

The Role of Informal Justice Institutions: An Overview of its Existence and Functioning in Justice Disbursement

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Abstract: *In the contemporary globalized world justice dispensation by the state has generated grave concerns as the state sponsored formalized judicial system has failed to prioritize this basic human need. Under most circumstances the justice systems has failed inordinately to bring about equalitarian conditions further delegitimizing the authority of the formalized structures. The ability of the state to render justice to citizens has come under severe scrutiny as the emphasis today is on 'inclusive governance' rather than on mere administration. Though it is the obligation of the state to provide accessible justice to 'all' but that not indicate that all justice should be dispensed through the formalized structures only. Judicial empowerment of the poor has been the cry of the millennium. Discussion on the rights and justice needs of the poor and vulnerable have remained tethered to the notion of balancing these with culture and custom without engaging with a more dynamic and result-oriented approach. Until a few decades back engagement with the informal justice institutions has not been on the agenda of development interventions in judicial systems. The emphasis paid in most recent literature has shifted inordinately from formal structures of justice disbursement to informal institutions and indicates that a proper environment is a first requisite for any proper justice dispensation.*

Keywords: *Access to Justice, Dispute Resolution, Good Governance, Healing, Informal Justice, Judicial Empowerment, Moral Misbehaviour, Reconciliation, Restoration, Socialized Courts, Traditional-Indigenous, Welfare State.*

1. INTRODUCTION

Conflict in any society is inevitable; being universal, it just seems to be a fact of life. However, the fact that conflict exists or has emerged does not necessarily denote a bad thing as long as it is resolved effectively. Though in the contemporary period, the definition of conflict as struggle over claims to scarce status, power and resources in which the parties involved seek to neutralise or eliminate their rivals has essentially changed, it is unanimously held that the sooner it gets resolved, the better. The emphasis today is on needs-based conflict resolution; a cooperative approach with focus on fundamental human needs encouraging a win-win solution for both the parties with the belief in the essential goodness of humanity. Rather than neutralizing or eliminating the rival, the fundamental premise is that conflict resolution should meet human needs. The idea is maximum satisfaction of human wants and expectations; what is needed is reconciling and adjusting the individual's desires or wants so as to secure much of the totality. Since the dual concern of conflict or dispute resolution in recent times has come to emphasize both self-assertiveness and empathy, it necessarily involves both concession making and doling acceptable solutions because justice is all about taking into account the real interests of man and satisfying his claims be it in political sphere or in home or workplace. Justice is the legitimate moral demand of the individual and implies not only doing something which is right to do and wrong not to do but that it is something which individual can claim to be his moral right. As a parameter for the effective functioning of a system of order, justice includes the acknowledgement of the other because each person possesses inviolability which cannot be sacrificed for some larger societal interests as a just society is one where the rights and liberties of the people remain unaffected either by any political bargaining or social calculus. 'As fairness'

justice implies that undeserved or morally arbitrary disadvantages should be removed or compensated making room for intrinsic good; concerned with relation between the people it entails the idea of 'alteritas,' the recognition by one that with whom I am dealing is an 'alter-ego' that is a person with similar claims to mine.

Since the judiciary remains far from achieving total success in promoting egalitarian notions of justice in its true form, the contemporary trend towards judicialization is not the panacea of all ills. For the sole reason that judicial empowerment has not ushered in justice for all citizens alike, scholars have supported the bottom up legal mobilization of rights advocacy organizations and lawyers along with 'government financing' and 'joint-governance model' for making justice accessible along egalitarian democratic principles. While the idea of government financing would permit the state's involvement to ensure distributive justice, the joint governance model would bring about equal rights for all citizens including the disadvantaged and depressed sections of society. The joint-governance model in recognizing that some individual will be a member of more than one political-community enjoying rights and obligations emerging from more than one legal authority seeks to foster interaction amongst plurality of sources with an eye to improving the conditions of the vulnerable lot by minimizing the chances of injustice.

Access to justice and practices embodying good administration of justice have far reaching effects on the lives of individuals. The movement of access to justice has become an integral part of the global movement towards good governance through promotion and protection of human rights. Improving the life standards of people, particularly the disadvantaged and the exploited, lies at the heart of such world-wide movement. Special attention is focused on the issue of justice and its accessibility, on options for non-legal forms of dispute redressal, effective participation of all and last but not the least on justice disbursing institutions both formal and informal. Access to justice can be broadly interpreted to mean 'access to a fair set of laws which will ensure protection from harm and provide opportunities to use the service of legal representation including the services of paralegals. The concept also includes setting up of appropriate institutions for conflict resolution keeping in mind that these dispute resolution forums should be affordable and within easy reach. The issue is a much broader one having an impact upon the people and community through means which seem legitimate to them and which may well transcend the formal legal system. The emphasis today is not limited to attaining mere equality, its domain has expanded to include the element of need, with personal welfare as the primary goal and as such restoration and healing of informal justice institutions has taken precedence over retribution of the formal legal system.

Before delving deep into the discussion, it is apt to cognize oneself about informal institutions of justice disbursement in the contemporary society. A glance at the different societies around the world has indicated that there exist two variant of informal justice disbursing institutions. The first kind comprising of traditional-indigenous and societal structures as community courts and village councils found in closely-knitted and closed communities while the second variety includes structures sponsored by the state such as neighbourhood justice centres, family arbitration courts, small claims courts, mediation tribunals, peoples' courts or lok-adalats, consumer grievance tribunals and so on. These structures are collectively referred to as 'socialized or social courts'. These social courts are grounded on the argument that ethical restrictions are more effective surrogate for formal processes and rules. Empirical researches have shown that in a single society both community structures and social courts may co-exist side by side. India is a good example. Here both the informal institutions as community specific courts as sharia courts mutually co-exist and function along the state-induced structures as lok-adalats, consumer grievance tribunals and so on.

The proliferation of these socialized or social courts are premised on two basic and simple questions; (i) how far have formal legal systems been successful in dispensing justice and protecting the rights and liberties of the people especially those vulnerable and depressed? (ii) How the potentialities of the informal institutions be utilized to maximize their contribution towards justice dispensation.

I must mention here that apart from the peoples' traditions and the historical antiquity of community structures of justice disbursement, the failure of the formal legal systems to reach out to the people has been in large measure responsible for the rise of informal justice institutions.

Notwithstanding all structural and functional drawbacks of the formal legal systems, in this paper I seek to highlight one important area where the informal institutions of justice disbursement have scored more over the formal legal system. In this essay, while reflecting upon the inability of the formal structures to address the moral issues I also concentrate upon the differences between the formal systems with the informal institutions of justice disbursement as well the development and functioning of informal structures. Today, the informal justice system is the subject of much intellectual curiosity.

2. GAPS OF FORMAL LEGAL SYSTEMS

Since justice places a moral obligation on both the state and people, it is supposed that the state will endeavour to fulfil its moral obligations of being just by framing good laws and making the people retaliate by exhibiting their obedience to them. However, the reach of the state and its laws is circumscribed as there are certain areas as moral issues that largely remain outside its purview. Justice as such transcends the law because questions of moral aberrations transcend the jurisdiction of the law and legal institutions; these spaces are left unaddressed by formal precepts. Though issues as to 'what ought to be' are left untouched by legal precedents, the idea of justice is still fundamental to them. Therefore, conditions to make society a better place to live in demand correction of moral misbehaviours. Thus it is evident that justice assumes importance not only in public life but equally it applies to private life involving moral issues.

The democracies of the 21st century promise equality and justice irrespective of their varied differences of colour, caste, creed, race, religion and ethnicity and any tampering with it is liable to get corrected through legal institutions of the welfare state. Though the state's legal institutions through reforms and new laws have continuously sought to extend its authority to decide on citizens' rights, in this judiciary dominated environment obtaining legal validation for securing ones rights and liberties has proved to be a boon but for the privileged few. The nature of distributive justice dispensed by the state is under immense strains; its frustrating nature is evident in the fact that its formal legal structure has remained incapable of penetrating into the grass-roots of societies. Large sections of people in their respective societies, particularly the marginalized and the downtrodden have no access to the formal judicial system. Scholars have labelled this failure of the formal legal system to take into account those who lay below its judicial vision as nothing but strategic interplay of the elites themselves, as law has always favoured the powerful and the affluent. Today, there is sufficient evidence to prove that legal courts have not been able to live up as effective units of conflict management.

This is because justice imparted by legal courts has legal and rational elements but that dispensed by informal institutions includes a third element, that of emotions. While verdicts of formal courts are impersonal, those of informal institutions take into account personal wants and needs in the larger context of societal harmony. Since society is both social and moral, maintaining the moral society is both the responsibility of every member residing in it; the 'sine qua non' of maintaining order requires rectifying both social and moral misbehaviour.

Though scholars and legal professionals support the increased power of the judiciary as this pillar of society performs the arduous task of promoting and protecting the legal rights of citizens, till late the realization has dawned that reliance on the judiciary alone may not be the cure for all its ills. Scholars have pointed out, the citizens' rights and privileges will be better protected and sustained when they are given the liberty to choose between alternate options. Multiple institutions with multiple options of legal remedy help correct inequalities that an individual might suffer at the hands of one institution. The idea that institutionalization has not adequately responded to citizens needs or that it has failed to bring about positive social changes are complemented by disillusionment in other areas as hostility to professionals and bureaucrats and inadequate rehabilitation facilities for the victim.

While each person has the right to have access to justice through the formal state structure, in practice this is often denied. Apart from a host of intractable bottlenecks, both structural and procedural, as delayed disposal of cases emanating from long and turgid proceedings multiplied by delays and adjournments, prohibitive cost of employing legal brains and travel costs incurred due to long distances the factor which stands out is that justice administered by the state fails in

providing restitution and restoration to the victim. Internal family disputes and common societal issues considered highly sensitive in insular cultures prefer resolving them either through their extended family network or societal judges, or in other words through informal institutions. Since there always remains scope for retaliation and punishment in any ongoing dispute, it is pertinent to amicably resolve the dispute through common arbitrators. Unlike state laws, the informal system of justice disbursement motivated by twin objectives of social reconciliation and compensation for the wrong done remains indifferent to the idea of retribution of the perpetrator.

3. DIFFERENCES BETWEEN FORMAL AND INFORMAL SYSTEMS OF JUSTICE DISBURSEMENT

Most societies have both formal legal and informal community institutions for dispute resolution. The efficiency of the informal system lies as to how effectively it caters to the peoples' demand for justice. Today, there is greater recognition and emphasis on the informal justice mechanisms in the global legal world. As the UN Secretary General's Report on 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, (2011)' recommends, 'due regard must be given to indigenous and informal institutions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international standards and local traditions. Where these are ignored or overridden, the result can be the exclusion of large sectors of society from accessible justice'. The same report defines justice as 'an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interest of victims and for the well-being of the society at large. It is a concept rooted in all national-cultures and traditions and while, its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant'. It is only since the last decades that efforts have been made to address the problem since large section of society have remained outside the purview of the formal legal system for centuries.

There are two major ways in which society can keep a check on the behaviour of its members. Though the aim of both the formal and informal forms of control is to curb unruly behaviour of citizens', the instruments of sanction are different. Instruments of formal sanctions include the laws of the state and its official machinery such as police, courts, correctional homes and other custodial agencies. Instruments of informal sanctions are community oriented and social and moral agencies such as family, church, peer groups and immediate neighbourhood. Formal sanctions are used in case of legal misbehaviour, for example, disobedience to law(s) or encroaching upon the rights and liberties of another individual. Informal sanctions are more normative in nature. They basically relate to 'the ought to be' of the community. They do not have any legal basis. They are more in the nature of moral sanctions.

The processes used by the informal justice systems are basically mediation, arbitration, conciliation, rehabilitation and reparation. Unlike the formal justice system retribution does not figure in the agenda of informal institutions; rather much emphasis is laid on reform and rehabilitation. The informal techniques of dispute resolution gained prominence as an effort to bring out conflicts from the setting of formal legal court rooms, with aims at resolving them within relative ease and within a short time.

Although both the formal and informal systems entail the idea of accountability their methods are different. The formal system is conspicuous by the absence of religious ceremonies and rituals. Legal-rational tones dominate the proceedings of the formal system which is absent in the informal proceedings. There is no legal-professional representation and the rules of evidence are flexible unlike the formal systems where strict rules of evidence are followed. The logic of formal law is different. Either the individual is 'guilty' or 'not guilty.' Unlike in the formal legal system in which one party wins and the other loses, the informal system moves beyond the winner-loser rhyme. What is insisted upon is 'win-win' situation for the parties involved through compromise and negotiations. Consensus and agreement among the parties concerned is the key to its success. In this age of speed and efficiency, the informal justice mechanism is largely viewed as being progressive and constructive in its approach. An informal justice process is a frame work for responding to conflict and wrong doing through community stake holders. It involves looking beyond retributive measures to resolve conflicts that repair the broken relationship between the victim and the offender. Informal justice system is all about restoration

and not punishment. It can be an effective instrument for restoration of peace and communal harmony in society. Informal justice system is all about acknowledging and taking responsibility and not about voicing displeasure and blaming.

The formal justice systems identify individual responsibility and guilt and impose retributive punishments. The concept of collective responsibility and shame finds no place within the formal structures. The 'communal dimension' of collectivity and victimhood are alien to formal legal systems. Recognizing only the criminal guilt is the task of formal courts and the idea of moral responsibility is buried. Cases are handled purely in terms of 'prosecutorial logic.' But in informal justice systems, conflicts are dealt in terms of accepting the wrongdoing on the part of offenders and the healing dimension of truth telling. The informal justice system is marked by high degree of public participation with the community members providing remedies and suggestions. Civil society normally sets the rules, appoints the traditional mediators and supervises over the implementation of the decision. The setting of the legal courtrooms is marked by a high degree of sophistication which gets manifested in the solemn language, the formal atmosphere, court dressessuch as robes and wigs of the judges and advocates and use of legal jargons.

Customary laws and traditional values are important factors in reaching a compromise. The process is marked by bargaining and compromise. The proceedings of the formal court are carried on in strict compliance of official laws and statues. The proceeding in the formal courts is conducted by professional lawyers and advocates, while traditional leaders and elders of the community mediate upon disputes within the community. The proceedings of the formal courts are time-consuming and lengthy. Time constraint is not an issue in the informal justice systems. Sometimes the conflict is resolved in a single sitting which might last for two-three hours or sometimes the issue in question might be resolved within three-four days. The family members and friends of both the victim and the offender are active participant in the resolution process. Unlike in the formal system where apart from the parties concerned, others are mute spectators, in the informal community resolution process the community members voice their suggestions and suggest remedies.

One of the salient features of the informal justice system is that it attaches priority to the needs of the disadvantaged and the marginalized. It seeks to strengthen their access to the justice mechanisms. A central task of informal justice institutions is to build 'communal relations' based on self-sustained peace through more holistic and locally relevant approaches that addresses a set of concerns, including acknowledging the truth, accountability, reconciliation and ultimately rehabilitation of the parties concerned.

The informal justice system focuses on the people and their accessibility to justice needs rather than institutions and formal processes like the formal legal structures. Such structures have lived for some hundreds of years and are important tools of social control. They provide ground for an individual's allegiance to one's community and its norms and traditions.

4. GROWTH AND DEVELOPMENT OF INFORMAL INSTITUTIONS

The practice of resolving disputes through non-conventional or informal institutions is not something new. The roots of resolving disputes outside the formal legal system can be traced back from the period of Renaissance when the Catholic Popes acted as arbitrators between individuals as well as between European countries. The Catholic tradition regards the individual as the bearer of moral values and indicates the use of reason for resolving disputes and fostering justice. Resolving disputes outside the conventional judicial structures dates back to earlier periods as Garth, for instance, refers to the justice of the peace (juge de paix) in France during the 1790's which was largely a product of the hostility towards the established judiciary. This provided a model for the subsequent Prussian Schiedsmann (or mediator) during the early 19th century.

Resolving disputes through mediation is a practice of ancient origin. The earliest written records of resolution of disputes through mediation of community structures emerge from the Hindu traditions of 'Vedantism' around 1500 B.C. The practice also developed in Taoist China around 5th-6th centuries. The system also prevailed among the ancient Greeks as well as among the Romans. In the Roman civilization the community mediators were called by various names as 'internunciis', 'intercessor', 'conciliator', 'interlocutor' and 'interpolator'.

The members of Confucian and Buddhist communities' believed in resolving their disputes peacefully through wise men or traditional chiefs who were regarded as sacred figures. The Confucian principle of 'man is the measure of man' stems from the conviction that a man's good conduct which begins from his family is carried forward towards his community and then nation plays an important role in establishing peace and prosperity in the world. The Confucian philosophy believed in exercising social control through moral education and ethical norms. In this context mention must be made of the concept of 'Li' commonly understood as a set of social and cultural values that formed the foundation of ethical behaviour. In conflict situations 'Li' is applied and interpreted to produce just outcomes. In the contemporary period the village based Peoples' Mediation Court (PMC) in China created by the Constitution of 1982 evolved out of traditional local institutions that have functioned since ancient times.

Similarly, the Japanese traditions based on the maxim of avoiding disputes with one's fellow beings relies heavily upon the informal resolution processes of mediation and arbitration to restore societal peace and harmony. Maintaining their earlier traditions, resolving disputes through negotiation process is still preferred without taking recourse to formal courts.

In India, village councils or 'panchayats' 'a collective body or assemblage usually of five persons' considered respectful elders of society chosen by the local community because of their old age, experience, wisdom or supposedly higher degree of 'mana' (prestige) were part and parcel of ancient politico-judicial system. The panchayat system deeply rooted in Indian civilization settled dispute between individuals at the local or village level. It is really interesting to note that in ancient times the administration of justice was not a part of the state's duties. The administration of justice was a private affair. The panchayats upheld and maintained self-styled responsibilities of individual conscience and moral sense through customary rules and usages which were not always strictly in accordance with the law of the kingdom. Yet the decisions of the village councils were recognized and enforced by the state. It has been recorded in the 'Smritis' (ancient text) that the duly arrived decisions' of village councils were enforced as they were invested with judicial powers by the state. It has been documented in Maratha documents that kings like Shivaji, Rajaram and Shahu often refused to entertain a case if it was brought directly to them; they preferred village disputes to be resolved by their respective village panchayats. Even Muslim rulers of Bijapur followed the same practice. Historical evidences show that infact the institution of village panchayats had been more important than the king himself. In ancient India the king was head of the state, but not of the society. His functions involved protection of his kingdom from external aggression and securing life and property of his subjects against internal foes. He had no direct touch with the daily life of his people, which was governed by social organizations.

However, changing times led to the metamorphosis of the institution as the British colonial masters in India replaced this age-old institution with their own system of law and law courts which continues till today on more or less similar lines.

References of hostility to legal formalism has been emphasised by Christine Harrington in relation to the USA as early as Roscoe Pound's 'Sociological Jurisprudence'. Towards the turn of the century, that the business clients were facing difficulties with the way the courts were dealing with commercial disputes had become evident. Although talks of 'crisis of the courts' was not a direct push for informality but it can be said that dispute resolution based upon hostility to legal formalism played crucial role in developing judicial management strategies for the future. At this juncture Frederick Taylor's 'scientific management' provided the much needed ideas to transform the approach towards law and legal issues into more 'business-like'. Opposition to the formalism of formal laws and procedures paved the way for the emergence of the 'children's court', courts of 'small claims' courts dealing with 'domestic relations' as well as provided impetus to conciliation, mediation and arbitration. These courts operated with a human and therapeutic touch with its ideal of prevention, education, healing and curing as these institutions aimed at resolving disputes without adhering to formal rational legal procedures.

The development of welfare state coupled with a more critical outlook towards the state or established authority paved the ground for informality since the late 20th century or precisely, from the 1970's onwards, in variegated spheres as family, administrative, criminal, commercial, and discrimination and equal opportunity law. For instance, the primary thrust for the cropping up

of various forms of informal justice institutions in the Australian context since the late 1970s have been the governments' concern for 'community justice', provisions of the family court, urge for legal informalism in the commercial sphere and emphasis upon informalism in criminal law for more effective social reintegration of offenders.

5. GLOBAL SPREAD OF INFORMAL JUSTICE MECHANISMS

In the present dispensation the world society is replete with instances of pluralistic legal systems with multiple societal or informal institutions as sources of law. 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 powers of the state. In the contemporary period, empirical researches have proved that people, especially those marginalized and vulnerable resolve about 80-90% of their disputes through informal institutions and strategies. The countries of Africa and Latin-America are good examples of such practices. The practice of resolving disputes through community forums is vogue in countries of South Asia. The informal institutions in South Asia countries have withstood the massive onslaught of both colonialism and reassertion of western legal culture; a classic example is that of India. The 'village-shalishi' system as evident during both the Hindu and Muslim rules in India were destroyed by the British colonists but they could not be wiped out completely as they remained with the people in their traditions and culture; they still exist today and co-exist with the formal legal system. The 'shalishisabhas' in Bangladesh, an assisted participatory mediation process, led by community elders are accessed by the citizens because of its easy accessibility, low cost and quick disposal of conflicts. Similarly the 'jirgas' in Pakistan resolves a major share of the local disputes particularly in the rural areas.

Based upon widely accepted cultural paradigms, the traditional chiefs and community elders in Liberia resolve disputes to restore community peace. The practice is effective in strengthening community and inter-communal problem-solving and healing. In such traditional and closely-knitted society the practice of community justice based on indigenous mechanism of dispute resolution is a legitimate and cost-effective means of providing the marginalized with a sense of social oneness and hegemony.

In the African countries of Tanzania, Mozambique, East Timor, Botswana, Ghana, South-Africa, Kenya, Zimbabwe and Zambia informal community structures exist alongside the formal state-structures. Similar positions of mutual co-existence and acceptance along the formal system are enjoyed by community structures such as 'rondas-campisenas' in Peru, the 'junta-vecinales' in Bolivia, 'local kastoms and komitis' in Fiji, Papua New Guinea and Solomon Islands, the 'katarungangpambarangay' in Philippines, and the 'local council's court' in Uganda.

The system works best in conflict and post-conflict situations or where the state has retreated or the formal legal developed has not developed strongly. A classic example of conflict and post-conflict scenario pertains to Afghanistan. A country ravaged with civil war and strife and faced with the problem of establishing legitimate rule of law, both the Afghan people and the government engage with informal institutions to resolve disputes including inter-village and inter-tribal conflicts over land, water and natural resources. The traditional mediation mechanisms involving community elders and religious leaders resolve both civil and criminal matters.

The last decades have witnessed several experiments with informal institutions of justice disbursement for resolving both civil and petty criminal cases. For instance, the National Centre for Dispute Settlement of the American Arbitration Association initiated the arbitration program in Philadelphia Municipal Court in 1969 to handle minor cases of harassment and malicious mischief. Similarly the Night Prosecutor Program listened to private complaints helping parties reach agreed solutions. By the middle of 1970's, popular initiatives have led to mushrooming of similar programs in Pittsburgh, New-York, San-Francisco, Massachusetts, Miami, Cincinnati and many more such 100 programmes are vogue in different American states.

6. PROCESS OF DISPUTE RESOLUTION BY INFORMAL INSTITUTIONS

The crude and strict retributive justice as practised by the formal judiciary is widely hailed as unfit in modern times by the law and legal experts as well as academics. Retributive justice with

emphasis on blame and punishment has in contemporary period given way to the forward looking restorative justice with restoration and healing as its chief concern. Instead the society has shown its affinity for restorative justice with restoration, healing, reform and deterrence as its pillars.

Both the community based informal institutions and socialized courts function on the dictum that all misdeeds need not be punished; justice can still be achieved without being extremely retributive. Unlike in the punitive legal system where the victim is relegated to the background with the sole focus on the offender, the social courts by employing techniques of restorative justice make the victim an important stake-holder in the decision making or resolution process and while communicating the consequences of the injustice or injury inflicted suggest the kind of remedy sought.

The social courts and community structures follow a three-fold policy and instead of satisfying abstract legal principles focus upon needs of the victim, the offender and the community at large. Instead of punishing the offender, the emphasis is laid upon encouraging the offender to take responsibility of the harm that he has inflicted upon his victim. The process fosters dialogue between the victim and the offender exhibiting respect for the injured and accountability of the offender. Instead of fulfilling material wants, the mediation process stresses upon repairing emotional needs and as such apology and forgiveness is central to the entire process.

By involving all stake-holders the restorative policy of community and other informal forums uphold the idea that since crimes hurt, justice should be so as to heal. The process involves a shift in responsibility for addressing the harm or injury inflicted. The people as community members and citizens take an active part in restoring and healing the harm inflicted. The informal justice system before deliberating upon a conflict engages itself with certain preliminary questions as, 'who is the victim? 'What is his/her needs'? Whose obligations are these? What are the causes? Who has a stake in the situation? What is the appropriate process to involve all stakeholders so as to repair the harm? This sharply contrasts with the punitive formal justice system which seeks answer to three queries as, who is the offender? Which law(s) has he/she violated? What should be the punishment for the offence committed?

Negating the idea of punitiveness the socialized courts undertake experimentation with victim-offender mediation and conferencing, face to face contact, restitution and special educative programmes. The dominant language in the discourse of state sponsored informal justice institutions is seeking resolution of disputes keeping in mind the greatest interest or the interest which weighs more in the community as a whole. This is sought to be achieved by relying on experience and developing reasons giving maximum effect to the whole scheme of interest with the least friction and waste. While catering to needs of the victim and providing restitution, the social courts attempt at collective reconciliation, though in the aftermath of the offence. With an eye to its future implications, its deliberative process holds the highest potential for achieving restoration and healing. Instead of applying punitive measures to cut him off from the society the offender is imparted basic moral values and reintegrated back into the community to save him moral and social indignation. The purpose is not only to punish the wrong-doers but to serve societal ends like protection of society from disruption by providing deterrence. Restorative justice operates on the golden rule 'do unto others as you would have others do unto you'.

The restorative philosophy of informal community forums and social courts is different from the adversarial legal process of civil litigation. While the informal system seeks to address issues beyond its legal implications, touching upon actual social reality and human lives, the formal institutions only harp upon achieving legal solutions. The informal institutions with its humanitarian concern seek and strike a balance between the needs of the victim and the rights of the offender; it seeks to achieve a balance between the need to rehabilitate the offender along with the general duty of protecting the rights and interests of citizens.

The informal judges or mediators apart from assessing the damage caused by the offence, first listen to the bitter experience of the victim until they are able to empathize with the same. Equal opportunity is also provided to the offender and then steps are initiated to address the injury caused by the crime. The offender is held accountable and attempts are made to integrate him back into the society. The restorative process employed seeks to understand and address the situation under which the crime has been committed; this is done to prevent recidivism. It must be

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mentioned here that while restoration and healing of the victim is the primary aim, recidivism also occupies an equally important place in the agenda of reform. The informal justice disbursement forums operate on the belief that justice can be achieved through healing and restoration rather than by punitive isolation. An important goal of the informal justice system is to demonstrate solidarity with the victim. It seeks to make the victim realize that in times of need the community is always by its side. At the same time, the system tries to reform the offender. The end is welfare of the community at large, or 'social well-being'.

The whole process works only with the consent of the parties and revolves around arriving at consensus decision in which the neutrality of the mediators is of prime importance. Consent is entrenched in the mediation process; the consent of the parties to the resolution process as well as the outcome of the deliberation is central to its efficacy and superiority over complex legal procedures.

7. CONCLUSION

The institution of informal dispute resolution forums serve to make the rights of individuals as citizens more effective by providing additional and more accessible platforms for vindication of their rights. The community mediation conferences calculate justice as the restoration of broken rights and relationships. They appear to be something more immediately concerned with restitution and rehabilitation of local participants unlike the professionalised justice process. In emphasising upon restorative aspects, it enables disputants to better understand each other and work towards healing the injury inflicted. The institutions and processes of informal dispute resolutions are justified on grounds of producing increased efficiency, greater speed, and more satisfactory substantive decisions that are less legalistic and more humane. The non-judicial techniques employed by mediation centres and neighbourhood justice centres and other informal forums help the individual deal with dispute that would have not been successfully managed by legal courts; they relieve formal-legal institutions from those concerns that they are ill-suited to manage. The informal institutions sustain the individual choice in the sense in providing voluntary, individually empowering way of resolving disputes in a non-confrontational, congenial and hospitable way they encourage disputants to take responsibility for their own acts. In leading to a consensually just conclusion rather than litigations, informal processes make citizens feel better with their activities.

A powerful argument in favour of informal institutions is that people want it. It is their deliberate choice. It is in tightly knit and closed communities where people are intertwined in multiplex relations, where a disturbance in one realm affects the other that informal systems best dominate. In such societies, the dispute is perceived neither as concern of the two individuals or two families but as something concerning the entire community or society because each member in being tied to the other in varying degrees suffers from a sense of being wronged and accordingly bears a sense of responsibility in rectifying the harm done. The matter transcends the domain of individual curiosity regarding the affairs of one's neighbours, but becomes the concern of the community. The overarching conclusion is that the informal systems are critical to dispute resolution; in societies where literacy level is low and development impaired, the beneficial features of the informal systems should be harnessed in order to improve access to justice for the poor.

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