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Legal Pluralism in South Asia: The Sustainable Role of Customary Law in Modern Legal Systems

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Abstract

This research explores the phenomenon of legal pluralism in the South Asian legal system with special emphasis on the continued relevance aspect and resilience of customary law within modern legal frameworks. Despite the formal establishment of state-tuned legal systems derived largely from colonial legacies and aftermath post-colonial codification, customary norms—rooted in diverse indigenous traditions with religious practices, and community eccentric adjudication which continue to shape the lived legal realities of millions across the region. So, by drawing on comparative analyses from jurisdictions in India, Bangladesh, Pakistan, Nepal, and Sri Lanka basically this study evokes the complex interplay between state made law and non-state powerful orders & customs. The paper examines how customary law works both in complementing and in time of political tension with formal legal systems particularly in areas such as personal laws land tenure regardless resolution and access to justice. This paper further investigates how courts and legislatures negotiate the legitimacy and admissibility of customary norms, principles and how such negotiations are influenced by factors including identity politics, rural-urban sub divides, gender dynamics and legal reform agendas for a long time. This paper further investigates how courts and legislatures negotiate the legitimacy and admissibility of customary rituals including principles and how such negotiations are influenced by factors including identity politics, religion, rural-urban sub-divides, gender dynamics, social justice and legal reform agendas for a long time. It further highlights how customary governance and indigenous regional jurisprudence interact with formal laws how legal hybridity shapes normative authority representing pluralism and how these frameworks collectively influence state legitimacy of pluralistic society and access to justice.

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Keywords: Customary governance, Indigenous jurisprudence, Legal pluralism, State legitimacy, Access to justice.

1. Introduction

Legal pluralism, basically understood as the co-existence of diverse Justice systems within a sole political field, has long been a defining subject of the South Asian legal landscape. Despite the dominance of the state-centric legal system introduced and consolidated during colonial rule. Various customary laws continue to operate promptly within various communities— by shaping legal consciousness, resolving disputes, providing solutions and determining rights in matters as diverse as land tenure, marriage, inheritance, and local governance procedure. Far from being a reflection of the past, customary International law in South Asia remains both resilient and adaptable negotiating its place alongside formal legal orders in a complex and often contested legal terrain for developing Justice in the southern part. The evolution of the South Asian legal arena reflects a polite and fragmented jurisprudence. During the colonial regime British administrators codified select indigenous norms, rules especially in personal law while systematically marginalizing other local practices that were incompatible with imperial authority .[1] This selective recognition laid the groundwork for a post-colonial legal hierarchy where state law assumed normative supremacy of law while customary law was relegated to a secondary or informal status in nature.[2] However, the legal reality across countries like India, Bangladesh, Pakistan, Nepal and Sri Lanka reveals a more intricate picture where customary law continues to serve as the primary or preferred method of justice delivery particularly in rural areas and indigenous settings.[3]This research paper explores the sustainable role of customary law within the greater framework of legal pluralism in South Asia. That investigates how customary norms are incorporated, adapted

[1] Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947* (CUP 2014).
[2] Upendra Baxi, 'Postcolonial Legality: A Critique' in Rajeev Dhavan and Rajat Ray (eds), *The Supreme Court under Strain* (OUP 2002).
[3] Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (2nd edn, CUP 2006).

or legitimised within state centric institutions highlighting on how legislatures and courts negotiate their admissibility in favor of justice and authority. The legal analysis further considers how such negotiations are influenced by identity politics, gender dynamics, cultural disparities, rural-urban legal divides and a huge number of reformist agendas.[4]In doing so, someone asks whether customary law can be developed with modern constitutional principles more especially those concerning human rights, legal certainty, legal consumption and equality. Rather than treating legal pluralism as an armour to be resolved, this study proposes a normative framework that recognises the concept as a structural feature of legal development in post-colonial regime. The paper argues that inclusive recognition of customary legal systems coupled with oversight, reform, reconciliation and participation—can develop legal empowerment and enhance access to justice for historically marginalised communities to provide prompt development.

2. Conceptual Framework

Legal pluralism, a theoretical construction and socio-legal phenomenon, reflects the simultaneous existence and interaction of multiple normative orders within a given polity of justice.[5] These normative pathways may include state law, religious law, civil law, customary practices and transnational norms that coexisted by government .Legal pluralism thus challenges the traditional positivist school of law as a unified and hierarchical system emanating from the state.[6]The school foregrounds the reality that legal authority is often fragmented and negotiated among various and institutions especially in post-colonial legacy and pluralistic societies like those in South Asia. The multi foundational distinction in the study of legal pluralism is between *classical normative pluralism* and *new legal pluralism*.[7]By this Classical concept of pluralism arose from colonial encounters in middle Africa and Asia where imperial administrations recognised certain

[4] Anne Griffiths, *In the Shadow of Marriage: Gender and Justice in an African Community* (University of Chicago Press 1997).
[5] Brian Tamanaha, *A General Jurisprudence of Law and Society* (OUP 2001).
[6] HLA Hart, *The Concept of Law* (2nd edn, OUP 1994).
[7] Franz von Benda-Beckmann, 'Who's Afraid of Legal Pluralism?' (2002) 47 *Journal of Legal Pluralism* 37.

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indigenous customs directly particularly in personal status matters while imposing Western legal thought in other areas.[8] This early recognition was often strategic and selective, intended to maintain control while appearing to respect native traditions of the sub-continent .[9] Conversely, new legal pluralism which inaugurated in the latter half of the 20th century recognises the continuing existence of multiple legal norms within modern, post-colonial states, regardless of state recognition and approbation. This includes informal, unofficial or even "illegal" legal systems that function parallel to or in resistance against formal law or modern jurisprudence. A key theoretical contributor named John Griffiths opined that "legal pluralism is not a pathology of Justice, but a normal state of affairs in any peace loving society."[10] He also distinguishes between *traditional* and ancient legal pluralism: the former entails the coexistence of multiple legal systems that are not subordinated to authoritative law while the latter includes only those non-state norms recognised or permitted by the state solely.[9] In the South Asian jurisprudence both forms exist with formal recognition given to religious personal laws and informal systems (like *jirgas* or *panchayats*) often functioning independently of, or in defiance to, constitutional cultural principles.

3.Historical Context: Customary Justice System and the Evolution of Legal Pluralism in South Asia

The persistence of legal pluralism in South Asia is deeply rooted in the region's colonial and post-colonial legal arena. Prior to the advent of colonial rule of South Asian societies were governed by a diverse mosaic of customary, religious, civil and royal legal procedures. These normative orders, while often unwritten and orally transmitted, regulated social conduct of property ownership, dispute resolution and religious obligations Through various castes, tribes, races and

[8] Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (CUP 2002).
[9] Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (CUP 1985).
[10] John Griffiths, 'What Is Legal Pluralism?' (1986) 24 *Journal of Legal Pluralism and Unofficial Law* 1, 3.

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communities.[11]These Indigenous rulers and institutions such as the Hindu *sabhas*, Muslim *qazis*, Buddhist councils, Purohit and tribal elders administered law in ways that were deeply emphasised within local norms and moral universes of Justice .[12]The imposition of British colonial rule in the 18th and 19th centuries significantly altered this pluralistic legal ecology spontaneously. From history the East India Company and aftermath the British Crown sought to centralise legal authority through codification, marginalization, classification and institutionalisation of laws.[13] However, the colonial state did not—and arguably could not—eradicate existing legal systems. Instead, co-opted certain practices of indigenous traditions through a policy of *indirect rule* especially in areas where local legitimacy was necessary for effective governance for ends of justice. This structure led to the formal recognition of "personal laws" based on religion, society—Hindu, Buddhism, Muslim, orthodox Christian and others—particularly in matters of marriage, divorce, inheritance, custody, proper maintenance and guardianship. Simultaneously, the British introduced a Western-style legal system based on common law principles such as formal court hierarchies, English legal education, Equity and statutory enactments. The resulting system institutionalised a dual model of pluralism: state law also operated in public and commercial affairs while customary and religious laws governed personal delinquencies and community matters. Yet this coexistence was far from equal. The ancient colonial courts often viewed customary law as inferior, irrational, informal or in need of reform and subordinated the courts to statutory and case law unless the concept could be "proved" to be longstanding and not contrary to public policy and morality .Furthermore, the codification of customs in a formal way—particularly under works like *The Punjab Laws Act 1872* or *The Frontier Crimes Regulation 1901*—distorted many Act and negotiable customary practices by freezing them in text and stripping them of their contextual flexibility for understanding .Even Courts, relying on textual interpretations rather than lived pragmatic practices often misrepresented or reified regional customs, thereby diminishing their adaptability and legitimacy towards progress .Aftermath post-colonial period did not significantly

[11] Marc Galanter, 'Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law' (1981) 19 *Journal of Legal Pluralism* 1, 3.

[12] Nandini Chatterjee, *Land and Law in Mughal India: A Family of Landlords across Three Indian Empires* (CUP 2020).

[13] Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (CUP 2002).

disrupt this dual legal structure. On attaining independence, most South Asian states retained colonial legal institutions, principles, doctrines and court structures, while continuing to recognise religious and customary laws in family and property segments. This legal continuity was justified on pragmatic fields like —stability, familiarity, justiciability and administrative convenience— but also reflected deeper procedural dependencies formed during the colonial legacy .India for instance adopted a common law framework through their first Constitution and court proceeding while preserving distinct personal laws for Hindus, Muslims, Christians and Parsis .[13] Henceforth Pakistan inherited similar pluralities and expanded the jurisdiction of *jirgas* and *panchayat system* especially in tribal and rural justice system .[14] In Bangladesh post-1971 continued many Pakistani legal arrangements which include plural personal law regimes and reliance on informal dispute resolution bodies.[15] Also Nepal and Sri Lanka exhibit similar continuities blending customary adjudication with codified systems of pluralism and formal courts.

4.Country Analyses: Customary Law and Legal Pluralism in South Asia

4.1. India: State Recognition and the Paradox of Pluralism

India exemplifies one of the finest manifestations of legal pluralism in South Asia where the interaction between customary, religious, political and statutory laws is deeply embedded in both legal tradition and constitutional pluralism. The Indian constitution provides freedom of religion and personal autonomy of choice under Articles 25 to 28, while also advocating for a Uniform Civil Code (UCC) in Article 44—a constitutional paradox that continues to fuel debates on legal codification and reformation. [16]In fact Customary law persists totally among tribal communities particularly within Scheduled Areas governed by the Fifth and Sixth Chapter of the Constitution of India .[17] The very early Panchayats system (Extension to specific Areas) Act 1996 (PESA)

[14] Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (CUP 1994).
[15] Martin Lau, 'Islamic Legal Norms and State Law in Pakistan: A Critical Analysis' (1994) 5 *Yearbook of Islamic and Middle Eastern Law* 29.
[16] Constitution of India 1950, arts 25–28, art 44.
[17] Ibid, Fifth Schedule; Sixth Schedule.

affirms the authority of gram sabhas then and customary tribal conventional institutions granting them substantial autonomy in local governance, justice, dispute mechanism and dispute resolution proceedings .[18] This statutory recognition embraces a pluralistic legal philosophy regarding justice that validates community-based normative orders especially in legal spaces where state legal infrastructure is either absent or ineffective totally. Even the Indian judiciary however has responded ambivalently to customary practices. Courts have upheld certain customs when they meet the legal tests of antiquity, genuineness, certainty, and reasonableness.[19] In another case *Gokal Chand v Parvin Kumari*, the Supreme Court of India held that for a conventional custom to be accepted as valid that must be "ancient, not against morality, certain, genuine, not against the law and reasonable.[20] Yet, courts have also struck down customs violating constitutional morality and fundamental rights, particularly in cases concerning gender justice. In another famous case *Shayara Bano v Union of India* the Supreme Court verdict on the practice of triple talaq unconstitutional exhibiting the precedence of constitutional rights over religious norms.[21] This marked a moment in Indian jurisprudence reflecting the judiciary's commitment to progressive constitutionalism and individual social dignity The legal scope remains divided. On the one hand, state law continues to permit the operation of religious value and tribal customs in personal matters and local governance system. On the other, the state intervenes through secular legal instruments like the Hindu Succession Act 1956 which particularly after the 2005 latest amendment which granted equal inheritance rights to establish rights of daughters.[22] This dualism technically illustrates an ongoing tension between legal modernity and pluralistic authenticity wherein state recognition of custom is both an instrument of woman empowerment and a mechanism of social discipline.

4.2. Bangladesh: Custom, Marginalisation, and Legal Access

[18] Panchayats (Extension to Scheduled Areas) Act 1996, s 4(a)-(d).
[19] *Mohd. Zubair v State of UP* AIR 1987 All 113 (All HC); see also *Collector of Madura v Mootoo Ramalinga Sethupathi* (1868) 12 MIA 397 (PC).
[20] *Gokal Chand v Parvin Kumari* AIR 1952 SC 231.
[21] *Shayara Bano v Union of India* (2017) 9 SCC 1.
[22] Hindu Succession (Amendment) Act 2005, amending Hindu Succession Act 1956, s 6.

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While the formal legal system is based on a unitary structure inherited from British colonial codified law then pluralism continues to persist informally through religious personal laws, also indigenous legal traditions, tribal laws and community-based dispute resolution systems such as *shalish system in Bangladesh.*[23] Religious personal laws are formally recognised in matters of family law with Muslim, Hindu, and Christian communities following distinct legal regimes governing marriage, divorce, inheritance and guardianship.[24]However, indigenous communities more particularly in the Chittagong Hill Tracts (CHT) where maintain customary legal practices through traditional Justice like Circle Chiefs, Headmen, local panchayat and Karbaris especially in function to land tenure and strongly dispute resolution proceedings .[25] While the Chittagong Hill Tracts Regulation 1900 remains legally operative many years ago and implicitly acknowledges these structures in a large number later state policies and interventions have often undermined customary authority articulating national integration at the cost of local autonomy.[26] The government-sponsored settlement of non-indigenous populations in the CHT has led to widespread displacement and dispossession of indigenous lands bypassing customary land tenure rituals .[27] This suppression of indigenous rights has been criticised as a violation of international legal norms including the International Labour Organization (ILO) Convention Article No 169 which slightly emphasises respect for indigenous land rights and legal systems.[28] Across rural Bangladesh, salish tribunals which consist of village elders and influential local figures are widely used to resolve civil disputes, family matters, civil wrong and sometimes minor criminal Justice.[29] Despite being informal and unofficial, it is socially legitimate due to its accessibility, cost-

[23] Ridwanul Hoque, *Judicial Activism in Bangladesh: A Golden Mean Approach* (University Press Limited 2011) 137.
[24] The Muslim Family Laws Ordinance 1961; Hindu Married Women's Right to Separate Residence and Maintenance Act 1946; Christian Marriage Act 1872.
[25] Amena Mohsin, *The Politics of Nationalism: The Case of the Chittagong Hill Tracts, Bangladesh* (University Press Limited 2002) 91.
[26] The Chittagong Hill Tracts Regulation 1900 (Regulation I of 1900); see also *Raja Devasish Roy, 'Customary Land Rights and Legal Pluralism in Bangladesh: The Case of the Chittagong Hill Tracts' (2004) 34(4) *Modern Asian Studies* 745.
[27] Philip Gain (ed), *The Chittagong Hill Tracts: Life and Nature at Risk* (SEHD 2000).
[28] International Labour Organization (ILO), *Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169)*, adopted 27 June 1989, entered into force 5 September 1991.
[29] Erin Moore, 'Negotiating Justice: Legal Pluralism and Informal Justice Systems in Rural Bangladesh' (2011) *Asia-Pacific Journal on Human Rights and the Law* 23.

effectiveness and embeddedness in community norms.[30] However, human rights advocates have criticised *shalish* proceedings for being deeply patriarchal including biasness, lacking procedural fairness and delivering discriminatory outcomes especially in cases involving domestic violence, divorce, maintenance and female inheritance claims.[31]

As a last resort the judiciary has responded cautiously. In *Bangladesh's most famous case Legal Aid and Services Trust (BLAST) v Bangladesh*, the honorable High Court Division of the Supreme Court declared extra-judicial punishments imposed by *shalish* bodies are unconstitutional and violate fundamental rights, especially the right to life for the human being and social dignity.[32] The authentic judgment marked an important intervention in asserting the primacy of constitutional safeguards while acknowledging the social reality of informal justice strategy in Bangladesh In Bangladesh, customary law continues to exist due to its practical accessibility regarding the structure and social legitimacy of hope, trust. Nonetheless, the lack of a coherent national policy on legal pluralism coupled with the systematic marginalisation of indigenous people's right and women's voices which obstructs the effective integration of customary justice into the formal legal framework. Achieving legal pluralism phenomena with equity and accountability requires a more inclusive rights-based approach to customary law recognition in our country.

4.3. Pakistan: The Politics of Custom and Parallel Normativity

Pakistan presents a highly complex and politically sensitive role model of normative pluralism, characterised by the existence of Islamic law, tribal law, colonial legal remnants, tribal customs and informal justice systems. This unique plurality is not merely tolerated but often institutionalised especially in regions historically governed under semi-autonomous contact.[33] In personal law, religious communities must follow distinct legal systems. Muslim personal law

[30] Shahdeen Malik, 'Access to Justice in Bangladesh: The State of the Informal Justice System' in Asian Development Bank, *Legal Empowerment for the Poor* (ADB 2001) 87.
[31] Naripokkho, *Unjust Norms: Gender-Based Violence and Informal Justice Systems in Bangladesh* (Dhaka, 2012) 35.
[32] *Bangladesh Legal Aid and Services Trust (BLAST) v Bangladesh* (2010) 30 BLD (HCD) 194.
[33] Martin Lau, *The Role of Islam in the Legal System of Pakistan* (Brill 2006) 97.

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governs the majority while Hindu, Christian, Jew and other minorities also maintain separate family law regimes for matters such as marriage, divorce, inheritance, maintenance and guardianship.[34] Beyond religious view customary legal institutions—most notably the *jirga* (tribal council) and *panchayat pratha*—continue to function widely in Khyber Pakhtunkhwa, Balochistan, Peshawar and parts of southern Punjab.[35]Historically, these areas were articulated under the Frontier Crimes Regulation 1901 (FCR) which granted significant discretionary powers to local authorities. Though the 25th Constitutional Amendment and the (FATA Interim Governance Regulation 2018) repealed the FCR and merged the Federally Administered Tribal Areas (FATA) of Pakistan into Khyber Pakhtunkha for ensuring customary justice systems remain entrenched in both practice and political tensions.[36] *Jirgas* often serve as informal courts resolving disputes involving property, marriage, blood feuds, maintenance and honour-based issues. However, these bodies have come under intense scrutiny for facilitating decisions that violate constitutional guarantees more particularly in relation to women's rights for assuring standard of CEDAW. The Mukhtaran Mai case where a *jirga* ordered gang rape as a form of collective punishment, after that the verdict gained international attention and exposed the brutalities enabled by extra-legal systems in Pakisran.[37] In response, the Supreme Court of Pakistan *Suo Motu Case No. 1 of 2006* directly held that *jirgas* had no legal power to adjudicate criminal cases when such adjudications infringe upon fundamental rights related to right to life.[38]Despite judicial condemnation, the state continues to rely on *jirgas* and tribal mechanisms in regions where formal courts are inaccessible or distrusted in nature This institutional duality creates normative tension: while the Constitution of Pakistan 1973 upholds the right to get equality in everywhere , due process of law, social hustings and protection from inhuman and cruel punishment, customary justice systems often deliver directions that directly contradict these protections.[39] The Alternative Dispute Resolution Act 2017 aimed to integrate non-state justice systems under the supervision of

[34] Christian Marriage Act 1872; Hindu Marriage Act 2017; Muslim Family Laws Ordinance 1961.

[35] Mohammad Waseem, 'Judging Jirgas: Pakistan's Informal Justice System and Human Rights' (2020) *South Asia Journal of Law and Policy* 45.
[36] Constitution (Twenty-Fifth Amendment) Act 2018; FATA Interim Governance Regulation 2018.
[37] Mukhtaran Mai v The State (2005) PLD 2005 FSC 25.
[38] *Suo Motu Case No. 1 of 2006* (2006) SCMR 1736 (SC).
[39] Constitution of Pakistan 1973, arts 8–25.

formal structures thereby providing a regulated framework for community-based resolution then.[40] However, many critics argue that such reforms lack gender-sensitive safeguards, honor killing, human rights violation and community participation. In practice legal pluralism in Pakistan is not just a pro legal reality but a political battleground reinforcing tensions between traditional authority, Islamic legal identity, Islamic culture and modern constitutional values to uphold Justice Unless addressed through inclusive reforms policy and clear normative guidance, pluralistic governance may continue to undermine the very goals of justice, equality, fraternity and legal certainty.

4.4. Nepal: Indigenous Custom and Constitutional Recognition

Nepal presents a nuanced and constitutionally grounded model of legal pluralism as their National practicable policy in South Asia where indigenous customary laws are both formally recognised and politically contested enough. The Constitution of Nepal 2015 affirms the nation as a "multi-ethnic, multilingual, multi-religious, multi functioned and multicultural" polity that directly expressly safeguarding the rights of Adivasi Janajati (indigenous nationalities) to maintain and exactly develop their traditional knowledge System's exhibiting the rights of the ethnic. Customary laws, rules and governance institutions.[41]Customary legal systems remain vital in rural and indigenous regions among groups such as the Tamang, Sherpa, Bote and Tharu, whose dispute resolution processes emphasize restorative means of justice, mediation, counseling and social harmony over punitive mechanisms.[42] These forums—though informal—are often viewed as more legitimate practice and accessible than the state judiciary especially in geographically remote areas wherever no access of the common people .Historically, Nepal's legal system was centralised and Brahmanical with the Muluki Ain of 1854 serving to homogenise legal norms based on Hindu caste hierarchies where thereby marginalising non-Hindu and indigenous practices.[43] However,

[40] Alternative Dispute Resolution Act 2017 (Pakistan).

[41] Constitution of Nepal 2015, Preamble, arts 32, 51(j), and Schedule 8.
[42] Pratikshya Kandel, 'Customary Law in Nepal: Reconciling Indigenous Practices and Human Rights' (2016) 5(2) *Himalaya Law Review* 41, 43–44.
[43] Muluki Ain 1854 (General Code of Nepal).

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democratic reforms beginning with the 1990 Constitution and culminating in the post-conflict constitutional restructuring following the 1996–2006 civil war created openings for legal pluralism as a mechanism of inclusion society and reconciliation.[44] Legislative enactments such as the National Foundation for Development of Indigenous Nationalities Act 2002 and the other enactment named Local Self-Governance Act 1999 authorised local prone governments to incorporate customary institutions in justice delivery and governance albeit within the boundaries of the national legal system .[45] The judiciary has occasionally invoked customary practices in adjudicating land and family disputes clearly provided such norms do not contravene constitutional rights with dignity or gender equality provisions.[7] Despite these progressive approaches implementation remains uneven. So, we can see Customary systems suffer from legal fragmentation, legal principle insufficient documentation and exclusion from mainstream policy discourse.[46] Notably, gender justice poses a persistent challenge as some customary norms remain deeply patriarchal highlighting with Articles 18 and 38 of the Constitution which guarantee equality and women's rights.in practice. Yet, Nepal stands out in South Asia for having constitutionally enshrined legal pluralism which offers a promising—though incomplete—model of integrating custom with constitutionalism, reflective of its commitment to diversity, inclusion, eco cultivating and transitional justice.

5. Thematic Deep Dive: Gender, Land Tenure, and Access to Justice

Legal pluralism in South Asia cannot be adequately understood without a nuanced examination of the thematic intersections between customary legal concepts and broader issues of gender justice, land rights, Justice and access to justice. These themes reveal how customary legal both empower

[44] International Centre for Transitional Justice, *Navigating Plural Justice Systems in Nepal* (ICTJ 2011) 7–10.
[45] National Foundation for Development of Indigenous Nationalities Act 2002; Local Self-Governance Act 1999, s 28.
[46] UNDP Nepal, *Access to Justice: A Baseline Survey of Legal Aid* (UNDP 2012) 18–19.

and marginalise often operating in tension with formal constitutional guarantees which interpret justice and international human rights obligations.

5.1. Gender Justice and Customary Law

Perhaps the most contentious domain of legal pluralism in South Asia involves the regulation of gender roles highlighting in the areas of marriage, dower, divorce, inheritance, maintenance and bodily autonomy. Our Customary systems—whether tribal councils, religious courts, regional customs or rural *panchayats*—often reinforce patriarchal structures by codifying social expectations that restrict women's rights continuously .[47]In *Bangladesh* for example women in rural areas frequently encounter *shalish* decisions that deny them equitable access to inheritance or impose extrajudicial punishments for alleged moral transgressions.[48] A landmark case named *Bangladesh Legal Aid and Services Trust (BLAST) v Bangladesh* that challenged these practices with the High Court ruling fatwas and punishments by informal tribunals are unconstitutional in nature and violate women's rights.[49] Similarly, in *Pakistan* the same scenario *jirgas* have drawn national and international condemnation for decisions that involve child marriage *vani* (giving girls in compensation) and concept of honour killings.[50] Despite Supreme Court rulings that declare such decisions unlawful and the persistence of these norms indicates the enduring strength of patriarchal custom of justice and the weakness of enforcement.[51] Even where courts have promoted gender equity—such as the Indian Supreme Court's decision in the famous case *Shayara Bano v Union of India* which invalidated the Muslim practice of instant triple *talaq*—reform critical faces resistance from conservative Muslim community leaders who argue that such interventions erode religious autonomy and the legal assumption has no right to change the matters.[52]This common tension reflects a broader dilemma: how can legal systems respect cultural diversity while ensuring that customary principles do not violate gender equality? The effective challenge lies not

[47] Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (OUP 1999).
[48] Sara Hossain and Lynn Welchman (eds), *Honour: Crimes, Paradigms and Violence against Women* (Zed Books 2005).
[49] *Bangladesh Legal Aid and Services Trust (BLAST) v Bangladesh* [2010] HCD 38 DLR (2010) 294.
[50] Asma Jahangir, 'The Origins of Honour Killings in Pakistan' (2002) 3 *Human Rights Law*
[51] *Suo Motu Case No. 1 of 2006* (SC Pakistan).
[52] *Shayara Bano v Union of India* [2017] 9 SCC 1.

in abolishing legal customs but in transforming the premature concept. These legal empowerment strategies must involve women as participants in customary tribunals ensuring procedural safeguards of justice and develop culturally sensitive reforms that align with constitutional commitments to practicable equality.[53]

5.2. Customary Land Tenure and Resource Rights

Customary law also governs land tenure systems across many South Asian indigenous and rural communities for many years. These systems are often based on collective ownership, lineage rights and oral agreements rather than formal title deeds. While such arrangements can protect communal resources of peaceful means and ensure sustainability that are frequently unrecognised by state institutions, even exposing communities to displacement and exploitation. In *India*, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 attempted to correct historical injustices by recognising customary institutional land claims in forest areas .[54] However, implementation has been inconsistent in nature and bureaucratic barriers have led to widespread rejections of tribal claims.[55] *Bangladesh's Chittagong Hill Tracts* represent a stark example of the marginalisation of customary land tenure by tertiary ways. The state's drastically failure to fully implement the CHT Peace Accord 1997 has led to continued land disputes in these ways between indigenous groups and Bengali settlers for more than 40 years[56] Our customary international rights recognised under the *Chittagong Hill Tracts Regulation 1900* remain under threat due to non-registration including weak enforcement and lack of proper institutional support.[13]In *Nepal*, the post-2015 constitutional recognition of indigenous communities' rights to ancestral land disputes which marked a shift toward inclusion. However, economic development policies and federal restructuring have diluted these protections more especially where community claims lack documentation or lack of political inclusion of social demand. The disjuncture between

[53] Sally Engle Merry, 'Legal Pluralism and Transnational Legal Orders' (2016) 4 *Annual Review of Law and Social Science* 377.
[54] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (India).
[55] Armin Rosencranz and Sharachchandra Lele, 'Implementing the Forest Rights Act: Lack of Political Will?' (2008) 43 *EPW* 8.
[56] Amena Mohsin, *The Politics of Nationalism: The Case of the CHT* (University Press Limited 1997).

formal law and customary tenure systems perpetuates legal insecurity for time being. To address this, states must develop hybrid systems that allow for the recognition of oral approbation of rights and collective rights within statutory frameworks highlighting government policy. Legal literacy, community mapping, communal justice and participatory titling can help bridge the gap between customary norms of pluralism and bureaucratic requirements.[57]

6. Normative Proposals and Policy Recommendations

Legal pluralism in South Asia must be approached not merely as a socio-legal fact but as a normative project one that aims to harmonise cultural legitimacy with constitutional justice system. The objective is not to dissolve customary legal systems totally but to ensure that their operation contributes to equitable, accessible, fairness and accountable governance. This section outlines proposals to promote sustainable legal pluralism in four core dimensions—recognition, reform, participation and regulation—anchored in constitution accountable governance and comparative jurisprudence among the Asian countries

6.1. Legal Recognition with Constitutional Conditioning

States must develop clear legal frameworks that formally recognise customary legal systems particularly those of indigenous and rural communities in the world. Aftermath recognition should not be arbitrary or symbolic it must involve legislation that defines the jurisdiction, scope, and relationship of customary forums with the formal legal system.AS India's PESA Act 1996 and Forest Rights Act 2006 serve as promising models such as they grant Scheduled Tribes procedural rights to govern local resources with a profitable way and resolve disputes based on tradition. However, replication in other South Asian states demands constitutional conditioning: customs must not violate fundamental rights those concerning equality, dignity, fraternity and access to

[57] Daniel Fitzpatrick, 'Evolution and Chaos in Property Rights Systems: The Third World Tragedy of Contested Access' (2006) 115 *Yale LJ* 996.

justice. Bangladesh lacks a statutory framework for recognising tribal legal systems in the Chittagong Hill Tracts that resulted in social screening and state encroachment procedure. A Customary Rights Recognition Act incorporating ILO Convention article 169 standards could fill this legislative vacuum for the time being.

6.2. Reform from Within: Internal Accountability and Gender Sensitivity

Our efforts must be made to institutionalise participatory norms based on practical sense by including women, youth, tribes and marginalised groups in traditional dispute resolution processes. Various research has shown that inclusion of women in community courts or *shalish* forums significantly alters outcomes in the cases of inheritance, family disputes or gender violence. Powerful Programs like UNDP's Access to Justice Initiatives in Nepal and Bangladesh have piloted participatory models within *shalish* and community mediation strategy demonstrating that traditional institutions can evolve through community dialogue rather than imposition of law. In this moment legislatures should mandate minimum representation quotas and establish ombudsman mechanisms to address abuses of power in these systems and by the way they can check and balance among the organs.

6.3. Jurisdictional Integration and Appellate Pathways

The sustainability of legal pluralism requires jurisdictional clarity and vertical accountability randomly. These Customary forums should be allowed to handle civil, family, criminal, quasi civil and land-related disputes within a scope, while criminal matters and violations of fundamental rights should remain strictly under the purview of state led courts. Moreover, Contemporary customary decisions should be made subject to judicial review through appellate mechanisms or community based legal aid centres. In Pakistan's *jirga* rulings, for example have repeatedly faced backlash for violating constitutional protections due to the absence of appeal as per their codified law. Here India's experience with Nyaya Panchayats although limited illustrates that quasi-judicial forums integrated into the formal hierarchy can balance local legitimacy of all right with

procedural fairness. So, a graded appellate system relating to local courts and legal aid NGOs can help mitigate the risk of abuse while reclaiming the benefits of community adjudication very soon.

6.4. Legal Education and Customary Literacy

To bridge the normative gap between state law and custom, legal literacy must operate both ways: communities must understand their constitutional rights, and state legal actors must be sensitised to the legitimacy and nuance of customary norms. Law schools and judicial academies should incorporate customary law modules, including field-based ethnographic training.[9] Furthermore, community paralegals—drawn from within local populations—can act as intermediaries who interpret, mediate, and document customary practices in ways that enhance transparency and legal legitimacy.[10] Programs like Namati's legal empowerment initiative in India and BRAC's community legal clinics in Bangladesh have shown that trained community-based legal advocates improve outcomes and reduce rights violations.

6.5. Documentation and Codification Without Rigidity

A major challenge facing customary systems is their lack of documentation, which leads to legal misinterpretation, erasure, or manipulation. However, codifying customs must avoid rigidifying them into static rules, as was done under colonial regimes. The solution lies in participatory, living documentation—recording customary principles through iterative consuthetion, periodic updates, and community validation. Digital archives, community charters, and oral history repositories can help preserve and validate customary norms, especially among tribal communities in Nepal, northeastern India, and the CHT region. Legislative backing for such community-led documentation would enable courts and administrative authorities to assess the validity of custom without resorting to elitist or external constructions.

7. Conclusion

Legal pluralism, including the religious, political, social pluralism in South Asia is not an anomaly to be corrected albeit a structural reality of existence to be understood, negotiated, talked and reformed manner. Rooted in deep histories of indigenous governance in that area highlighting colonial engineering and post-colonial social continuity, the coexistence of state made custom and non-state legal systems reflects both the diversity and instigates the tension between the region's jurisprudential concepts. Various customary laws continue to function as a living source of legal authority—shaping community identities, resolving disputes, providing peace and delivering justice in ways that are often more accessible, comprehendible, context-sensitive and legitimate than state systems. Yet this proper resilience is not without contradictions. Customary law when left unchecked may reproduce inequality, disparity, marginalise vulnerable groups, and conflict with constitutional principles of human rights, especially gender based justice. So, the task for modern legal systems, therefore, is not to extinguish customs from society but to transform and integrate the customary concept into a normative framework that ensures fairness, justice, inclusivity and legal certainty. This research has shown through comparative analysis across India, Bangladesh, Pakistan and Nepal that proved sustainable legal pluralism is achievable when the state adopts a multi-cultural ways for instance (1) legally recognising customary jurisprudence with constitutional safeguards; (2) empowering communities to reform regular customs from within (3) integrating customary legal forums through appellate and jurisdictional clarity; (4) investing in legal literacy and community-based advocacy culture and (5) documenting customs in participatory and adaptive ways in Courts and legislatures as institutional guardians of rights which must balance respect for tradition with the demands of constitutional justice by ensuring that pluralism does not become a veil for impunity or patriarchal dominance. Ultimately, the legal pluralism offers not only legal dilemma but also an opportunity. When guided by inclusive reform strategy, participatory governance, pluralistic society and rights-based pluralism which can make a bridge between law and society.

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