Review of: "Legal Pluralism, Familial Honour and Shariat: A Case of Alternative Dispute Resolution within a Muslim Clan, Uttar Pradesh, India"

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This is a review of “Legal Pluralism, Familial Honour and Shariat: a Case of Alternative Dispute Resolution within a Muslim Clan, Uttar Pradesh, India”, by Prof. Rafia Kazim (https://www.qeios.com/read/BXV5V3).

I would first like to mention that, although I am familiar with the concept of Legal Pluralism and I have some publications dealing with the interaction between Religious and State law, I am by no means a scholar in the field of socio-legal studies, nor do I have extensive knowledge of Islamic law.

I believe this is a very interesting article, providing useful information and a thrilling case study. Moreover, it was a delight for me to read about one of the legal issues which are part of the story in the famous novel “A suitable boy”, by Vikram Seth. However the structure of the paper and its conclusions may make it difficult to follow for some readers who, like me, are not experts in the field.

The author contends that individuals may have resort to customary or religious norms and to customary or religious dispute resolution mechanisms for various reasons, even though such norms and mechanisms may not be enforceable or accepted by the state and may therefore look weaker. Among these reasons there may be the costs and lack of speed of state courts, a desire to behave in accordance with one’s religious beliefs, fear of being ostracized or a desire to keep matters within the family or clan and thus avoid harming one’s honour.

Furthermore, the author also claims that individuals may simply resort to any of these norms or mechanisms purely because they understand that they are going to achieve their personal goals more easily that way. However, as a dispute resolution lawyer, the strategy of having resort to one dispute resolution mechanism or forum rather than another, or the strategy of claiming the application of one legal system, rather than the other, sounds more like well-known litigation practices like forum shopping or interpreting conflict norms to one’s advantage.

If my understanding of the paper, as summarized in the previous paragraphs, is correct, the author could have made all of those claims earlier on in the paper. Instead, those claims seem a little scattered across the paper. Concerning methodology – of which I am not an expert – it may also be somewhat surprising that the fieldwork consists of interviews made in 2013, whereas this paper is published ten years later. In the description of the case study, it was also a little difficult for me to understand that the subjects of the interviews where some of the parties in the informal dispute that the

author takes as the case study, rather than scholars who were going to provide insight into the topic of legal pluralism. Furthermore, some of the explanations regarding property in Islamic law, especially regarding women's rights in Islam, seem a little unrelated to the case study itself.

Besides, as a dispute resolution lawyer, I would argue that the case study described by the author may not really be a dispute. In the description of the facts of the case, the author explains how a wealthy family lost all or part of its property after the reform of the Zamindar in India in the 1950s and how, apparently, years later, a member of that same family managed somehow to bring part of that property back into the family, for the purpose of building a village school, asking the formal owners to relinquish part of their unused property to that effect. This process was conducted informally, making use of the Khandahan as some sort of village council.

This may in fact be a very interesting use of informal rural assemblies to make decisions which affect all members of the community but does not sound like a real dispute, in a legal sense, such as an arbitration, negotiation or even a process of mediation, where parties with opposing interests, claims and rights need to be involved and where there must usually be an independent third party adjudicator or at least negotiators trying to reach an agreement. The transfer of property to the trust which was going to build the school, regardless of whether it was later formalized in accordance with Islamic law or Indian law, was made by means of an agreement but that agreement is not described in the paper as the end of a previously existing dispute.