



Informal Community Courts and Formal Law Enforcement: The Ismaili CAB in the Chitral District of Pakistan

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Abstract

Governance of the Ismaili community is regulated by a Constitution issued in 1986, which regulates, among other things, the community adjudication system: The Conciliation and Arbitration Board (CAB) system. The paper looks into the functioning of the CAB system alongside the official court system and the former's relation with the latter in a particular setting: the Chitral district of Pakistan. Using 'legal pluralism' as a theoretical framework, the paper is based on fieldwork conducted in Chitral, where a sizeable Ismaili population guarantees a very interesting interaction between the local CAB and the local courts and law enforcement agencies. In the face of a very staunch government position on legal centralism—a government which does not encourage parallel dispute resolution, especially for religious minorities, and does not recognize CAB as a legitimate forum of (in)formal justice—CAB has been allowed to operate on a broad variety of issues, from family law all the way down to private, labour and commercial matters. Surprisingly, the Chitral case shows that in certain cases also non-Ismailis resort to CAB, and that even law enforcement agencies refer cases to it. As such, the paper contributes to the growing socio-legal research towards understanding 'legal pluralism' in action with a specific focus on a minority religious legal system (CAB) in the broader purview of the state official legal system (Pakistan).

Introduction

The idea of 'law' as a tool of social control has remained a primordial need of human society. With the passage of time, like other technologies, law has also been transformed from its primitive shape into a modern legal system. Today, in the heyday of nation-state, 'law' is solely associated with the codified rules and regulations which run down from the state' (Hughes 2010) and the state's legal system is considered as the only legitimate system of judicature. In contemporary times, the state sponsored law or legal system has presumably replaced, at least in theory, rest of the social institutions. A phenomenon that John Griffiths calls 'legal centralism' has engulfed almost all sorts of informal legal systems across the spectrum. As a result, 'it is the state law that has been the central focus of scholarship', laments Ehrlich (1913).

Nevertheless, it is an established fact that even the hardcore Positivists do not and cannot subtract law from its natural habitat – the society of human beings. In the past few decades a growing number of scholarship has taken a discursive view of law. In this regard John Griffiths holds a key position, who, on the one hand, has challenged the monopolising attitude of state law, and, on the other hand, has presented an alternative descriptive theory of law called 'legal pluralism' – a situation in which "two or more legal systems co-exist in a given social field" (Griffiths 1986: 1). A number of studies have been undertaken by proponents of legal pluralism arguing for the validity of this claim. Most of these studies have discussed indigenous law or customary laws, a few have tried to explain religious law as examples guaranteeing plurality of legal orders. Even more acute is the nature of studies addressing 'minority' religious legal systems. In order to pool this gap, this paper seeks to explore 'legal pluralism' in modern nation-state, and in doing so it discusses the field-based research undertaken to study the Ismaili community's informal legal system – Conciliation and Arbitration Board (CAB) – work in Chitral district alongside the state's (Pakistani) formal legal system. CAB is one of the institutions of the social governance of the Ismaili community, a sub-branch of Shia Islam. This governance structure has a decentralised landscape. Primarily governed by a constitution – a binding on the global Ismaili community – a strong network of social, economic and cultural institutions exists at grassroot level i.e. within the community wherever they reside. Given the prevailing circumstances, this comes a surprise because religious institutions exercise excessively centralised authority.

Menski (2006) believes that 'during the past couple of centuries the positivist, statist and monist outlook of law has been deliberately been advanced in the West. However, scholars

like Chiba (2002), Griffiths (1986), Moore (1978), Smith (1974), Pospisil (1971) and others have challenged this myopic view of law. Drawing insights from normative pluralism, the descriptive theory to study co-existing legal systems has propelled a distinct discipline – legal pluralism – in socio-legal studies. This relatively new -ism provides a broader view of law vis a vis the conventional Legal Positivism. This study uses legal pluralism as the theoretic framework to investigate CAB's functioning, as an informal legal institution of the Ismaili community, within the confines of a nation state which has its judicature installed in the district since 1969.

Chitral and the Pakistani Law (formal legal system)

While Pakistan came into being on 14 August 1947, Chitral became an administrative district Pakistan in 1969. Before this, it was an independent princely state within the territories constituting Pakistan' (Marsden 2005, Pastakia 2004: 93). With the abolishment of the independent princely state, the district's administrative apparatus along with the Pakistani judicial system was introduced in Chitral. Taxonomically the district level judiciary in Pakistan falls under the category of 'sub-ordinate judiciary' (Hussain 2015: 15). Broadly the 'sub-ordinate judiciary' comprises mainly of two types of courts functional at district level:

- Civil Courts
- Criminal Courts

According to the Pakistani law, 'jurisdiction of the subordinate judiciary extends to whole district' with no exception whatsoever (ibid.). Despite the stated jurisdiction of the formal legal system, CAB in Chitral has not only been working as a community-based legal system of the Ismailis but it has also been approached by *Sunni* disputants. This all-inclusive nature of litigation service adds nuance to the CAB system which invincibly resonates with the conjectural claims of 'legal pluralism'. In addition, it also depicts that adopting a decentralised approach in community governance not only becomes effective but also garners respect in the eyes of the wider community. This ultimately leads to the genesis of a plural society.

CAB, its Structure and Functions

CAB is a dispute resolution technology used by Ismailis living around the world including Chitral, Pakistan. It is part of the broader governance structure of the Ismaili community which is created through a Constitutional instrument. Its basic function, as envisaged in the

Ismaili Constitution (1986), is to resolve disputes of various nature pertaining to the Ismaili Personal Law and other civil matters. The same instrument provides for the institutional structure of CABs at regional (RCAB), national (NCAB) and international (ICAB) levels. In areas with cluster of dense Ismaili population, panels (hereinafter Local CABs) have been established. CABs in their respective regions, including Chitral, have been instrumental in dispute resolution. The nature of disputes ranges from Ismaili Personal law down to commercial law labour law and so on.

CAB is a transpiring case for an empirical study within socio-legal research for a number of reason. Firstly, it is a legal system of a specific community. Secondly, it is imbedded in the decentralised governance framework of the Ismaili community, and thirdly it interacts with other social institutions such as police and the courts in Chitral. Given that the phenomenon of 'legal pluralism' within nation-state remains an under-studied aspect of socio-legal scholarship, this study aims to contribute to this debate by exploring the relationship between formal and informal legal systems in Chitral.

CAB as Applicable Law

Majority of the research participants (75%) were the litigants. Except 2, who were currently attending CAB hearings, all others had availed the services before. They cited different reasons for resorting to CAB. For example, Khoshroy one of the respondents who was representing his sister in a divorce case said, "it [CAB] ensures our privacy, maintains communal fraternity and helps us in deciding the cases amicably among ourselves." Similar views were shared by Qareeb Uddin, who had settled his divorce issue at CAB too. He said, "I chose CAB because it is my religious institutions. My wife (ex-wife now) and her family were not willing to go to the police station." One-third of the respondents said that they were 'summoned' by CAB because applications were moved against them.

It was also noticed that none of the respondents, upon being summoned, showed reluctance to appear before CAB. Majil Ahmed, a local school teacher who teaches in a government elementary school, said that "an application, accusing me of illegally occupying the petitioner's land, was filed against me and CAB summoned me". He recounted the experience: "*I went to CAB as if I was going to the [formal] court, with my homework done. I brought along all the necessary documents related to the case.*" In another case of similar nature in which the claimant is a Sunni Muslim stated that:

"I went to the police station, but the police sided the other party and pressurised me. I thought, there are other avenues of justice too, so, I approached the bigger police station. From there I was referred to this institution [CAB]. I am sure that justice will be served here."

Compared to CAB, the respondents took a sceptical view of the formal judicial system. A respondent retorted that *"the Pakistani 'adālat [court of law] is a never-ending process and proving your right takes a life time. It also incurs financial loss."* Similarly, for Qabul *"[g]oing to the 'adālat is only a compulsion. Only if an acute need is felt and all other options including the Imāmat institutions are exhausted only then 'adālat becomes an option."*

Compliance of CAB Resolved Cases

Zargul, who was hoping to get his cases decided at the LCAB, reiterated:

"I will accept whatever decision is made here, however, if the other party doesn't comply then I wouldn't have any other choice then going to the formal court of law. But, it is obligatory a thing to file an application here at CAB first."

This shows that LCAB's decision would be considered binding on parties like the decisions of any other legal system. Moreover, most of the Ismaili respondents also knew about the existence of higher CABs. For example, one of the participant, Mr. Khoshroy, stated that *"had the case not been settled here, I would have approached RCAB. Even if RCAB was unable to decide, I would have engaged NCAB. However, I wouldn't have gone to 'adālat first."* This depicts that not only people consider CAB as a system which has many levels and they can resort to the higher level of CAB body i.e. RCAB or NCAB if the LCAB was unable to settle disputes. On this question, Qareeb Uddin retorted, *"how can he [the other party] do not comply? He signs the agreement when a decision is made. A copy of this reconciliatory note remains at CAB office and it is also shared with the police."* Two-third of the respondents cited almost the same reason regarding compliance of the decisions made at CAB.

Case-Studies

1. A divorce law case

On Sunday 06 August 2017, exactly two weeks after its registration (23 July), CAB panel Garam Chashma heard a divorce case registered by a young woman named Halisa (Party 1).

In the application seeking '*khul*' (a situation in which divorce case is initiated by the wife) she had resented that soon after their marriage (9 days), she found out that her husband, Rasir (Party 2), was mentally unstable.

The woman said that she was ill-treated and remains under constant fear for her life while she lives with the man. The crux of her arguments was 'to set her free from the man and end the relationship without being harmed'. However, seeking '*khul*' would have meant that she would pay the '*mahr*' (dower money) which was PKR 400, 000.00. It gets further confusing as Party 1 was also demanding '*nafaqa*' (maintenance money) from Party 2.

This case was a labyrinth of socio-legal issues and implications. The panel had to handle this case with care which required impartiality, on the one hand, and being wary of the legality involved in family related cases, on the other. After consulting both the parties separately, the panel then decided to convene a combined hearing of both the parties in order to develop a consensus. When both the parties were heard together, seemingly both of them had agreed to end the relationship on '*talaq*'.

2. Labour Law case

This case was brought before CAB by employees of a private security guard company against the admin officer of the Aga Khan Health Service, Pakistan (AKHSP), a non-governmental organisation. The application prays:

"Respectfully it is stated that we the security of staff of AKHS[P] run Tehsil Headquarter Hospital [THQ] responsibly looking after the security of the public and property, the admin office has deprived us of our room from 14 October 2016 and we are forced to stay under the open sky in the cold... If our concern is not addressed within 24 hours, then will be compelled to approach higher legal authority of the government." This application was filed on 4 December 2016, and winters are very harsh with temperature dropping below the freezing point in this mountainous terrain situated more than 2000 metres above the sea level. After two days, on 6 December 2016, LCAB Garam Chashma had summoned the concerned admin officer and the case was decided in favour of the security employees and ordered the hospital management to arrange alternatives for the employees. Here CAB functioned as a labour court and addressed the employees' concerns, which it felt were legitimate. The judgement passed on the same day (6 December 2016):

“Whereas, the security staff of THQ Hospital had filed an application requesting an appropriate room which they could use to fulfil their basic need i.e. resting, keeping themselves warm in cold, changing clothes, using toilet etc....

Whereas, the matter was discussed with the concerned admin officer when he called before CAB;

Therefore, it is decided that an old canteen which is closed now, and which also has a toilet, shall be used as a room, attending the needs of the security guard, until a permanent room is constructed for the security personnel.”

3. Family Wellbeing Case

On July 23, 2017, there were four cases on the docket of LCAB Garam Chashma. Soon after the hearing the first case, the parties had just left the room, a middle-aged woman (Party 1) entered the room accompanied by her husband. Later Party 2 also joined them in the room.

This case was a unique case of its kind. The primary complaint of Party 1 was that her family including his father and brothers do not care about her wellbeing. She wants them to talk to her, listen to her woes and show familial care and affection. In the absence of any kind of sympathy from my family, “I have no other option to drown my sorrows and find a shoulder to cry on”, she said crying. She was repeatedly using the term “*dimaghi bemar*” (mental torture) for her condition. She said if the condition remains the same, she will jump into the river and commit suicide and her family shall be held responsible for this.

When asked, what specific things the family didn't do for her? She said, “my brothers are not paying attention to me. They neither visit me nor ask me whenever I am sick.” When the brother was asked about the issue. He said that they are ready to help her in every possible way but they are not exactly sure what she wants from them. “If she wants land, we will give land, if she wants a vehicle, we will buy her a car, if she needs financial help, we will pay her money.” However, she insisted that her family should be called before the LCAB, and they must be asked as why are they ignoring their daughter?

LCAB members asked Party 2 to appear before LCAB Garam Chashma within two months along with his family. Results of this case would be discussed in any future study; however, the point here was to show the nature of cases LCAB deals. Nevertheless, Party 1's complaint was entertained and she found solace for being heard by a legal institution that could ensure justice to her problems.

4. Property Law Case

This case presents a property related dispute which gets complicated as the case proceeds. In the beginning Nurjur, wife of Asman Khan (Party 1) files a complaint against her father, Pindad (party 2). Later the parties change, as Party 1 (daughter) and Party 2 (father) team up against Asman Khan the husband of Party 1. The case is tossed between the police and CAB and finally it gets settled at CAB. Excerpts from the available documents are translated as below:

The first application to the police:

“It is being requested that my mother (Tikan) had bequest/gifted (*hiba*) her paternal property to me, details of which are attached to this application (sic). [But] my father, Pindad along with his brothers, is doing injustice to me. After beating me he is threatening my mother with an axe.

Dear Sir, I have supported them financially for the past fifteen years, please stop my from committing this atrocity on us... moreover, due to recent floods, my cowshed has been destroyed but my father is [adamantly] using my guest house as a cowshed... when asked he threatens me along with his other relatives...”

This was sent to CAB and then it took CAB eleven hearings to resolve the case. The first hearing at CAB took place on 20 July 2015 and the final settlement was done on 22 December 2015.

The final decision that was agreed by all the parties read:

1. On showing interest by Asman Khan, the Aga Khan LCAB negotiated the following the agreement between the husband, wife and the father-in-law:
2. Asman Khan will unconditionally take his wife back to his home,
3. Asman Khan and Nurju will not have any skirmish with Pikan about the land since the matter is currently under judicial consideration [therefor it is sub judice case]. Until a decision is made, the land will remain under the owner of Mr. and Mrs. Pikan.
4. After the judicial decision, Pikan, according to the Shari'a conventions, will distribute the land with the help of member of LCAB. He will bring an application to LCAB about this help himself.

This case sketches a complex situation in which multiple factors are at play. More importantly, the it sheds light on the interaction of police with the CAB and the court. On the

one hand, it depicts the police through its gatekeeping role lends a legitimacy to CAB's work. It can easily forward cases to the formal legal system i.e. the court(s). However, being close to the society it is aware of the ground realities and cooperates with CAB as an institution of dispute resolution. Since dispute resolution is the primary function of courts-based-litigation too, it means that CAB's functions are legal within the broader purview of law. Moreover, the definition of law does not and should not be limited only to the codified law alone.

CAB as a Legal System

Many people might find it unfair to ignore the definitional problems confronted by legal pluralism. This is because “[d]efining the boundary between non-state law and similar non-legal social phenomena has been a continuing problem for legal pluralists”, argues Forsyth (2009: 36). However, such a definitional issue is not legal pluralism specific. It is generally the case with the idea of ‘law’ itself and “[i]t would, however, be an illusion to imagine that there is a simple answer to the question ‘What is law?’ or even to the question ‘What is law about?’” (McCoubrey and White 1999: 2). Without getting bogged down by such academic polemics this socio-legal study, for analytical reasons, considers ‘law is what people consider as law, nothing more nothing less’ (Dupret 2007: 1). Its function is social control and that too hinges on the condition of being acted upon by people. Thus, law is for people rather than being the opposite.

In the case of CAB in Garam Chashma, all the litigants/clients, who had either approached CAB themselves or had been called because applications were filed against them, considered it an institution of justice. For example, to repeat what Majil described: *“I went to CAB as if I was going to the court, with my homework done. I brought all the necessary documents related to the case.”* Similarly, the exact vocabulary and jargons that are used for a legal system were used in CAB related proceedings too. For example, ‘plaintiff, summon, hearing, filing and application etc’ show that it is only the language that has tremendous influence in categorisation of institutions. It is only perhaps the excessive use of jargons of state judicial system that identifies it as the standard legal system.

Qabul Shah another respondent maintained that *“[t]his institution [CAB] upholds justice and people working here know the ground realities.”* What Qabul was implying here was the organic nature of CAB. The social aspect of human life is perhaps the most complex phenomenon and many things happen spontaneously. Therefore, any untoward situation cannot be precluded, no matter how well things are planned. This also holds true for matters

related to law and legal systems. As argued by Ehrlich (1913) in his discussion of 'living law' that, "someone who above all perceives regulatory action in the law...[should understand] that human life does not occur before the courts." The case about Family Wellbeing, discussed above, is one such example. This case was brought before CAB by a lady who was yearning for family's compassion, care and love.

In the various instances discussed above we saw that CAB does not solely work within the Ismaili community but it also interacts with the other social institutions and the society at large. These cases underscore such an interaction by showing the working relationship(s) and communication especially between the police and LCAB Garam Chashma.

One of the most recurrent themes in the observed in the interviews with all respondents (litigants/clients, CAB members and police) showed that a substantial number of cases are referred to CAB by the police. This shows the police's confidence in the LCAB's work. As the police officer in his interview said, "*this institution [LCAB] is doing a good job. It saves people from the agony and misery they would otherwise face.*" If we closely read the statement again, the second part is comparing CAB with the formal legal system. Therefore, it would be safe to assume that even the police believe that CAB is a legal system that co-exists in Chitral along with the formal legal system.

Conclusion

Legal pluralism is a budding discipline in socio-legal studies that provides a descriptive theoretical approach to study co-existing legal orders in human society. This qualitative study followed a similar methodological plan and a month-long fieldwork was undertaken in Chitral, which involved data collection through qualitative means and tools such as distant observer, semi-structured interviews and document analysis. Key findings of this fieldwork illustrate that CAB has a de facto jurisdiction in a wide range matters including family law, property, inheritance law, commercial law, family wellbeing and labour law related cases. Moreover, it also interacts with other institutions in the society such as the police and courts in matters of socio-legal nature. This shows that a decentralised governance structure is an effective technology that could provide public goods with greater efficiency. As LCAB Garam Chashma caters to socio-legal needs of the communities (both Ismaili and Sunni), despite the existence of formal legal system of Pakistan, the co-existence of two legal system within the same social field is also established. This co-existence of CAB in Chitral along with the formal legal structure guarantees a promising case of legal pluralism in action.

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