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Research Article

INFORMAL JUSTICE SYSTEM AND THE STATE: A CRITICAL APPRECIATION

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A R T I C L E I N F O

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A B S T R A C T

This paper focusses its attention on the intricate relationship between the informal organizations of dispute resolution with that of the state. There is no disputing of the fact that democracy and democratic governance is undermined in the absence of effective access to justice. The concept is organically linked to poverty reduction because a poor citizen is denied the spectrum of choices, opportunities of participation and a voice in the decision-making process. Such flaws can be corrected through the informal institutions which provide scope for the flourishing of the democratic process of participation, accountability and responsibility. The informal justice sector with a firm commitment to take justice to the poor man's doorsteps is playing a creative role in fostering a democratic order. The informal justice system acts as a buffer between the state and civil society and with strong influence and control they interact with community members, kinship groups and other familial networks. They mediate between disputing parties and depending on the contours in which they are embedded they influence the role of the state vis-a-vis the civil society.

INTRODUCTION

The discourse on informalism fraught as it is with a plethora of complexities and diversity of approaches and interpretations is one of the most challenging, yet compelling domain of disquisition and articulation within contemporary socio-legal debate and research agenda. Critiques of legal formalism have engaged in recent years to produce informalism in legal-theory drawing upon Foucault's approach to power. A study of informalism or informal justice is particularly fruitful and warranted for a deeper understanding of the interplay of power, social control and freedom. This endeavour assumes added importance because the problem of understanding informal justice in legal theory compel us to move beyond seeing power as radiating outwards from something called *thestate*, as well as beyond the opposition of individual and community's conception of liberty to *statepower*, towards a more complex and nuanced understanding of the ways in which law and government work through individual and community freedom, rather than against them.

Legal pluralism questions the idea that all laws must necessarily emanate from the structure called state. There exists consensus that the state is not the only source of law as historical evidences suggest in ancient societies laws gradually developed from customs and practices in the absence of any central authority or government. History is replete with instances of pluralistic legal systems with multiple societal or informal institutions as sources of law. These organizations ranged from normative orderings as the church, the family and peer groups to voluntary organizations. These societal or informal associations while dealing with individual and communitarian disputes break the stranglehold of the idea that law is exclusively unified hierarchical ordering dependent upon the powers of the state.

In modern society legal centralism is a myth, an illusion. Legal pluralism indicates a shift from legal centralism - a tendency to hold that all legal precepts are rooted in state laws. Legal pluralism instead of looking at law as exclusive, systematic and unified hierarchical ordering of normative propositions depending upon the *grundnorm* or sovereign's commands, takes law to be as something developing from bottom-upwards deriving their validity from a general layer of norms of social organizations and developing into something ultimate. In actual practice, the presence of various normative orderings determines the nature of law that is enacted, enforced and accepted. The shift towards legal pluralism is a clear indicator of the fact that state takes into consideration the content and function of the principles and laws of non-state actors. The normative structures – shared cultural orientations, their conscious and unconscious behaviour and tendencies, their beliefs, customs, conventions, communitarian ideals and practices, and collective suppositions and self-understanding -

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holding sway over substantial portion of community are authoritative in nature.The mosaic of normative structures is a dynamic system as they inherently bear the capacity to structure actions and engage or transform their particular communities. Neglecting thesenormative networks means ignoring crucial factors necessary for achieving the goal of access to justice. The existence of multiple normative structures is part of the democratic process. In the contemporary period law is plural, it is public as well as private in nature and that the national (official and public) judicial system is not the only primary source of regulation and control. Legal pluralism with its recognition of informal institutions as regulator of social conduct and resolver of disputes is justified as a technique of governance on pragmatic grounds.

Empirical researches indicates that the informal institutions functioning in the contemporary period is a product of legacies of the past; they have adapted to the cumulative impact of colonialism and modernisation and, specifically, the establishment of the modern state and its legal system. These informal forums is relevant to the justice sector reform for searching the ways and means to reduce pendency of judicial workload and providing justice to those who lie below the vision of formal judiciary. Most governments across the globe have opted for legal pluralism recognizing the fact that there would be discrepancies in the formal adjudication processes.
It is beyond any doubt that legal systems across different countries have witnessed major transformations in recent times. Since the issue of access to justice is of crucial importance not only for the legal profession but for the larger society as a whole concerted efforts have been made to open up avenues of justice disbursement. The issue encapsulates not only access to justice but the notion that it should be cost-free and quick with equal emphasis on substantive justice. Recognizing that the expansion of procedural rights, the delivery of more professional legal services and the proliferation of the formal legal institutions are inadequate for effective access and delivery of justice, the informal institutions symbolize repeated tirades to go beyond an individual's formal rights and address the more cogent emotions underlying the disputes.

Meaning of Informal Justice System

Before making an attempt to define the term informal justice system it must be acknowledged that considering its range no single definition is precise and sufficiently broad to encompass the multiple systems and mechanisms that make justice accessible. Varying considerably from encompassing various mechanisms of differing degrees and forms of formality with respect to legal or normative framework, state recognition, control and accountability instruments, system of monitoring and maintenance of records, informal justice system also include institutions and methods that have formal recognition. These institutions enjoying formal recognition as alternative dispute resolution mechanisms operate at the local and community level and are manned by traditional actors or by civil society organizations. Informal justice institutions adjudicate disputes and regulate conduct by employing the help of mediators or a neutral third party.

Its full range can be understood by having a look at the definitions provided by eminent socio-legal scholars. RichardAbel's (1982) definition of informal justice encompasses legal institutions which are non-bureaucratic in structure and relatively undifferentiated from society, with emphasis upon reduced dependence upon legal professionals and eschewing of official laws in favour of procedural and substantive norms that are unclear, unwritten, common-sensical, flexible, ad-hoc and particularistic. The informal justice mechanisms as Ewa Wojkowska (2006) points out are commonly referred to as non-state justice system and fall outside the scope of the formal justice system which includes all state sponsored and regulated institutions and procedures as courts, police, custody and custodial measures.

Helmke and Levitsky (2004) define informal institutions as 'enforced outside of officially sanctioned channels' whereas formal ones are 'enforced through channels widely accepted as official.' Operating within a set of acceptable collective behaviour, norms and customs they seek to shape individual and community expectations. Functioning on the basis of written and unwritten principles, they draw life-support from common set of beliefs and shared goals. In the opinion of Charles & Beckford (2012), it is an organized system of justice dispensation that imitates the functions of the formal system but operating outside the rule of law. The difference between the formal and informal justice system basically relates to power that enforces justice and standardization of the process. The formal revolves round the state while the informal relates to civil society. While formal justice system refer to codified laws, informal system denotes the cultural and societal judgment and reform agenda prevalent in many parts of the world especially developing countries as well as countries of the underdeveloped world.

The notion of informal justice is gaining momentum across law-related and legal fields. Informal institutions as informal regulators are a universal phenomenon; it is everywhere. In every society we can identify multiplicity of legal orders from the grass-root local level to the national level. In many societies in addition to the general laws, there thrive many exotic forms of law as indigenous law, customary law, religious law and laws pertaining to distinct ethnic and cultural groups. There are also evidences of private vigilance and policing. Informal conflict resolution institutions cannot lay claim to uniformity; they are not uniform across societies as the character and complexion of such mechanisms embrace regional and cultural variations. Their complexity and make up "varies from region to region, between the districts or villages and even differentiate among the social fields."[1]What makes the system of informal justice noteworthy is they operate with multiple uncoordinated and overlapping laws and customs but nonetheless, there is marked diversity amongst them. The informal justice institutions ranges from tribal or clan based structures, local religious leaders, community forums trained in mediation, state customary courts, local administrative bodies and sometimes a hybrid model where state officials apply the queer mix of customary norms and formal principles.

[1]Pfeiffer Julia (2011), *Traditional Dispute Resolution Mechanisms in Afghanistan and their Relationship to theNational Justice Sector*, Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America, Vol. 44, No. 1 pp. 81-98

These bodies often make competing claims and in imposing conflicting demands and orders generate controversies among individuals and groups but in this process the system also create opportunities for people to choose from co-existing judicial authorities to advance their aims. The jurisdictional competence of informal institutions relates to the person involved – his status, religion and occupation.

Informal justice institutions have silently become a part of the system of justice dispensation and their functioning remains crucial. It is a rational response to the hazards of the formal legal system since justice is not only about seeking remedy but more deeply it implies that people are assisted fairly and without discrimination by the justice system. The term symbolizes the rhetorical and doctrinal interface between the legal and social factors associated with the administration of justice affecting citizens in the application of both substantive and procedural law.

Scores of socio-legal scholars have attempted to problematize and clarify various aspects of informal justice as means of alternative dispute resolution. The contemporary period has witnessed an international movement toward the informalization of justice in social systems in nations as diverse as the third world, revolutionary societies and western industrial ones. Recent scholarly and professional legal interest in increasing access to justice and providing alternatives to adjudication for resolving certain kinds of disputes has sparked deep interest. Behind the hue and cry of the reform of the formal legal system a struggle is taking place over the meaning of mechanisms of alternative dispute resolution, the nature of its reform mission, its strength, its use of symbols of legality, and its methods for handling disputes. Much of the critical scholarship on informalism has examined its relationship to existing legal processes and the ways it challenges these processes. What is vital is the necessity not only of understanding retrospectively the working of informal justice as it existed earlier but also to grasp what is specific and novel about current justice initiatives. Within the reform movement, socio-legal scholars have focused their attention on three interrelated strands as service delivery, social transformation and personal growth to characterize the shift towards informalism for purpose of analysis.

Informal Justice Institutions and the State

The socio-legal scholarship has witnessed much debate and discussions over the informal justice delivery system during the 1980's though it could not maintain the same steam during the 1990s but nonetheless it continued to grow. One of the major criticisms over the informal dispute resolution mechanism was that "it tended to increase rather than decrease state control over minor dispute[2] but subsequently the focus shifted to "the implied dichotomy between state and community control (Oslon et. al, 2004). What is noteworthy here is that the informal system assigns the task of dispute resolution to the community with little or no space for professionals. During the 1980's much scholarly focus on the informal system was overwhelmingly critical. Scholars concluded that "informal extended rather than reduced the social control, failed to live up to its vision of non-coercive resolution, allowed more powerful parties to take advantage of less powerful parties, allowed more room for personal prejudice than formal processes do …"(Oslon et. al, 2004). Inspite of its lacuna where sometimes the community mediators play an upper-hand over disputants, the system continued to grow with numerous government supported community-based programmes. However, when speaking of professionals, it is important to point out that though theoretically the communitarian dispute resolution mechanism virtually leaves no room for professionals but as in US the professionals have spearheaded many state sponsored community based resolution programs.

As part of its policy to promote access to justice, the state provides tacit support to informal dispute resolution system and ensures that customs and practices violating human rights are not adhered to. In its attempt to provide for a formal linkage between the formal and informal justice dispensing mechanism, the state endeavours better control over the informal institutions. Empirical evidences suggest that state support that the informal institutions consider non-criminal cases and avoid any such cases where the state is a party to dispute directly or indirectly. Though prosecution of criminal cases always remains the sole prerogative of formal judiciary but researches have shown that in traditional or under-developed societies, the informal institutions handle petty criminal cases. However, the same holds true for the developed societies also. Though imposing retributive punishments remain beyond the jurisdiction of the informal institutions but evidences prove that in substantive terms inhuman and cruel forms of punishment such as flogging and banishment are handed out to offenders. The example of Somalia and Latin America can be cited as an instance. However on a more humane level compensation and compulsory community services are imposed on those exhibiting socially deviant behaviour and breaking communitarian norms.

Since women and children are prime users of the informal system, the state policy mandates that traditional-communitarian dispute resolution institutions refrain from any action that further marginalize both women and children. The state seeks to provide avenues that enable those vulnerable (women, children as well as those disadvantaged) to provide access to and participate in the informal dispute resolution process. However, inspite of all its good intentions, total success has eluded the state in ensuring safety and confidence of those depressed and disadvantaged. Therefore, the state still faces the challenge of moulding the informal system to better cater to cases involving women, children and those vulnerable. Extra-judicial settlement of disputes through informal institutions usually implies that decision is binding and only under exceptional situation actors takes recourse to the formal judiciary.

The informal justice system is increasingly becoming popular. Its theoretical promise of repairing harm, healing and rebuilding relations among the victim, offender and community has achieved practical success. Its basic premise of viewing crime as rupture of social relationship affecting the quality of life in the community and maxim of focussing on preventing crimes and solving neighbourhood conflicts have helped to redefine the role of the state. In concentrating its action to the level of individual and community, it minimizes the role of the state and government. Ethically questioning the

[2]Oslon and Dzur (2004), *Revisiting Informal Justice: Restorative Justice and Democratic Professionalism*, Law & Society Review, Vol. 38, No. 1, pp. 139-176.

idea of retributive sanctions, the informal system increasingly makes clear that censuring crimes may also proceed through alternative processes and procedures oriented towards reparation. According a central role to both the victim and community the informal justice system thus reviews the traditional retributive paradigm that offers only a simplistic choice of incarceration of the offender. The practical issue of getting justice done not simply stand for ushering in more state sponsored institutions with more lawyers and enacting multiple legal provisions but altering the cumbersome legal procedures of formal system and revising their relationship with those at the grass-root so that justice embraces vindication of individual rights within the democratic dispensation. Viewed from the prism of communitarian security, the informal justice system fosters balance between peace and justice. Since these informal institutions have defined boundaries, they are unlikely to encroach upon state authority and threaten national security.

Informalism – A Tool for Empowerment

The socio-legal debate on informalism envisions the process of consensual dispute settlement as one which will empower citizens allowing them to take greater control over their own lives, enhance their personal skills in dealing with conflicts, and endow them with techniques they can apply to other situations. There remains high hope that informal or popular justice can restructure society. Since the 1980's there has been a florescence of programmes rooted in and funded by the courts. But there has also been a proliferation of religious-based, social service-based, and community-based programs. Some speak of avoiding court, some of social and personal transformation while others advocate increased efficiency as well as greater personal satisfaction. The field of informal justice is diverse and somewhat untamed; not all programmes follow the same mould. In the contemporary movement, there is talk of community empowerment, the creation of a new sense of community through self-governance or neighbourhood control, decentralized judicial decision-making, and the substitution of traditional community judges by professional dispute resolvers. There are also religiously inspired mediation programmes which argue that learning to settle differences by sharing ideas through open interaction will promote both social and spiritual well-being. The informal system of dispute adjudication has moved justice delivery initiatives to local community and citizen involvement. Community hearing of grievances is an effective means for enforcement of decision outcomes. As such, the Shalishi system in Bangladesh utilizes the public form to publicize their decisions while its enforcement is brought about the committed collective community conscience.

What remains problematic is the continuing presumption that relations characterizing informal justice remain one of domination and coercion sparking a yearning for freedom and . Without accepting the enthusiastic rhetoric of advocates of informal justice it is necessary to examine whether there exist some elements of informalism in any legal configuration and whether informalism promotes justice in contemporary society. It remains to be seen how the organized efforts to bridge and link the realm of formalised legal ideas and procedures with extra-legal forms of social ordering work within the framework of power relations.

A perusal of different societies hasrevealed that informal dispute resolution institutions are unique in as much as it conforms to and deviates from the pattern of informalism. Empirical evidences have proved that conflict resolution institutions operating at the grass-root level do not reveal a conventional turn to mechanisms of informal justice as problem solving moves emerging from an overloaded or inefficient formal system but from much deep seated fundamental socio-religious and communitarian concerns.What is emphasised is the ideological effect of creating and maintaining an apparent social bond between disputing parties with engagements to displace fundamental inequalities in power relations and wider processes of exploitation and domination. In fact, informal justice system around the globe unfolds itself through both social and religious institutions. The informal dispute resolution institutions derive their specificity from their particular socio-cultural and communitarian ethos emphasising upon local neighbourhood institutions bound by a shared focus on the concern for creating consensus among disputants as well as maintaining necessary detachment of mediators. The local institutions provide a voluntary, empowering way of resolving disputes in a congenial way.

The practices of informal institutions necessarily elevate the role of the victim in the justice process. But in posing for the rights of the victim it neither disregards the rights of the offender nor advocates a zero-sum approach which is incompatible with a concern for the same. The informal approach to dispute resolution advocates such a sanctioning process where the offenders are provided scope to make amends towards their victims. The offender seeks amends in order to reintegrate themselves back into the society. Gordon Bazemore describes this unique approach of offender rehabilitation through reintegrative process as 'earned redemption.'[3]What is to be noted here is that the reintegration process is natural rather than expert or professional driven. Taking off from one major ideological premise the spin-off of informal system is increasing experimentation with victim-offender mediation conferences, healing circles, family-group conferences, restorative probation and special educative programmes with special focus on victimization, compensation and restitution. In focussing upon collective participation in crime prevention and neighbourhood revitalization efforts the informal system directs justice initiatives towards promoting community empowerment and increased public satisfaction.
Since the essence of the informal justice system lie more in its process than in its outcome well conducted community dispute

[3] … a sanctioning approach that allows offenders to make amends to those they have harmed in order to earn their way back into the trust of the community. To be effective, reintegration ceremonies focused on earned redemption would also require that rehabilitative efforts work in close harmony with these sanctioning processes, with efforts to promote safer communities, and with the efforts to meet the needs of crime victims. Finally, a process of earned redemption must be built upon naturalistic, rather than expert-driven processes of maturation and reintegration in communities. Gordon Bazemore (1999*), Restorative Justice, Earned Redemption and a Communitarian Response to Crime*,Florida Atlantic University. This paper is one in a series issued by The Communitarian Network and the George Washington University Institute for Communitarian Policy Studies (ICPS).

resolution mechanism offer a powerful sequence of moral and social emotions. Significant success have been recorded in achieving victim satisfaction, offender agreed obligations and community intervention. Since the early 1970s, substantial scholarly and professional legal literature have emerged revolving round the desirability and feasibility of creating informal alternatives to regular courts. The proponents argue that increased number of informal, non-coercive, participatory mediatory institutions will settle disputes better than formal courts. The system is more amenable to procedural fairness. In being least expensive and preventive of disrupting relations between parties it increases access to justice. Women in Malawi bring cases to local chiefs because the dispute resolution process offers confidentiality. Issues involving family relations and martial problems are resolved through community interventions.

Informalism and Restorative Practices

Informalism has drawn our attention to restorative justice programmes as a panacea to problems of punishment and other retributive sanctions. Scholars and researches have examined the effectiveness of a number of such schemes and initiatives that currently operate. Restorative justice is promoted as more humane and responsive to individual needs and better able to tailor agreements to particular situations than courts. It helps people to feel better about them. The consistently high measures of satisfaction reported in evaluations of restorative justice programmes in different societies point towards its success. The emphasis of restorative justice programmes on personal growth is part of a more general psychotherapeutic disposition increasingly pervasive in developed societies.

When a crime is committed the general query is, 'who did it and what should be done to the offender'? Detaching itself from the primary preoccupation of retributive dialogue, restorative justice asks, 'what should be done to heal the injury of the victim'? In contrast to one dimensional focus on punishment of the offender, restorative paradigm advocates that justice cannot be achieved simply by punishing the accused. With its core values of healing and restoration, restorative justice remains at the heart of the informal justice system. Viewing crime more as an offence against the individual and community and less against the state, restorative justice reconstitutes the way people think about crime. Espousing the principle that justice is best served when there is a balanced response to the needs of the victim, the offender and community at large, restorative justice advocates that basic multiple community expectations such as to feel safe and secure, to ensure that offence is reprimanded and allow the offender to reintegrate into society/community cannot be achieved by an insular focus on sanctions. Rather, to meet these demands and repair the harm crime caused all stake holders- the victim, offender and community as clients of the justice system should meaningfully participate in a holistic justice process. This encounter will lead to a more sympathetic understanding of the harm and suffering caused coupled with the fact that expressions of remorse, compassion and apology and forgiveness will foster feelings of respect, peace and satisfaction. Based on specific cultural approaches to crime, restorative justice addresses the needs of the victim and community through apology and reparation, a process intended to lead to integration of the offender back into the society. This bottom-up approach is crucial in restorative justice and contrasts with the top-down approach of retributive system.

Apart from the many loopholes of the formal judicial system as heavy backlog of cases and its slow disposal rate, cumbersome legal procedures and procedural wrangles, legal juggleries and high costs associated with legal brains - one that occupies the central position is the concern for victims.Victims are typically left out in resolution process unless the court feels their need as witnesses. Instead of making amends for the victim, the formal dispute resolution system focusses on the offender. The formal system remains offender-centric with much attention and time spent on how to punish the perpetrator of the crime. The formal process concerns itself with more retributive than restorative practices. Engaging with restorative practices, the informal system makes the offender take responsibility for his wrong-doing and in the process re-integrate the offender back into the community rather than imposing retributive punishments and putting him in jail. Therefore, scholars contend that the formal retributive system fails to reduce crimes generally and recidivism in particular. The informal system in bringing both the victim and offender into face to face contains attaches much value to the victim, which indeed the victims value more than anything else. The informal system in making the victim participate directly in the mediation process provides a therapeutic relief to the aggrieved; in that the victim is made to acknowledge what happened to them and have control over the deliberative process. The system empowers the victim to negotiate.

The community judges mediate local disputes, provide succour from misdemeanours of habitual trouble-makers, offer civil society support to drug-offenders and provide neighbourhood security. Resisting impulsive actions and organizing community members towards developing strong communitarian bonds, they act as conduits of social change. As three dimensional collaborative efforts involving the victim, the offender and the community, restorative practices eschew professional expertise in substantive law and procedure upholding human interaction. In emphasising upon unique circumstance of each offence it does not prescribe the same treatment for all since formal equality may reinforce actual inequality. The participation of individuals allows them to relate to each other holistically and fluidly as unique entities. While refraining from looking towards harsher punitive actions to deter or incapacitate the offender, the restorative practice of re-integrative shaming is viewed as a positive step in the right direction. The system holds offenders accountable to community collectivities and broader social interests.

In the contemporary period different countries have embraced restorative practices in varying degrees in their respective justice system. While all delinquency cases in New-Zealand except for those grave ones as rape and murder are dealt by community-family group conferences; non-violent felons and misdemeanours in the state of Vermont in the U.S. A. are made to make reparation to the victim by community boards. The state juvenile justice systems in Pennsylvania, Florida, New-Mexico, Idaho and Montana have inserted restorative practices in their justice system. Community courts have gained positive support in New York, Portland (Oregon), Baltimore, Denver, Minneapolis, San-Diego, St. Louis, West Palm Beach and Miami. Canada has devolved justice initiatives to its local communities. Likewise restorative practices have become a part of justice systems of Australia

and several European countries. The proliferation of these social courts is a reminder that besides increasing community involvement restorative justice has other substantive values also. The new ways of interaction between actors have both intellectual and affective dimensions. While the judges draw satisfaction from the fact that the process is more holistic and less adversarial, the participants draw strength from meeting their intellectual and emotional needs.

A revisiting of the concept of retributive justice brings forth the paradox, though wrongness of criminal act justify the imposition of punishment yet punishment itself is a parallel act against the offender. Criminal trials no longer constitute the centrepiece of social repair because the infliction of punishment provides an unparalleled opportunity for abuse of power and vengeance. The argument that retributive punishment is neither necessary nor a sufficient moral requirement has occupied the centre stage in the analysis of the relationship between restorative and retributive justice system. With the development and refinement of socio-ethical conviction there have been clarion calls from various quarters to curtail capital and corporal punishment. The aphorism *let the punishment fit the crime* has been replaced by cries of human rights violation. The current trend is one of transferring responsibilities for apportioning blame and sanction to public bodies and civil society. Their engagement in contributing to societal peace and stability provide avenue for negotiating a settlement that otherwise would not have existed. The maxim that rules the informal system is that of reform; the common adage is-the offender must be punished not to inflict harm but to reform him.

Focussing only on the offender ignoring the needs of the victim, the punitive paradigm (retributive justice) as an insular, closed system remains engrossed in assessing the criminal act and culpability and on defining the penalty. Since victims have no role except for being a witness, they undergo secondary victimization by the justice system. Lack of concern for the victim and the failure of the conventional retributive justice to realize that strong penal action will not necessarily reduce crime in general and recidivism in particular have been important strands of criticism against it. The adversary system of removing from the offender the need to take responsibility for their actions is another strong criticism against the retributive justice system.

Criticism

However, all is not well with the system and it must account for its fair share of criticism. Though the system of informal adjudication of disputes display some of the best human qualities - apology, reconciliation, restoration, and forget and forgive, but it has also exhibited some of the worst human traits as abuse, stigmatization, hate and oppression. The case of South Africa can be cited as classic example. Critics contend the system of informal justice is a benign-gloss as community mediation can be oppressive and abusive; the system unleashes violence and stigmatization - the very conduct they seek to control.Critics fear that the South African experience is an ominous reminder that informal dispute resolution system will deliver the worst of both the legaland extra-legal system.' Often informal practices have dispelled disaster for victims of violence, especially domestic violence. Inspite of all restorative practices, victims of domestic violence have risked ceding their individual rights for the sake of maintaining harmony within the group or clan.In cases involving women restoring community honour takes precedence over protection of their individual rights and self-esteem. For instance, in Somalia women who have been raped is forced to marry her offender. Wife inheritance and ritual cleansing is part of the customary practices in Kenya. Again, informal institutions might prove to be counter-productive as in Jamaica.[4]When local leaders and power-brokers influence local dynamics and power-structure, their effect can be ruinous. They can lead to local displacement, incivility, human rights abuse, homicide and all that is worse. Disregard for rule law by influential local judges and power-mongers can be hazardous for the democratic dispensation. When influential community and tribal leaders violate communitarian norms without sanctions just because they exercise the power to make and unmake rules can bring in societal decay and stagnation. Their authoritative assertions bear the potential and power to challenge and cripple state authority. The drug cartels in Colombia, garrison constituencies in Jamaica, the Italian mafias, the maroon communities and the favelas of Brazil are some concrete examples. In Colombia and Guatemala the poor urban communities controlled by drug mafias' exhibit distrust and suspicion towards the state security forces.

CONCLUSION

The current position is that of a continuum between the formal legal and informal justice system. They form a continuous sequence in which there is an official degree of recognition granted to and linkages with the state. Between the extremes of the two systems which are quite distinct, the common elements between them range from adjudication, participation, impartiality, accountability, transparency, implementation, monitoring and supervision and so on. Though support to justice sector reform has doubled over the past few years but it remains minimal in comparison to the attention given to the formal justice system. Since the specific niche in supporting the informal justice institutions lies as a part of the programme of democratic governance, poverty reduction, and human development, the state often favours units that exhibit affinity towards forming linkages with the formal system. For instance, in many countries the local leaders and tribal chiefs play decisive rolein nominating candidates for para-judicial system. The Local Council Courts in Uganda and the Village Courts in Bangladesh and Papua New Guinea have introduced affirmative action measures by setting up quotas for female representation. Similarly, the Primary Justice Programme in Malawi trained traditional chiefs and village headmen to aquaint them with knowledge of legal rights and the project was implemented by the local government.

The linkages between the formal and informal justice is both positive and negative. The positive collaboration between the two ranges from appeals, referrals, advice, and assistance and so onwards from the informal to the formal system. Opposition and hostility occurs when there is overlapping of jurisdiction and competition over scare societal resources. However, the key to engagement with the informal justice system is effective protection of individual and group rights. Global examples

[4]Charles and Beckford (2012), *The Informal Justice System in Garrison Constituencies,* Social and Economic Studies, Vol. 61, No. 2, Special Issue on Law & Justice in the Commonwealth Caribbean (June 2012), pp. 51-72.

have shown that human rights are better protected and preserved when there are scope for exchange of ideas and provisions to learn and co-operate between the two systems.

However, the response and attitude of the state towards the informal justice system has been varied – the spectrum ranges from (i) abolition of informal institutions by the state (ii) partial acceptance or co-existence and (iii) complete incorporation. In Ethiopia and Sierra-Leone the state through legislative enactments has completely abolished the informal-community based dispute resolution institutions. In countries as India, South Africa, Ghana, Uganda, East Timor, Kenya, Zambia, Zimbabwe and Peru there is mutual incorporation and co-existence between the state sponsored formal and community based informal structures. In Bangladesh and Philippines, there is complete incorporation of the informal institutions within the formal system.

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