nowshera.

Interviews and Cases Data Collected in District Nowshera

In 2014, to facilitate local people in District Nowshera, four DRCs were setup. Initially, a retired judge of the Peshawar High Court, Justice Raj Mohammad was appointed as co-coordinator of four DRCs in the District Nowshera. Since then, these councils are successfully resolving issues of minor land disputes, family cases and monetary conflicts (ASP Nowshera, personal communication, September 10, 2021).

Presently, there are four DRCs working in District Nowshera at Nowshera Tehsil, Pabbi Tehsil, Akora and Nizampur. Every DRC is headed by the Chairman and Secretary assisted by police diarists to keep record and other details of the cases. They have approximately 10 to 21 members in each council, comprises men and few women from different walks of life. Owing to patriarchal setup, there are very few

women members, although family cases related to women and children are settled in all male members' councils. Moreover, it has no member representing minorities or transgender; however it is very active and vigilant in settling disputes of minorities. It is pertinent to mention that except Nowshera Tehsil DRC, all tehsils of DRCs lack facilities such as conference room, retiring chamber and rest rooms. It is also observed that they have no funds for telephonic calls, transport and stationary. However, with no facilities and resources, the record shows that they dealt with every type of dispute successfully. The members are using Zalmay Radio (youth radio) for advocacy and awareness among the local people

(Chairman DRC, personal communication, September 13, 2021).

Nowshera Tehsil's DRC is stationed in the premises of Nowshera Cantonment Police Station; it has 12 men and 3 women serving the local community. In designated area for DRC, a jury, conference and retiring room is provided for the members and complainants (Chairman DRC, personal communication, September 13, 2021). Below is the list of cases settled and referred to courts by them and shared by the Secretary DRC. On average, each case is decided in three weeks time, depending on the availability of both the litigant parties.

Year	Total Cases	Land Disputes Resolved	Family Cases Resolved	Enmity Cases Resolved	Rent Issues Settled	Money Disputes Settled	Under Process	Refer to Courts
2015	184	27	39	None	40	48	None	30
2016	322	45	90	none	73	56	None	58
2017	398	93	84	1	73	103	None	44
2018	350	43	73	None	76	83	None	75
2019	335	50	80	None	52	67	None	86
2020	268	49	58	None	25	66	None	70
Oct.2021	65	07	06	None	3	11	28	10

In Nowshera, another very active and vigilant DRC is of Pabbi Tehsil. It has 14 male members and 2 female members to settle local issues and disputes. It is in the premises of Pabbi police station and provided only one room for consultation,

negotiations and resolution of disputes (Chairman DRC, personal communication, September 13, 2021). The cases list was shared by Secretary of DRC; here also cases were decided without any cost and on time to facilitate the parties in disputes.

Year	Total Cases	Land Disputes Resolved	Family Cases Resolved	Enmity Cases Resolved	Rent Issues Settled	Money Disputes Settled	Under Process	Refer to Courts
2015	255	57	59	2	47	50	None	40
2016	305	46	75	4	60	70	None	50
2017	305	60	67	none	70	78	None	30
2018	281	43	70	None	80	60	None	28
2019	239	40	56	None	50	62	None	31
2020	221	40	50	None	54	45	None	32
Oct.2021	70	15	20	1	4	15	10	05

The DRC of Akora Khattak is also active in dispensing justice. It has 16 male members and 4 female members (Chairman DRC, personal

communication, September 12, 2021). The list was shared by the Secretary DRC of Akora Khattak.

Year	Total Cases	Land Disputes Resolved	Family Cases Resolved	Enmity Cases Resolved	Rent Issues Settled	Money Disputes Settled	Under Process	Refer to Courts
2015	200	11	40	1	60	55	0	33
2016	280	40	62	5	70	51	0	52
2017	300	54	65	8	95	60	0	18
2018	315	62	78	7	65	72	0	30
2019	270	40	55	0	80	70	0	25
2020	255	42	70	1	69	53	0	20
Oct.2021	206	14	45	0	52	23	52	24

In Nizampur DRC, there are 14 male members settling all types of disputes. In this area, few cases were reported to the DRC and majority referred

cases to the court were of land disputes (Chairman DRC, personal communication, September 12, 2021).

Year	Total Cases	Land Disputes Resolved	Family Cases Resolved	Enmity Cases Resolved	Rent Issues Settled	Money Disputes Settled	Under Process	Refer to Courts
2015	40	10	15	None	5	4	none	6
2016	55	14	20	none	5	10	none	6
2017	71	04	16	none	11	25	none	15
2018	80	13	34	None	6	24	none	3
2019	65	02	40	None	4	16	none	3
2020	45	09	15	None	none	20	none	1
Oct2021	40	06	06	None	12	11	4	1

Nature of Disputes at District Charsadda and District Nowshera

Both District Charsadda and District Nowshera are inhabited by Pakhtun population. Thus, both these districts have experienced jirga system and hence are open to alternate dispute mechanism for resolution of their disputes. As it can be observed from the above quantitative data that very few cases are referred back to the courts and majority were decided by the DRCs at Charsadda and Nowshera. The success rate of family cases is high in both the districts while land disputes are problematic issue. Similarly, the enmity cases remained unresolved in both the districts. It is observed and assessed from data that the nature of cases in both the districts is almost the same and its resolution percentage is also similar.

Thematic Analysis of Data Collected in District Charsadda and District Nowshera

Thematic analysis method is adopted for analyzing of data collected through interviews and cases record. Thematic analysis method assisted the research work flexibility in gathering, transcription, organizing, analyzing and interpreting the data in order to make valuable inference from the available information.

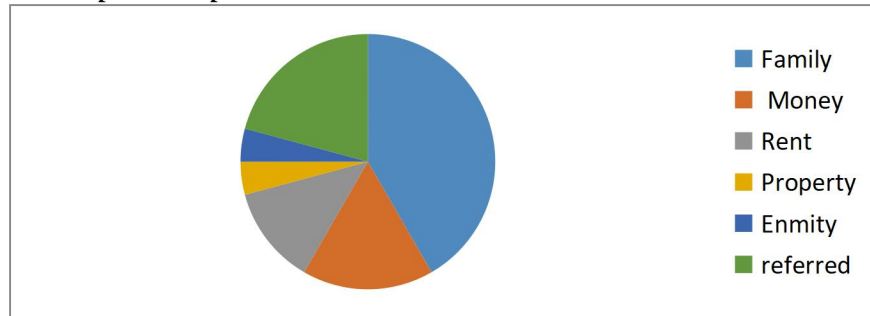
a. Effectiveness of DRCs in Charsadda and Nowshera

After analyzing the qualitative data collected through interviews with relevant stakeholders and quantitative data of cases record, it is observed that 80% of the cases are decided by the members successfully. It is noted that the effectiveness of these councils is rooted in the neutrality and impartiality of the DRC members in obtaining, gathering and examining the relevant evidence to a case by fully consulting both the parties. Even some of the very

problematic property cases were resolved by the DRCs in less than a month, ending years of enmity. However, several property cases were referred back to local courts due to powerful elements refusal on accepting the decisions given by the DRCs. The

success rate in the family cases is 80%, which reflects that it can play an important role in sharing burden of family courts. These DRCs also settled some old enmities, resolved money matters and rent issues of local people efficiently.

Graph 1- Graphical view of Nowshera and Charsadda DRCs' Cases



b. Cost Effective and Efficient

During interviews with complainants (Charsadda, Nowshera, personal communication, 10 September - 15 October) it is observed that there is a substantial difference between the DRCs and the local courts when it comes to the cost incurred and time spent in the litigations. On average, a civil case in court takes about one to two years to be resolved and the cost is around 0.1 million rupees while DRCs resolved many disputes within 3 to 4 months with no cost. It is also observed that DRCs have proven to be a cost and time affective avenue for the poor people in these districts.

c. Accountable and Transparent Working

On inquiring the extent of accountability and transparency in the DRCs, the respondents attested that DRCs functioned in a fully transparent manner (Charsadda, Nowshera, personal communication, 10 September - 15 October). This is primarily due to DRC members' compliance to DRC's mandate and respecting cultural norms and practices without being swayed by a party's socio-economic standing. In addition, DRCs' several members from both Nowshera and Charsadda stated that to ensure transparency, complainants are given choice to take their case to another panel. In some cases, on objections, raised by complainants, few members left voluntarily or were politely asked to leave (Secretary Nowshera, personal communication, October 7, 2021).

d. Respecting Privacy and Trust

The success rate in family cases is higher in comparison to other cases and the main reason is that members of DRCs respect the complainants' privacy and their matters are heard and resolved in relatively private setting. Moreover, DRC beneficiaries feel that the members of councils are reliable and trustworthy people, hence they feel comfortable in sharing intimate details about their personal lives (For details see graph 1).

Challenges and Hurdles

During field research and interviews, it is observed that there are several challenges faced by the members of DRCs in dispensing justice to local people in the communities. These may be viewed lacunas in the DRC Act. There is no operational budget allocated to these councils in the Act, which resulted in a dearth of basic facilities to keep computerized record of the cases resolved by them. It is observed that the offices of DRCs are without computers, laptops, stationary and other material needed for record keeping. They have no official telephones or any funds to summon parties involved in disputes. Their offices have no official transport to carry out visits to the sights of disputed property and in some cases settling enmities. Moreover, DRCs' offices have no proper waiting rooms for either male or female complainants. There are no rest rooms available for the members and complainants visiting them from far flung villages.

In DRCs, police officials stressed on inclusion of at least one woman member in each council. However it is observed that in some DRCs, women members are absent and there is no mechanism to fix the issue of women's absence from such bodies. Unfortunately, owing to patriarchal structures and absence of any legal instrument, women representation is nominal in Nowshera and Charsadda's DRCs. Even family cases that revolve around women and children's issues are resolved by the all-male members of DRCs. It is pertinent to mention that DRCs with slight variation is still an all-male congregation and is another form of Jirga that discourages women in public spaces and decision-making processes. Moreover, absence of minority and transgender from DRCs is also a huge challenge for the police and local administration and again the Act is silent about this. Regardless, all members of DRCs from both the districts supported minorities and resolved their disputes and cases without any bias or hurdles.

Besides logistics and other facilities, majority members identify hurdles faced by the complainants in accessing their forums through police. The complainants mentioned to the members that even although their dispute is non-cognizable, the local Station House Officers (SHOs) kept their application in the files for weeks and requested the members to intervene. It is not possible for the DRC members to intervene in the police official duties. In some cases, the members and complainants mentioned uncooperative attitude of police and related officials with DRCs members. However, it is observed in conversation with police officials from Nowshera and Charsadda that some members of DRCs tried to tackle cases of cognizable offence and thus it created problems for the police.

Suggestions and Recommendations

Several recommendations and suggestions are proposed by the different stakeholders in Charsadda and Nowshera districts to make DRCs more structured, effective and representative;

1. Administrative and Operational Recommendations

a. Police must take ownership of this project at the highest level because logistic and facilitation differs from DRC to DRC. DRCs with ownership of

Police hierarchy have done excellent job comparing with DRCs in other sub-division and districts where police had laid back approach.

b. District Police Officer (DPO) shall ensure necessary logistic and facilitation for quick and efficient disposal by DRCs in his district. He must have a system in place for regular feedback as is provided in the project document and Act.

c. He shall also encourage and wherever possible ensure inclusion of women and minority members in DRCs to dispel the impression of gender and religious bias.

d. An effective mechanism for redressal of complaint against police may be put in place, which shall also take care of delays at the part of DPO and SHO in referring cases to DRCs. DPO may use technology or flow chart to track and trace applications/requests received by police for referral to DRCs. Weekly reports could be a good source for monitoring performance of DRCs.

e. Training of the DRCs members may be conducted at the time of induction and also on customs, traditions and new laws, rules and regulations to keep them aware of legislative and administrative changes.

f. DRC shall ensure enhanced community mobilization/participation for dispute resolution and neutral evaluation to enhance the role of DRCs in crime prevention through collaborative approach.

g. Criteria for appointment of members are too broad and provide unlimited use of discretion. There is a need to narrow it down to reduce discretion and make it more objective.

h. Outreach to vulnerable group especially women and children is alarmingly low. A regular awareness campaign through social, print and electronic media and government department shall be carried out. Also publicize success stories-justice for the people by the people.

i. DPO may take lead and help in ensuring coordination between DRCs and different organizations dealing with dispute resolution under judicial and quasi-judicial regimes and other departments including with police access service (PAS) and police assistance line (PAL) to avoid duplication of efforts and to stay abreast with disputes in their area of jurisdiction.

j. Performance of the DRC shall be included in the agenda of District Criminal Justice Coordination Committee (DCJCC) to ensure regular review and coordination through DCJCC. A biannual report shall be published by the office of the DPO to maintain record for future references and monitor performance of DRCs.

2. Legislative Recommendations

a. Frame rules to regulate working of DRCs including selection criteria for the members, removal of members, implementation process, inclusion of women and minority members, and types of dispute resolution methods to be used by DRCs may be notified as soon as possible.

b. Instructions contained in the project document, SOPs and standing order of Inspector General of Police already issued in this regard may be updated.

c. Mapping of all laws being used by the federal government, all provincial governments and particularly government of KP with the name of custodian department for broader coordination and information sharing. That will keep members of DRC and district police current on new approaches being adopted or legislative changes happening in dispute resolution area.

Conclusion

In Khyber Pakhtunkhwa, locally evolved institutions and their core norms are central to people’s lives, and it is observed that such informal institutions have become even more relevant due to excessive work-load of police and judiciary. Thus, it is observed that DRCs in Nowshera and Charsadda have become highly consequential in resolving majority cases due to impartial setup and the provision of equal opportunity to parties involved in any dispute. Despite the overall success of DRCs, they are facing challenges such as poor documentation, lack of infrastructure, training and most importantly the absence of any enforcement mechanism of their decisions. To improve the working of DRCs, several recommendations suggested are officially recording and standardization of documents, provision of sufficient capital and adequate infrastructure, and strengthening the implementation of their decisions.

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