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Access to Justice; Informal Justice System and Principles of Human Rights

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ABSTRACT

This research identifies the effects of informal judicial formation on human rights according to the concept of legal pluralism. Legal pluralism assumes the fact of the coexistence a diverse set of legal procedures inside a particular culture and such system includes state judicial system and informal or traditional judicial systems. The answer to this lies in the search for a practical, multi-layered approach, namely, a valid pluralist approach that considers the challenges, experiments, and opportunities resulting from the variety of legal frameworks and their effects on human rights. It is based on the multidisciplinary approach which combines social, legal, and anthropological opinions, while conducting qualitative research, for instance, with the help of case studies, interviews, and legal document inspection. These findings, in short, illuminate the mechanisms of how alternative justice systems at the grassroots level can be actors of human rights promotion, as well as a possible source of a repudiation of such principles. The study concentrates on the pillars which support legal pluralism and the context which creates it and on the application of this pluralistic pluralism both to the informal justice systems and human rights.



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1. Introduction

The laws and legal systems of the world are very diverse, from the officially nationally recognized ones to informal laws that are unique to a community and based on traditions and customs. Traditional justice systems commonly complement the occupational legal structures, making them an important tool in the fight for human rights protection and promotion. This paper explains the complicated connection between informal legislation systems and human rights from a viewpoint of legal pluralism, which is in focus both the problems and advantages of such a process.

In this study, we examine how well the chosen Informal Justice Systems follow international human rights norms that affect people's ability to access the justice they deserve. We will primarily use data from research conducted in four districts of South Punjab, where we interviewed benches, law court employees, experts in conflict management, and users of both official and informal justice systems. This information will help us understand how informal justice systems work with and shape human rights principles.

The study focuses on three main areas: (i) **Access to Justice:** We explore how informal justice systems contribute to or hinder people's ability to seek justice. (ii) **Gender Justice:** We examine whether informal justice systems address gender-related issues and treat all individuals equally. (iii) **Due Process:** We assess whether informal justice systems uphold procedural fairness and protect individuals' rights during legal proceedings.

Through our analysis, we aim to identify factors that influence how effective informal justice systems are in protecting human rights. Promoting open discussions, raising awareness, and fostering collaboration can make informal justice systems more compatible with human rights standards. This, in turn, can help ensure that everyone in a community has fair and equal access to justice. This assertion is supported by pertinent secondary sources examining the Informal Justice System's adherence to international human rights standards. The definition of "legal claims and responsibilities about individuals' prosperity" and the goal of "empowering those in need and other underprivileged people" to enable the realisation of their justifiable expectations, particularly those connected to fairness, are also made possible by universal human rights standards (UNDP, 2005).

Informal Justice System and human rights concerns are frequently connected, and this study looks at how human rights legislation may be applied in certain situations. Thus, individuals are free to exercise their civil liberties in any circumstance, even while using the Informal Justice System for conflict settlement; on the contrary, the state must uphold, defend, and preserve these privileges (Fredman, 2008). Universal equality standards, according to Charles Worth, "provide a helpful interpretation of standards regarding human rights which could potentially be accepted," however, they're not a flawless guide for nations to follow and incorporate' into national legislation (Fredman, 2008). According to international law, countries must provide people with remedies when their rights are violated in three different situations, each of which has given rise to a distinct body of legislation and legal disputes.

2. Research Methodology

This exploration incorporated a multi-disciplinary charter containing lawful, social, and anthropological perspectives. Qualitative research approaches will be employed, including case studies, interviews with essential participants and reviewing legal papers. Various cultural backgrounds became the survey's focus to cover as many experiences and behaviours linked to informal justice systems as possible. A comparative study was implemented to describe the variations in formulating the impact of informal justice on human rights in different regions and environments.

3. Expected Impact

Consequently, this research will contribute to a clearer understanding of the complex relationship between informal justice and human rights when viewed from a legal pluralism perspective. Therefore, the results should shed light on how informal judicial systems could foster and, conversely, undermine human rights concepts. Moreover, the outcomes of this study could also inform policymakers and aid in decision-making in developing reforms and legislation that should account for ways in which informal justice systems should be compatible with human rights frameworks to protect them while preserving cultural and local traditions.

4. Research Objectives

1. Explore pluralism's theories and theoretical contexts, considering how they relate to informal justice systems and human rights.
2. Assess the impact of justice systems on human rights, ethics and morality.
3. Investigate the roles and constraints of justice systems in advancing rights, specifically ensuring access to justice, gender equality and fair legal procedures.
4. Analyse the factors that influence the effectiveness of systems in safeguarding human rights.
5. Suggest initiatives and penalties to improve collaboration between informal justice systems, focusing on upholding rights while respecting traditional community structures.

5. Understanding Legal Pluralism

Several juridical structures inside a community are acknowledged by pluralism in law. It recognises that there are other sources of constitutional legitimacy outside official state legislation and that the informal justice system, based on customary practices, plays a crucial role in resolving disputes and maintaining social order. Legal pluralism recognises the importance of integrating different legal systems, respecting cultural diversity, and Guaranteeing that everyone can access the courts.

The analysis of legal diversity and the Informal Justice System shows how state legal structures and common human rights bills have developed over the past thirty years to safeguard the privileges enjoyed by indigenous peoples and societies in light of a long history of major rights violations. According to global treaties and traditional law, torture remains one of the oldest, most heinous, and commonly outlawed abuses that violate civil liberties; in fact, it is regarded as "certain principles that characterise autonomous civilisation" (Jayawickrama, 2002).

According to MacKinnon, the inclusion of female viewpoints in the decision-making process is imperative. Women encounter different needs than men, so it is crucial to include gender perspectives in the process (Nairobi Declaration of the Ninth International Conference of national institutions for the Promotion and Protection of Human Rights, 2008).

6. Interactions Between Informal Justice System And Human Rights

6.1 Constructive impressions of informal justice systems

Informal justice systems can have effects on rights, both beneficial and detrimental. On the side, they offer people a way to pursue justice in a comfortable setting that aligns with their norms. These systems typically value community unity, social peace and reconciliation. They may be easier to reach and more cost-effective for groups that encounter obstacles in using legal mechanisms.

6.2 Adverse impressions of informal justice systems

On the other hand, informal justice structures won't always align with internationally diagnosed human

rights requirements. Gender biases, discriminatory practices, and limited procedural safeguards are some of the challenges determined in those systems. Women, children, and marginalized corporations may additionally face unequal treatment and constrained recourse to justice inside informal justice settings.

6.3 Obligation of human rights laws on IJS

Human rights laws may become obligatory in the Informal Justice System if extrajudicial organisations are included in the formal legal system. Due to repercussions, these organisations are now considered state apparatuses and, as such, are obliged to abide by international norms safeguarding human rights. Precursors of human rights declarations are found in the ancient codes of Hammurabi in Babylon (about 1772 BCE), the Charter of Cyrus the Great in Persia (about 535 BCE), edicts of Ashoka in India (about 250 BCE), and rules and traditions of pre-colonial Africa and pre-Columbian America (Ishay, 2008).

Even though informal judicial organs—chiefs, public bodies, and the like—are not formally acknowledged as part of the nation's legal system, the state still substantially assists them. This can entail, for instance, providing chiefs with living expenses or financial support for them to carry out their tasks or correctly identifying the judicial authority or decisions of informal justice mechanisms. The state may be held responsible for the decisions or activities of the informal judicial organ due to its close relationship to it.

Nonetheless, these ideas have been incorporated into Nepalese national law by the Treaty Act of 1990, giving them legal power and perhaps nullifying other laws that conflict with the international treaties that Nepal has ratified. Through its five-year plan, the Nepali judiciary has also committed to ensuring access to justice for all Nepali people based on the relevant principles of international human rights (MacKinnon, 1989). The responsibility of the government to defend people against rights breaches is another way that human rights laws may shield petitioners in the informal justice system. The Human Rights Committee observed that 'non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights' (Zhu & Kouroutakis, 2019).

One potential avenue for safeguarding the rights of individuals is through the legal concept referred to as the "horizontal application of human rights." This legal argument or theory holds that individual liberties are effective in every instance of legal dealings, not just with authorities but also with genuine and statutory individuals. The debate over the possibility that corporate individuals or companies may discriminate against people based on their sexuality, belief system, colour, or other traits that would be outside the law within the state is one example of this. This is where the image differs between nations. The South African constitution's Section 8.2 illustrates how human rights might be applied horizontally (Weissbrodt, 2009). Other states might not have as much of a problem with the horizontal application; thus a clear constitutional need for it is unique. The degree to which rights are applied horizontally varies throughout different legal fields and types of rights, even within South Africa. To protect private citizens' human rights, governments are more likely to rely on common law than on explicitly citing the Constitution—and even then, the Constitution might not always be applicable. For example, criminal law often forbids many forms of behaviour that infringe on civil and political rights, and legislation and judicial precedent may have a solid ingrained tendency to prevent public perception.

However, the obligations pertaining to rights in the areas of economy, society, and culture could only extend to activities that take place in public spaces. It is, therefore, challenging to separate both vertical and horizontal uses. "To participate in the administration of governance, whether personally or through legitimately elected personnel, is a right that belongs to all people", as stated in Article 25 of the International Covenant on Civil and Political Rights ICCPR. The Human Rights Committee, in its general comment, further expanded and explained the right to participation and observed: The Covenant ICCPR recognises and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. ...the Covenant requires States to

adopt such legislative and other measures as necessary to ensure that citizens have an adequate opportunity to enjoy the rights it protects (Rautenbach, 2000).

7. Regulating the Link Between Individual And Collective Rights

Ensuring that every person has an equal degree of immunity from all possibly harmful agents is the primary goal of human rights law. Informal justice may fill the gap left by the official system's inability to protect everyone or its minimal scope. This research categorises human rights problems into three main types. Three significant features of the Informal Justice System are:

- 1) The questions about the basic norms and principles that the Informal Justice System and case judgment apply;
- 2) The framework associated with the Informal Justice System, namely with involvement and accountability; and
- 3) The inherent fairness of the Informal Justice System. This categorisation makes it feasible to evaluate the Informal Justice System using the same criteria as traditional legal systems.

But the Informal Justice System's commitment to upholding human rights could go beyond temporary solutions. It might be argued that acknowledging traditional or customary justice is the most excellent way to safeguard indigenous peoples' rights to social, cultural, and economic life in particular situations. Inequality against women is defined as "any distinction, rejection, or restriction created based on sex" that negatively affects human rights and freedoms in the fields of politics, economy, society, culture, law, and other areas of life. Under the law, everyone has a right to this security, irrespective of the state of their marriage.

Human rights concerns raised by Informal Justice System operations are well-documented in various academic works. Gayatri Spivak's argument that the Subaltern cannot speak and is not heard correctly in the hegemonic context is equally applicable in the context of Pakistan's female and inferior participants of the Informal Justice System. Former British diplomat and law professor Philip Allott expressed the transformative potential of human rights when he found "room for optimism on two grounds. (1) The idea of human rights having been thought, it cannot be un-thought. It will not be replaced by some idea that contains and surpasses it. (2) There are tenacious individuals and non-state societies whose activity on behalf of human rights is not part of international relations but is part of a new process of international reality-forming (Allott, 1990).

The widely recognised human rights concerns that regularly surface during the Informal Justice System operations have been documented in many articles. Regarding Pakistan's weaker Informal Justice System attendees, Gayatri Spivak's claim that the Substandard has no voice and is not listened to appropriately in the dominant setting remains equally relevant (Spivak, 1993). Several flaws in the informal justice system's safeguarding of human rights for humans are detailed by Wojkowska (Wojkowska, 2006)

- A) The suspect does not always have the opportunity to have their say or sufficiently expressed;
- B) The decisions made through the Informal Justice System occasionally violate fundamental legal values, such as when they implement sentences like stoning or exile or when they uphold the subjugation of women and the mistreatment of young ones and
- C) The decisions made under the Informal Justice System frequently make citizens responsible to communal groups and broader social goals by limiting liberties like the right of adolescents to select a spouse for them. Remarkably, nearly every additional IJS shortcoming identified by Wojkowska could be categorised as state, IJS, or both failings to defend human rights:

D) Power disparities and susceptibility to superior abduction.

E) There is unjust and uneven treatment of women and minority groups.

F) Certain issues, such as those involving significant crimes, intercommunity disagreements, and interactions with public or private organisations, are inappropriate for the Informal Justice System and should not be handled this way. These conflicts are crucial to security and sustainable growth.

G) Insufficient transparency and a confused relationship between the informal and formal legal systems (for example, opaque processes or documentation of the decision made, disregard for or inapplicability of statutes or the constitution that guarantee fundamental rights, and the impossibility of appealing an unofficial tribunal's ruling).

8. Matters of Significance

Essentially, this matter concerns the federation's responsibility to ensure that the Informal Justice System does not violate fundamental human rights standards and, if they do, to take necessary remedial action and enforcement actions. According to MacKinnon, 'in societies in which gender has hierarchical consequences, there are no genuinely gender-neutral persons. In such societies, neutrality is a strategy to cover up the realities of male power. She further argues that the 'experience of women as women, and men as men, in all its multiplicity and variety, exists in social space in the real world (MacKinnon, 2003). Among all human rights violations, 'torture is the most severe violation of the human right to personal integrity and dignity (MacKinnon, 2003). If the following conditions fail to apply, the formal justice system is unlikely to uphold the decisions made by these judicial bodies in the context of the mutually agreed-upon assurances, which the parties may challenge in a protracted legal proceeding: the issues before these benches are limited to minor civil and criminal cases; they meet the basic requirements of a fair trial; and the rulings are acknowledged as legally enforceable by the state. These rules do not lessen the state's commitment under the treaty to defend the freedoms of any individual who the operation of traditional and religious courts harms.

9. Examining Strengths and Limitations

Analysis of the impact of informal justice systems on human rights demonstrates both advantages and disadvantages. Strengths include local problem-solving, adaptation, and community engagement. These strategies tend to result in quick and easy conflict resolution, foster social cohesion, and preserve cultural identity. However, there are limits when this technology violates fundamental human rights. This can happen in the form of gender-based violence, discrimination against minority groups, or violation of procedural rights. It is essential to balance preserving cultural authenticity and protecting human rights.

9.1 Enhancing Compatibility And Promoting Human Rights

Several strategies can be used to guarantee informal justice systems and human rights are compatible:

1. **Increasing Legal Knowledge and Education:** By providing legal education and awareness in communities, individuals can better understand their rights and take action against unfair treatment.
2. **Promoting Dialogue and Collaboration:** Encouraging communication and cooperation between informal and formal legal systems can lead to a more comprehensive approach to justice that upholds human rights.
3. **Engaging with Customary Leaders and Community Organizations:** Working alongside

traditional leaders, community organisations, and civil society actors can be instrumental in advocating for human rights principles within informal judicial systems.

4. **Finding Rich Standards and Codes of Behavior:** Developing explicit guidelines and rules incorporating human rights concepts can help prevent potential abuses and ensure equitable outcomes.

However, regarding international human rights law, referring to the accepted constitutional order does not remedy the problem of the indigenous judicial organ's failure to adhere to international human rights standards. Recognising the dynamism of culture and customary law and indigenous people's desire to be respected for their observance of human rights may be the most effective strategy to encourage indigenous judicial organs to observe due process rights. This is said to arise due to either the initial compulsion of parties to bring the case to a particular Traditional Justice System during the dispute resolution process or while implementing the decision (Connolly, 2005).

10. Problems with Access to Justice Caused by Gender in Reality

Although the law on families and constitutions has acknowledged the idea of not discriminating against women, it remains disputed to what extent these regulations have enhanced the conditions of women. Various scholars have contended that changing legislation does not always result in a change in social standards. The situation for women might get severe if the law does not consider the cultural context of their lives. For example, state legislation in Kenya has rendered it more challenging for women to hold ownership by codifying and personalising ownership rights. Therefore, if state regulations fail to consider the reality women experience, they could hinder their ability to vote.

There are preexisting limitations caused by sexual orientation, but the prevailing status of the system of justice negatively impacts women. The results show that in Pakistan, revenue is constantly required for even the most fundamental legal functions, such as filing papers, setting up an appearance for trial, getting a duplicate of a decision, or looking through a legal file. Women will have less financial resources than men since they are not as wealthy. Things like these will influence individuals to choose between the two systems.

Especially in cases where there have been no procedures or disagreements and the matter has been settled by the court's decision, it can be challenging to carry out judgments and protect constitutional entitlements in many nations developing with underdeveloped systems of justice. Either way, enforcing decisions by municipal executive branches or even conventional leaders might provide challenges since they might not follow the verdicts and the law's fundamental values. Others trace modern human rights to the emergence of natural law theories in Ancient Greece and Rome and Christian theology of the Middle Ages, culminating in the rebellions in 17th and 18th century Europe, the philosophers of the Enlightenment and the Declarations that launched the French and American revolutions, combined with the 19th-century abolitionist, workers' rights and women's suffrage movements (Hunt, 2007)

But if they get won over by influential groups, famous people, or "big men," people can decide to ignore judgments or agreements. In the following section, we'll examine the difficulties in upholding women's ownership rights. As discussed, public involvement—like that found in certain Shalish institutions in Bangladesh—may provide some defence against disregard for the law.

10.1 Lack of Awareness Challenge

The national study indicates that users and actors of informal legal processes have a profound ignorance of women's liberties. This is a severe issue that frequently involves more than just a basic unfamiliarity with the terminology of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Women could thus be significantly less likely to participate in communal spreading of knowledge and educational campaigns, and they might also be dreadfully ignorant of the legislation regulating their nation. This is usually where administrations, developing groups, and nonprofit groups

(particularly those concentrating on providing judicial aid) begin their projects.

10.2 Women as Witnesses or Litigants: Procedural Barriers

Hence, there may be no justifiable reason for treating women variously; for this reason, the section on barriers to society following it must be read in conjunction with this. The absence of formal rules and procedures is not consistently a bad thing in unofficial justice mechanisms; in fact, the lack of administrative constraints can make proceedings easier and easier to obtain for individuals without legal representation, but it can also lead to prejudice and the misuse of authority, which is easily understood to be detrimental to women within more male-dominated civilisations.

In Islamic tribunals, procedural issues could come up. As per a scholarly publication, "In nearly every system founded on Muslim legislation, the belief is the fact that the two individuals who witnessed it need to be men." This applies to Islamic marriages in religion as well. On the other hand, in Yemeni and Sudanese regulations, two women and one man can give evidence. One way to see rights for people is as fundamentally moral requirements. When expressing declarations on rights for humans, there is an implicit belief that the fundamental moral assertions will withstand honest and thorough examination, just like with other ethical declarations that need endorsement (Sen, 2004).

In most nations, it is against the law to have four women observe a marriage ceremony as witnesses. The reduced 'value' of women as matrimony observers is supposed to stem from the Qur'anic regulations (2:282) on the observance of promises for impending financial obligations. Certain nations, such as Pakistan's now-criticized Hudood laws, need four male eyewitnesses to testify in Islamic court cases to establish the involvement of rape. Despite changes in 2006 that removed some cases from sacred tribunals and improved the status of women in terms of proof, Islamic judicial systems still function under rules that value the testimony of women lower than the testimony of men in numerous nations.

Privacy and secrecy are crucial regulatory considerations for women as well. Due to the greater degree of confidentiality, they experienced as opposed to the open-door aspect of the traditional Informal Justice System offered by local chiefs, the women in the Malawi investigation chose to hand over their conflicts to the town enforcers rather than conventional chiefs. Another factor was the prevalence of female mediators in the countryside.

Based on research conducted in Bangladesh, women's engagement is methodically dealt with in Shalish courts, attributed to the backing of nonprofit groups. The informal settlement is used in Malawi, but society and customs are still valued in Bangladesh's modernised Shalish courts, which nonprofit groups support. This might guarantee decisions are made and act as a communal education application, particularly about gender equality. The advantage of having written norms of the process is that they offer an unquestionable standard of behaviour. They will hold individuals accountable only until the regulations are correctly publicised and understood by the general public. While fresh rules are implemented, regulations and training will be necessary.

10.3 Societal Constraints

Women's advancement may need to be improved by more significant social barriers than ignorance of what they are entitled to at home. The capacity of a woman to earn and retain wealth is influenced by her years, ethnicity, faith, and financial standing. When considering transparency from a broad rights-based viewpoint focusing on values, the processes need not be identical to those used in established organisations. One of the first native authors to try to extract and disseminate universal aspects of African tribal law was the Nigerian legal scholar Elias (Ajisafe, 1924; Danquah, 1928).

Research conducted in Papua New Guinea claims that since sorcery is so common in the area, women in the Ungai-Bena Province live in continual terror for all of their lives. When it results in somebody passing away or becoming sick, and the reason is determined (by the loved ones) to be associated with sorcery, we simply understand that one of us is going to be assaulted, beaten, or even murdered," according to the research. Our wives cannot stand up for us when they suspect us of engaging in an affair, no matter how

many children we have. We are not legally recognised.

When a woman does anything beyond her better sense and her family's desires, she "could become a significant source of challenges and potential risk." Women might encounter varying degrees of stress at every step of the legal system. Given this, individuals might need assistance addressing their behaviour's social repercussions. Women may face hidden or obvious dangers of assault, harassment, or social isolation as a result of defying powerful male role models or cultural norms.

Women in IJS-affected provinces of Afghanistan and Baluchistan hesitate from visiting courthouses for the risk of embarrassing loved ones. According to an inquiry, a large number of Pakistanis who belong to view the nation's binding statutes as a "rival" legal authority that puts at risk the organisation's ideology and continued existence. As a result, most people would only use local laws to debate their cases rather than use them for legal recourse purposes. There is an inadequate representation of women in the regional judiciary due to the above problems. The case of Niger shows how breaches of fundamental and functional rights may reinforce one another and that the threat of dissolution acts as a powerful disincentive for women to file complaints in any scenario. According to the Human Rights Commission, states should make sure that "customary, historically significant, spiritual, or cultural beliefs are not utilised to defend breaches of the rights of women to equal treatment under the law and equal utilisation of all fundamental rights." In part, this strategy is a reaction to requests for a historical approach to court system reform, which aims to address the shortcomings of previous reform initiatives (Maru, 2006).

11. Customary Law and Informal Justice Systems

11.1 Indigenous People

"Indigenous peoples" is a word without a commonly accepted definition. In the absence of a definition for "populations," native and "tribal" inhabitants are defined by specific and unbiased standards under International Labour Organization (ILO) Conventions Nos. 107 and 169. One broad-minded organisation that recognises particular characteristics that determine the indigenous population is the World Bank. These include the individuals. Connection to their ancestral lands, their freedom of self-identification, and the unique characteristics associated with their conventional entities and linguistics. According to the Bank, the term "indigenous people" might refer to Native Americans, Aboriginals, Tribal Communities, Indigenous Ethnic Minorities, etc. A more comprehensive justification provided by José Martínez Cobo, for short, has gained considerable traction within the UN assembly. The UN designated the Cobo as an impartial observer to investigate prejudice towards Native Americans. As stated by the UN, "Native American populations, individuals, and states constitute those that think of their own separate from other aspects of the cultures that currently reside within those boundaries, or segments of them," since they preserve a past connection with the before colonisation and beforehand civilisations that evolved on their homelands. Though they are presently a minority in society, these tribes are determined to preserve and advance their ancestral homeland and way of life for the advantage of the generations to come.

11.2 Indigenous populations of Asia

In Asia, the issue of who is 'indigenous' has yet to be settled. Some Asian governments hold that the term 'indigenous peoples' does not apply to many of the population groups within their boundaries who regard themselves as indigenous or have suggested that the term applies equally to all the major population groups within their countries (Barnes, 1995). In Asia, the issue of who is deemed "indigenous" is still not completely settled. Many Asian governments either deny the existence of indigenous cultures within their territory or have indicated that "indigenous peoples" are not limited to any of the major population categories who reside there, even if such populations may still identify as indigenous. Debates over cultural heritage are still divisive across much of Asia. However, a few Asian nations are using the term

"indigenous," if not directly accepted, with possibly more acceptance. Different names in Asian countries refer to these individuals. Thai hill tribes, Chinese minorities, Malaysian Bornean "natives," Taiwanese and Malay Peninsula "aboriginals," and Malay "scheduled tribes" are just a few examples.

11.3 Describing Customary Law

Customary law has no commonly accepted definition. Nevertheless, it may be regarded as: 'an established system of immemorial rules which had evolved from the way of life and natural wants of the people, the general context of which was a matter of common knowledge, coupled with precedents applying to special cases, which were retained in the memories of the chief and his counsellors, their sons and their son's sons (sic), until forgotten, or until they became part of the immemorial rules (Bekker, 1989). There's no universally accepted definition for traditional law. However, it may also be considered: "a developed order of immemorial standards which emerged from the habits living and genuine requires of individuals, the overall setting of which had become an issue of popular belief, together with previous decisions implementing to particular situations, that were kept in the mental archives of the leader and his counsellors, their offspring and their son's children (sic), as long as disregarded, or when they grew part of the long ago rules..." Chiefs do not consistently enforce common rules; some standard norms today are not very ancient. Nonetheless, the term does give a notion of customary legislation, if not as far as authorised non-indigenous experts are concerned.

For example, customs and customary law English law held that 'local' custom was a source of law distinct from other branches of common law (Walker, 1976). Community traditions and the understanding of statutes 'Local' tradition was acknowledged as an autonomous basis in English law, unlike other common law domains. The challenge of proving the existence and legality of a custom or ordinary rule of law rested on the party relying on it; the practice was not officially recognised until a judicial decision established it. Although this is frequently not the situation in most Asian countries, it could be the responsibility of the person requesting approval of traditions of law to present proof of its prevalence. According to the particulars of each case, the obligation of proving and the needed standard of proving may vary. The native people's establishments administer traditional law, and everyone knows its validity, contents, and procedures—particularly those who are elderly in the neighbourhood. In most Asian countries, customary law is subordinate to formal and constitutional principles in terms of formal standing; in the event of a dispute, the latter gains preference. However, a few severe instances need discussion.

The ancient legal system of the Naga and Mizo communities, who live in the nations of Nagaland and Mizoram in northeastern India, is unique. The Indian Constitution has safeguards against foreign interference in the application of traditional law, habits, and issues regarding land by local populations. Modifications or repeals of pertinent fundamental articles need the consent of the appropriate national legislative body, which is presently presided over by the state's indigenous societies and a clear majority of the country's two houses of parliament. To amend or do away with the relevant constitutional provisions requires a special majority of the country's bicameral houses of parliament and the consent of the state assembly concerned, which is now controlled by the state's indigenous peoples (Roy, 2003).

11.4 Customary Law from the Perspectives of Indigenous People

Although expressly prohibited or somehow hindered, indigenous peoples often control traditional social and legal problems and any modifications to them in a manner they choose, regardless of the official opinion of the common laws or other statutory procedures. Cobo observed that such systems are essential to who they've become as a community. Examining the specifics of their daily activities will reveal how customary rules and institutions of indigenous cultures are implemented on the ground in reality. It is common for indigenous people to participate in tradition-based disputes at all levels, serving as responders, decision-makers, mediators, and complaining parties. All parties to the disagreement are well aware of the processes and standards set out by the applicable traditions (or, at the very least, by the

more senior associates). In such a situation, documentation of the existence and implementation of the relevant custom or law is not necessary. The matter doesn't become public until one of the contesting parties raises whether such a law applies. A distinguishing feature of traditional law from legal statutes is that the former is usually "more closely tied to a human civilisation."

This is hardly feasible given the state frameworks and related established legal systems. The development of oral tradition is a reflection of adjustments in society across time. Regrettably, most politicians and jurists at the national level are ignorant of the intricate nuances involved in creating and amending customary laws. As a result, they tend to see indigenous peoples' customs as comparatively static, archaic, and frequently even irrational or socially archaic. Indigenous peoples consider it difficult to continue using these conflict resolution techniques due to the presence of such false and distorted ideas. Usually, questions concerning the validity and standing of these laws are brought up only by one of the disputing parties.

Because it is "more tightly linked to the public's customs," customary law can be separated from statutory law (Ahren, 2004). Traditional law is anything that has "grown, specified, modified or developed by the people over time," according to research conducted on an Ibaloi residents tribe in the Philippines' Mountain area (Gimenez, 1996). Indigenous cultures throughout the world can also benefit from this perspective of thought. More traditional systems of justice can benefit much from the interactive character of indigenous legal procedures and the teachings they can impart on arbitration, settling disputes, and post-dispute reconciliation. Later on, some of such characteristics will be looked into. Alternative dispute resolution may be closer to line with people's real-life experiences. It may even expand their judicial options, considering the belief that "even in communities with the best-established legal structures, roughly five per cent of judicial issues are resolved in court" (Chirayath, Sage, & Woolcock, 2011).

11.5 Customary Laws and Formal Justice System

The confluence of developed legal structures with the traditional laws of indigenous cultures presents several challenges on a national and international scale. While there are instances in which traditional law and state statutes conflict, there also exist many instances in which conventional law procedures operate under the cautious misrepresentation of state law and judicial establishments. Overall, there are times when the relationship is characterised by mistrust and disdain on both sides. These practical examples demonstrate the true breadth of these links.

As part of this strategy, the 2001 Local Government Ordinance contained rules for establishing Musalihat Anjuman at the municipalities, the most basic operational level, across the nation. But there was not a single procedural detail in the Ordinance. As per the legal provisions, the Musalihat Anjumans' participants must apply their valuable services to facilitate the peaceful resolution of conflicts involving the Union stakeholders using negotiation, conciliation, mediation, and adjudication. (The Punjab Local Government Ordinance 2001 (Ordinance XIII of 2001), According to the Musalihat Anjumans' law, no more explanation of procedures was provided until every province passed Rules to supplement the 2001 Ordinance. That being said, this does not alter the reality that even they are fallible. The 2001 Act and associated Rules, for example, do not specify how the Committees are to be established or who their audience is, even though the Panels are in charge of selecting individuals of the Musalihat Anjuman.

12. Conclusion

The impact of Informal Justice systems on human rights is intricate and diverse. Acknowledging the presence of frameworks and adopting a legal pluralism perspective offers a more nuanced understanding of their interplay. It is feasible to improve the compatibility of informal justice systems with human rights by encouraging debate, education, and collaboration, ensuring that justice is accessible, fair, and inclusive to all community members. When the impoverished learn about law, they must have equal access to formal and informal court institutions to seek redress. As a result, support for its restoration is widespread

throughout the country. The Panchayat usually resolves land and family disputes, which can provoke social upheaval.

The informal Justice System is a sustainable technique for defending human rights and upholding the rule of law. It should be regarded as allowing individuals to access the judicial system. Knowledge of the law is required to provide access to justice, as people who must be made aware of their rights and the laws that protect impoverished groups frequently fail to exercise them. Establishing the partnership also requires recording the conflict resolution methods for ease, consistency, and preservation for future generations. The prompt, fair, and consistent execution of relevant laws—free of political influence and corruption—is critical to sustaining public trust in legal institutions. Thus, a link between the two systems is necessary to maintain balance and lessen the chance of a double calamity.

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