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A comparative study of the notion of legal and political pluralism in India and the Western world: Challenges and way ahead

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Abstract---Legal pluralism refers to the idea that there are multiple laws or legal systems in any geographical territory bounded by the traditional borders of a nation state. In the past few decades, it has gained a lot of traction as an analytical technique and a normative concept in Europe and even beyond. It has gained prominence not only in European Union law, but also in private international law, European human rights legislation, public international law and the analysis of legal systems. India is recognised as a pioneer in establishing a constitutional framework that recognises group-differentiated rights. The paper seeks to explore how well has this worked in the context of Indian democracy, given the reality of exclusions resulting from stratification, heterogeneity, and hierarchy, which often act concurrently and generate intersectionality. For decades following independence, our thinking was defined by a pluralist perspective of nationalism and *Indianness* that reflected the widest possible circle of inclusivity and a "salad bowl" approach. In recent years, a new perspective known as 'purifying exclusivism' has tended to infiltrate and dominate the political and cultural environment. Growing jingoistic tendencies threatens to eliminate any dissent, no matter how minor. The paper analyses the works of Malinowski, the colonial discourse and the Hybrid legal systems in colonized nations. The "*Malinowski Problem*" which is the central point of dispute between Griffiths and Tamanaha is also analysed with relevant examples. The paper attempts to deconstruct the claims that legal pluralism lacks the requisite institutional and analytical framework and proposes suggestions to tackle the issues concerning legal pluralism.

Keywords---legal pluralism, political pluralism, constitutionalism, diversity, majoritarianism, legal anthropology.

Review of Literature

Despite the complexity and heterogeneity of postcolonial cultures, *Parmar* firmly grounds her argument in the debate between indigenous peoples' rights and the dominating hegemony of the global political economy and multinational corporations, where colonised processes are repeated. A vertical translation of Adivasi claims and narratives of exclusion, displacement, and exclusion into the dominant languages of the formal legal system can be found here. While certain meanings are acquired, others are inevitably lost in translation. When claims and meanings move across the legal system, they don't always lead to "justice," as *Parmar* demonstrates. Legal pluralism, indigenous rights, and the two most important areas of law and society scholarship—legal mobilisation and legal consciousness—are all enhanced by this book's exploration of the common meanings of law.¹

Sandberg mentions the original research topic, 'Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts,' in his introduction to *Religion and Legal Pluralism*. This study led to the creation of *Religion and Legal Pluralism*. Despite the fact that the project's primary focus was on Religious Courts, one of its primary goals was to "contribute to discussion over the degree to which English law should accommodate religious legal systems." As a final piece of evidence, this edited collection of articles includes a draft legislation that proposes an operational model of jurisdiction for both religious and secular courts acting outside the State legal system. What's the idea? These debates and proposed reforms in the domain of adapting religious legal norms should be highlighted in order to advance these discussions.²

Using a discursive approach to legal pluralism, *Sbriccoli* investigates the legal and political practises and ideas of justice and authority that exist in Rajasthan, India. to show how legal pluralism can be analysed in addition to the presence of different normative systems or the availability of different legal forums, but also in relation to the ability of social actors to build their own position in a discursive order characterised by the potential production and multiplication of legal and political planes.³

In *Chiba's* view, the area of legal pluralism research has been increasing since the discovery of non-Western nations' dual structure of state and minor law. This paper aims to stimulate this investigation by highlighting previously overlooked aspects of legal diversity in the modern world. Finally, the author suggests a conceptual framework and an operational definition of legal pluralism for verification by interested academics after examining several varieties of legal pluralism.⁴

¹ Jhuma Sen, Pooja Parmar, *Indigeneity and Legal Pluralism in India: Claims, Histories, Meanings*, 51 *LAW & Soc'y REV.* 201 (2017).

² *Religion and Legal Pluralism*, R. Sandberg, Aldershot: Ashgate Publishing Limited, (2015).

³ Tommaso Sbriccoli, *Legal Pluralism in Discourse: Justice, Politics and Marginality in Rural Rajasthan, India*, 45 *J. LEGAL Pluralism & UNOFFICIAL L.* 144 (2013).

⁴ Masaji Chiba, *Other Phases of Legal Pluralism in the Contemporary World*, 11 *RATIO Juris* 228 (1998).

A focus of *Julia's* academic work has been on the seeming difference between customary law and state law and the ways in which this duality is negotiated in the practises of both the state and its people. Many academics are focused on custom and state law as scholarly "entities," rather than the emergence of legal plurality within the efficient administration of justice and rights by state and non-state institutions.⁵

Statement of Problem

1. Is there a certain form of legal complexity that we refer to as legal 'pluralism'? Does this notion often used terminology such as "multiplicity" or "plurality," to cope with the complexity we are now presented with? What is legal pluralism? Does it need the presence of more than one legal system or order, or are 'legal processes' sufficient, and can one talk of legal plurality inside a single judicial system or court system?
2. What is meant by the terms "existence" or "co-existence" of laws or legal orders?

Research Objectives

- To have a better understanding of the concept of legal pluralism as it exists in India, as well as to compare it to the western model of legal plurality.
- Deliberating on the consequences and challenges associated with legal plurality.

The idea of Legal Pluralism

Diversity is natural, Homogeneity, on the other hand, is considered to be imposed. According to Hobbes, people were governed by their group norms in the natural state, which differed from group to group. Contrasting that vision of utopianism was the dystopian one presented by Thomas Hobbes, who proposed the model of an authoritarian monarch to whom everyone committed allegiance in exchange for the restoration of law and order. That idea was used by Austin to define law in top-down terms, claiming that all law was a direct or indirect command of the sovereign, and that anything that could not be shown to be law was not law. Philosophers like Kelsen and Hart in the latter stages of their careers posited that in order to be deemed law, every rule of conduct or norm must be traceable back to a grundnorm or rule of recognition in some form. Unless it can be traced in this manner, it is not law. A number of thinkers, among them Paul Ehrlich, started to throw doubt on this notion of law in the 1930s. They saw a disparity between the state's laws and the behaviour of its citizens. Individuals saw and practised a wide range of things that the state law did not explicitly address, or to which individuals behaved differently even if the law did address them.⁶

⁵ Julia Eckert, *Urban Governance and Emergent Forms of Legal Pluralism in Mumbai*, 50 J. LEGAL PLURALISM & UNOFFICIAL L. 29 (2004)

⁶ M. P. Singh, *On Uniform Civil Code, Legal Pluralism and the Constitution of India*, 5 J. INDIAN L. & Soc'y V (2014).

According to Griffiths:

*"Legal pluralism goes hand in hand with social pluralism: a society's legal structure matches its social structure. Legal pluralism refers to the normative heterogeneity that comes with social activity taking place in the setting of numerous overlapping, semi-autonomous social domains, which, it should be noted, is a dynamic state in practise."*⁷

When two or more legal systems coexist in the same social context, the same is referred to as legal pluralism.⁸ Such a view of legal pluralism is completely compatible with India's social realities. State acknowledgement of legal plurality in contemporary history may be traced back to Warren Hastings's 1772 rule.

*"In all suits regarding marriage, caste, and other religious usages and institutions, the law of the Koran with respect to the Mohammedans and the law of the Shaster with respect to the Gentoos shall be adhered to"*⁹

With this exemption, everyone was bound by state law, which applied to everyone. As a result, India's legal pluralism was legally recognised.

It is vital to examine the arguments in favour of legal pluralism, particularly the legal pluralist criticism of the relationship of law with the state, in order to appreciate the increasingly trans territorial character of regulatory governance.¹⁰ The lawyer who is trying to figure out what will happen to her profession in a world that is shifting from national to global will have to do both methodological and theoretical research. It's methodological in the sense that legal notions are pitted against other discipline methods in order to successfully handle the regulatory issues and aims posed by 'global governance.'

As a source of different ideas and a platform for debate among individuals from a variety of communities, normative rivalry across legal systems is inevitable and may even be constructive at times. Community members may instead choose (and increasingly are doing so) to seek out (and increasingly are creating) a variety of procedural mechanisms, institutions, and practises to manage hybridity rather than eliminate it by imposing sovereigntist territorial prerogatives or universalist harmonisation schemes. Along with describing our current reality in more detail, pluralism offers a potentially helpful alternative approach to the creation of procedural procedures, institutions, and practises.¹¹ With globalisation, all societies are growing more and more diverse, resulting in the migration of individuals from all origins to a single location. As a result, legal pluralism becomes their condition as well, leading to an increasing number of nations are

⁷ John Griffiths, "What is Legal Pluralism?," 24 Journal of Legal Pluralism 1(1986).

⁸ Sally Engle Merry, Legal Pluralism, 22 LAW & Soc'y REV. 869 (1988).

Note: In an important essay on the definition of legal pluralism, Griffiths defines it as "that state of affairs, for any social field, in which behavior pursuant to more than one legal order occurs.

⁹ M. P. Singh, On Uniform Civil Code, Legal Pluralism and the Constitution of India, 5 J. INDIAN L. & Soc'y V (2014).

¹⁰ Peer Zumbansen, Transnational Legal Pluralism, 1 Transnat'l LEGAL THEORY 141 (2010).

¹¹ Paul Schiff Berman, Global Legal Pluralism, 80 S. CAL. L. REV. 1155 (2007)

seeking answers to legal issues that have arisen as a result of social heterogeneity.

The notion of Political Pluralism

We use the term "liberal democracy" often, but we don't always give it much thought. To use the word more generally, it refers to a political organisation in which all lawful authority originates with the people and in which decisions are made either directly or indirectly by the people as a whole. When it comes to politics, the term "limited" refers to a certain sense of what constitutes "legitimate political decision-making." Liberal government recognises that certain aspects of human existence are outside the scope of governmental authority in some form or another. All kinds of complete authority, including domination by democratic majorities, are protected by it.¹²

Professor George H. Sabine, in an extremely interesting article entitled "*Pluralism: A Point of View*," defines Political pluralism as a theory "*which denies that there is any rigid necessity about the demand for a unified legal and political system. It insists, on the other hand, that an amount of loose-endedness is possible and under some circumstances inevitable and even desirable. It asserts that, at least at any given time, a community may be living under two systems of law and that a government may be organized in such a way as to include two or more authorities that are juristically coordinate, in the sense that their respective jurisdictions are not fixed by a third and higher authority competent to coerce them. This does not mean, as sometimes is supposed, that the different authorities would be without relation to one another..... The pluralist merely insists that such relations could not be brought under the conception of a delegation of authority. Neither would have the legal power to fix the competence of the other; relations between them would take the form of what Mr. Laski calls negotiation.*"¹³

To begin with, political pluralism rejects attempts to view people, families, and groups as just components of a political whole or part of one. Another argument against the instrumental/teleological interpretation of people, families, and groups is the idea that they exist only to further a political goal. Those who believe in political pluralism see the world as divided into several realms, each with its own unique character and set of internal standards. Each sphere has a small but genuine degree of independence. In other words, it rejects any theory of political community based on a one-dimensional hierarchical structure between various domains of existence. Many different types of organisations are intertwined in intricate ways. Local or partial hierarchies may exist among subsets of domains in certain contexts, but lexical orderings across human life categories are non-existent.

When it comes to pluralist politics, the focus is on acknowledgment rather than creation. It doesn't think of itself as the creator or creators of those activities; rather, it sees itself as an observer of those actions. That doesn't imply that

¹² William A. Galston, The Idea of Political Pluralism, 49 NOMOS: AM. Soc'y POL. LEGAL PHIL. 95 (2009).

¹³ Westel Woodbury Willoughby. Ethical Basis of Political Authority (1930).

families are "socially created," but they are influenced by public legislation. It is absurd to say that the public realm generates religion groups, even while there are complicated linkages of reciprocal influence between public law and faith communities.

As a normative text, the Indian Constitution's Fundamental Rights illustrate that the citizen is an independent person who is given identity by belonging to a diverse group of people. Rights are seen as a matter of individual autonomy, but also a matter of community membership, with specific safeguards for the most vulnerable people.¹⁴

Both religion and government have considerable limitations in a pluralistic political system, yet each may nevertheless play a unique role in society. Rather than a shift in religious conviction, normative religious diversity is made possible by the relationship between religion and politics. An ever-shifting equilibrium between the many systems accountable for different sorts of human goods is essential to modern political pluralism. Political pluralism starts with the identification of some specific good, which initiates a debate of the conditions necessary for its manifestation in current circumstances and in connection to other good. Instead of starting with universal principles of justice. Through the use of such local, hands-on studies of human goods, religious principles and values may be integrated directly into the creation of public goods and standards for their distribution.¹⁵ Neither religion nor politics are confined to the arena of "public reason," where neutrality is rigidly enforced. Even according to liberal philosophy, religion is not limited to a mere symbolic function in public life in this larger examination of what Rawls called the "background culture." It has a voice in the public arena. With political plurality, religion is not reduced to a duty of "obedience and suffering," as Calvin once phrased it, when confronted with secular power.¹⁶

Lawyers, theologians, editors, and ethicists will always have work to do on these questions in a society devoted to political plurality, since it is essential to political pluralism that the government's power is neither unilateral or infinite. Political pluralism offers an explanation and a normative theory as an alternative to responses that are insufficient to the reality of religious plurality in many areas of the globe today. The contemporary West's experience with religious strife has helped us grasp how religious plurality has grown out of political pluralism. As a normative framework, it permits religious traditions to keep their distinct identities in respect to one other and to the state.

¹⁴ Chakravarthi Ram-Prasad Pluralism and liberalism: reading the Indian Constitution as a philosophical document for constitutional patriotism, *Critical Review of International Social and Political Philosophy*, 16:5, 676-697, (2013)

¹⁵ Robin W. Lovin, Religion and Political Pluralism, 27 *Miss. C. L. REV.* 91 (2007).

¹⁶ John Calvin, On Civil Government, in *LUTHER AND CALVIN ON SECULAR AUTHORITY* 82 (Harro Hpfl ed. 1991).

Legal Pluralism in the Western World

The notion of legal pluralism has been used to the study of social and legal ordering in urban industrialized societies, notably in the United States, the United Kingdom, and France, throughout the final decade of the previous century. As long as the phrase "legal system" is used broadly enough, almost any civilization, regardless of its colonial history, is legally pluralistic. The reconceptualization of the law/society relationship is heavily influenced by legal pluralism.¹⁷

Unlike the conventional philosophy of legal order, legal pluralism denies the notion that a legal system must have (exclusive) power. Legal pluralism supplanted and changed the ancient notion of legal order autonomy (legality) into a necessary substantive underpinning for the law when the authority of the legal order started to collapse towards authoritativeness.

The academic agenda suggested by a pluralist perspective focuses on the micro-interactions between various normative systems. Such a case study method would be a contrast to rational choice and other types of more abstract modelling, by concentrating instead on extensive description of the ways in which diverse procedural processes, institutions, and practises really work as places of conflict and creative innovation. To better understand the mechanisms by which normative inequalities between communities are bridged, researchers should investigate applying pluralism to international affairs, since this opens up a wider area of study and research.¹⁸

European legal professionals are increasingly using pluralistic principles as roadmaps to help them get out of a lengthy disciplinary deadlock. As soon as the EU - then known as the E(E)C - became the subject of constitutional studies, there was widespread suspicion that it was an emerging transnational polity with a distinct *sui generis* feature as a political system. It was thus also stated and eventually acknowledged as fact that European law established an independent legal system, qualitatively separate from both national laws and international law.¹⁹

In this pluralistic perspective, the foundations of public-legal order are made up of a variety of different structurally diverse constitutional actors who operate at various structural levels and generate and apply norms in their own unique ways. Because of this new emphasis, it opens up a whole new field of study for legal and constitutional academics.

When jurists conceded in the 1950s and 1960s that the Community legal system was autonomous and that a European Constitution was a possibility, they were merely assuming or postulating the existence of a European Constitution, and this is exactly what they did. Nevertheless, the Community did not have a coercive

¹⁷ Sally Engle Merry, *Legal Pluralism*, 22 *LAW & Soc'y REV.* 869 (1988).

¹⁸ Paul Schiff Berman, *Global Legal Pluralism*, 80 *S. CAL. L. REV.* 1155 (2007).

¹⁹ Chris Thornhill, *Legal Pluralism: The Many Books on Europe's Many Constitutions*, 21 *Soc. & LEGAL Stud.* 413 (2012).

apparatus, an independent and self-sufficient institutional base, and it depended entirely upon cooperation from Member States, on their continued desire to comply with Community legislation and to contribute toward its growth. A European Constitution could not thus be presupposed but was to be intentionally recognised, sought, and promoted via the assumption of a moral and political commitment towards the development of Europe in accordance with Community law writings of the 1950s and 1960s.²⁰ To accept the Community Grundnorm over the State Grundnorm was seen as a moral decision in favour of the European Union. In pursuing a constitutional ideal, those jurists claimed the European Constitution was fundamentally a project, a constitution in fieri, which was what they were doing. Consequently, the Constitution was not a basic 'want' in the Kelsenian sense, but rather an intrinsic desire to be. It was seen as a statement of the EU's desire to become a federal state by those jurists.²¹

An imperialist government with a centralised and codified legal system foisted a legal system on communities with vastly different legal systems, sometimes unwritten and without official mechanisms for assessing and enforcing. Therefore, it can be safely deduced that legal pluralism stems from power disparities. Legal pluralism has recently expanded to define legal relations in advanced industrial countries, albeit the issues are diverse. Their main point is that courts are not the only place where law is made, as many legal experts believe.²²

The structure of Legal Pluralism in India

India is a multicultural and multi-religious society. The main religious groups—Hindus, Muslims, Christians, and Parsees—are each ruled by a set of personal rules that are unique to themselves. In today's global order, one of the most pressing issues is figuring out how to deal with the proliferation of legal universes. Globalization and counter-hegemonic globalisation are characterised by a proliferation of normative regimes at the global, national, and local levels. To begin with, figuring out how the various judicial branches relate to one other is a difficult task.

State creation in India is influenced by the country's rich history of ethnic and religious diversity. The history of state building in Europe has seen a concentration of power and authority at the national level, but in pre-colonial India, sub-continental empires and regional kingdoms vied for supremacy as sovereign entities. Mauryan, Mughal, and British empires, which spanned most of India's land during the 16th and 20th centuries, are examples of subcontinental empires.²³ The Princely States under British authority and the regional kingdoms imposed constraints from both within and outside the kingdoms. Indian state authority, in all its manifestations, was never able to extend beyond the borders of the country. Scholars believe that the state's segmented and constricted power

²⁰ Giulio Itzcovich, *Legal Order, Legal Pluralism, Fundamental Principles. Europe and Its Law in Three Concepts*, 18 EUR. L.J. 358 (2012).

²¹ Eduard Barany, *Legal Pluralism II*, 100 PRAVNY OBZOR 327 (2017)

²² Sally Engle Merry, *Legal Pluralism*, 22 LAW & Soc'y REV. 869 (1988)

²³ Susanne H. Rudolph and Lloyd I. Rudolph, *Explaining Indian Democracy: A Fifty Year Perspective, 1956–2006* (New Delhi: Oxford University Press), 51 (2008).

structure was not just a pragmatic concession to local chieftains' authority, but also a philosophy rooted from Hindu sacred legal scriptures (dharmaśāstras).²⁴ Various social groupings were considered to be antecedent to the state and independent of it. The responsibilities of the kings and queens were to maintain and defend the traditions and laws of self-governing social groupings.²⁵

Our Constitution fully acknowledges and accepts this variety due to the social and legal makeup of our nation. It exempts the family from the application of the Fundamental Rights. While other constitutions have created a fundamental right to the family, the Constitution of the India does not provide this. The Bombay High Court and the Supreme Court concluded early on in the Constitution-implementation process that personal laws were exempt from Article 13 and could not be challenged as breaching fundamental rights.²⁶

The majority of political parties in our country have been multi-ethnic and have provided opportunities for minorities to be included, for example, in significant positions in party structures. A politics of negotiation and compromise has been enabled by the political class. In this respect, certain lessons from the experience of other nations in a comparable geographical location, particularly in Asia, may be learned. As a Muslim-majority nation with a variety of laws, including customary rules, Muslim law, and colonial law, Indonesia has made some progress in this area, but has not yet achieved its full potential. Scholars have made similar recommendations for a common civil code in India. We may look at all of these instances and ideas to see if we can come to a decision on this subject. Because of this lack of agreement, any effort to achieve a uniform civil code would not only fail, but also be in conflict with the Constitution.²⁷

Legal pluralism studies in India have long focused on the relationship between state and non-state legal regimes. The subject of how a foreign normative framework was imposed on Indian society and how Indian society adopted and adapted it has received particular attention because of the country's colonial past. It has been debated as much about the extent to which state law has superseded traditional legal regimes as it has been about their resiliency and long-term influence on social order. As studies have examined how state law is adapted to local practises, others have shown how custom and religion are transformed through state codification, an issue that pertains particularly to the state's accommodation of legal pluralism through the personal status principle.²⁸

In India, several kinds of legal pluralism play a significant role in daily ordering and conflict resolution. Formal and customary legal regimes, as well as the social norms they reflect, are woven together in ways that are pluralistic and pragmatic. A more accurate word for this kind of legislation is "unnamed law", since it has no

²⁴ *Id.*

²⁵ Rochana Bajpai, *Why did India Choose Pluralism?*, Global Centre for Pluralism (2017)

²⁶ *State of Bombay v. Narasu Appa Mali*, AIR 1952 SC 1952 Bom, at 84;

²⁷ M. P. Singh, *On Uniform Civil Code, Legal Pluralism and the Constitution of India*, 5 J. INDIAN L. & Soc'y V (2014).

²⁸ Julia Eckert, *Urban Governance and Emergent Forms of Legal Pluralism in Mumbai*, 50 J. LEGAL Pluralism & UNOFFICIAL L. 29 (2004).

clear source of legitimacy and instead emerges through the interactions between the many institutions that make up a government. Legal plurality in this form is nothing new. Legal order in (urban) India has evolved through time, based on the configurations of governance and power relations, which differed greatly from one another. This means that Indian state formations throughout time have allowed for a tolerance for variety while maintaining an order characterised by hierarchy, which may be referred to as a type of hierarchy or segmented plurality.

Understanding the “Malinowski Problem”

Views of Griffiths

Legal pluralism has been a key issue in recent legal theory and sociology. Legal pluralism originated as a unique analytical idea in the 1970s.²⁹ According to legal pluralists, the state does not own a monopoly on the rule of law. In legal pluralism, the underlying belief is that there exist a wide range of normative regimes that are not tied to the state but are nevertheless law. Griffiths outlines his goal: "to construct a descriptive understanding of legal pluralism," which will allow them to compare different kinds and degrees of this socio-legal phenomena in various nations. For every social field in which there is more than one legal order, legal pluralism may be defined as "that condition of events, for any social field, in which action according to more than one legal order happens." By drawing attention to the "social field" in which legal plurality may exist, Griffiths follows Jacques Vanderlinden's lead.³⁰

To be certain, Griffiths is unyielding in his pursuit of dismantling the legal centralist paradigm. He sees legal pluralism as a paradigm whose major goal is to prove the existence of non-state legal regimes that coexist with state law but are not submissive to it (at least not entirely).³¹ Although "it is not an actual truth, but rather a characteristic of the structure of state law," he dismisses any instance of legal diversity within the framework of state law. The contrast between "legal plurality in the strong sense" and "legal pluralism in the weak sense" is crucial. The first, and only "genuine" and socially relevant legal pluralism, is when state law coexists with non-state legal regimes. As per him "Legal pluralism is defined as the term of a social condition of affairs and a trait of a social group" by social scientists. It is not a concept, philosophy, or ideology only.

Views of Tamanaha

Legal pluralism is a focus of Tamanaha's criticism, which is directed against any study that uses the theoretical framework of legal pluralism. Griffiths' "legal-pluralist" perspective is the target of his most vicious assault, though. A definition

²⁹ Ido Shahrar, *State, Society and the Relations between Them: Implications for the Study of Legal Pluralism*, 9 THEORETICAL INQ. L. 417 (2008).

³⁰ John Griffiths, *Legal Pluralism and the Theory of Legislation - With a Special Reference to the Regulation of Euthanasia*, in *LEGAL POLYCENTRICITY: CONSEQUENCES OF PLURALISM IN LAW* 201, 201 (Hanne Peterson & Henrik Zahle eds., 1995).

³¹ M. Galanter, 'Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law' 19 J. of Legal Pluralism I (1981)

of law outside of the state, but distinct from other kinds of normative order, is the only obvious answer to this difficulty. While legal pluralism proponents openly admit this difficulty, the movement continues unabated, relying on the intuitively appealing belief that even without a test to discern between what is and is not law, our senses can tell us when something is right.³²

*When non-state normative systems are recognised as law, Tamanaha claims, the "Malinowski problem" arises: it becomes hard to define law properly, and every effort to do so leads to a slippery slope and the conclusion that all kinds of social control are law.*³³

Despite their seeming differences, Griffiths and Tamanaha have one thing in common: they both ignore the state's conception. So in their talks of "state law," the second component gets all the emphasis, while the first half gets none. "State" is as illusive and difficult to define as "law."

Hybrid legal systems in colonized nations

The term "mixed legal system" or "mixed jurisdictions" is widely used interchangeably by comparatists, however the problem is becoming more prominent as a consequence of current discussion and advancements. A variety of Anglo-customary legal systems were developed across the British Empire, including hybrid Anglo Hindu law systems in India, Anglo-Buddhist law in Burma, and Anglo-Muhammadan law in Pakistan.³⁴ The legal system of a hybrid or mixed nation consists of major aspects of both common law and civil law. Legal origins literature has mostly ignored hybrid nations.

There are aspects of civil law, common law, equity, as well as customary and religious law, in India's legal system. Traditional Hindu and Islamic law was abolished in favour of British common law with the arrival of the British Raj. So the country's current judicial system is heavily influenced by British precedents and has little if any ties to the Indian legal systems that existed before to British rule.³⁵

Even in societies where the legal system was not developed spontaneously, but rather was imposed by a colonial power, the legal framework is an essential predictor of human rights practises. Civil legal traditions may be as successful as common legal traditions when it comes to human rights, according to research.³⁶ States with a colonial past have consistently ranked higher on indicators of state repression than those without a colonial legacy in this study (1976–2006).³⁷ For

³² Brian Z. Tamanaha, *The Folly of the Social Scientific Concept of Legal Pluralism*, 20 J.L. & Soc'y 192 (1993).

³³ Ido Shahar, *State, Society and the Relations between Them: Implications for the Study of Legal Pluralism*, 9 THEORETICAL INQ. L. 417 (2008).

³⁴ M.B. Hooker, *LEGAL PLURALISM-AN INTRODUCTION TO COLONIAL AND NEO-COLONIAL LAWS* 6 (1975).

³⁵ Sally Engle Merry, *Law and Colonialism*, 25 LAW & Soc'y REV. 889 (1991).

³⁶ *Id*

³⁷ Kenneth G. C. Reid, *The Idea of Mixed Legal Systems*, 78 TUL. L. REV. 5, 11 (2003)

nations with low economic levels, we need more indigenous, scientific analyses of the efficacy of law and legal systems. This also applies to the rest of the developing world. Furthermore, comparative study including a broader range of nations, rather than only those with common law or civil law systems, is critical in this domain.³⁸

Contemporary Issues of legal pluralism in India

Indian history shows that pluralism may flourish without equality for all members of society. For most of India's history, a segmented pluralism has existed, with little contact between various socioeconomic sectors and a significant degree of autonomy granted to minority communities. With the emergence of novel kinds of hierarchical and segmented plurality in various parts of India, including the increased segregation of Muslims in some urban areas (for example), inclusionary policies are being challenged.

One of the most important components of an equitable political system is a framework for resolving conflicts. Minority rights and affirmative action for historically disadvantaged communities were included in the Indian Constitution (1950), which was ahead of its time. Over time, the constitutional lexicon of democracy, secularism, social justice, development, and national unity has served as a common ground for discussion. Even today, the Constitution is often cited by political opponents as a model for upholding the country's founding principles.

The process of correcting the exclusions of disadvantaged groups via inclusionary policies takes time and needs methods of accountability. As a result, the underrepresentation of SCs and STs at the upper levels of public and commercial sector employment persists, notwithstanding a policy of quotas. The implementation of an official policy of positive discrimination thus necessitates the addition of measures to track the progress made toward inclusion.

Conclusion and Recommendations

More and more scientific and scholarly works are incorporating the concept of legal pluralism, and the framework for understanding legal phenomena in various societies is evolving, indicating that the socio-legal world is recognising the futility and impossibility of separating life spheres such as law, religion, morality, and politics. It is currently argued that legal pluralism has become a "key term in a postmodern perspective of law", a "central issue in the reconceptualization of the law/society interaction." The author contends that rather than recognising legal diversity, the most important goal is to begin considering law in a pluralistic and multicultural manner. There is no way to do this without a shift in viewpoint. Law must instead be seen as a part of the entirety of social life, rather than viewed as just another piece of legislation.

Legal pluralism emphasises balance over incommensurability, legal space over legal order, and multilevel governance over the state. Long term, legal plurality

³⁸ Joireman, Sandra F., "Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy" Political Science Faculty Publications. 113 (2001).

poses both practical and theoretical challenges. Legal pluralism emerged to examine the processes of legal integration beyond the previous paradigm of legal order. Of course, unlike order and coherence, legal disagreements may be conceptualised and settled by judges. Nonetheless, legal disputes might recur from time to time, and when they do, we can only conclude that their resolution is the result of a discretionary decision on the part of the adjudicator among irreconcilable claims to power. But, if there is no longer any legitimacy, no certainty, no order, is it possible that there is no longer any law? Not unexpectedly, this position, which has arisen as a direct result of the crisis of state sovereignty, has prompted legal scholars to warn of the perils of 'legal nihilism.'

In certain ways, legal pluralism conceptualises and manages disputes that are logically unresolvable, i.e. non-technical, external antinomies between integrating legal systems. There are more opportunities for conflict when legal systems become more integrated. Long-term indifference and incommensurability-corollaries of legal order autonomy and authority-may give an inadequate response to legal integration's numerous questions: there must be at least a minimum of legality and clarity in the implementation of Community law. The normative disputes that disturb the disordered legal space will survive as genuine antinomies, i.e. disagreements that may be addressed in various ways by various authorities. So long as there is no shared political community, a lack of legality and legal certainty may be tolerated.

Social conflict, according to well-established sociological theory, seriously undermines social order, but it also serves to expose the order's flaws, allowing for its repair. The same holds true when it comes to legal disputes. Although we expect that the law would triumph without any controversy, it is impossible to achieve this goal. Those of us who are subject to the rule of law must never strive to ignore or detest disputes out of spite, but rather respond to them prudently in light of their inherent character and our shared societal goals. Legal pluralism would cease to exist if disputes in the law were not accurately observed and managed.

When it comes to legal order recognition and prioritisation, there is always room for debate. Due to the absence of agreement on how linkages between rival legal orders are to be established, these remain recurring. This raises problems concerning the degree to which such regimes may coexist, as well as the circumstances under which one rule takes priority over another, among other things. As a result of these agreements, legal pluralism offers a repertoire from which social actors may draw in order to develop discourses of legitimacy that can be used to promote and legitimise a variety of types of intervention, action, and policy-making across a wide range of fields and settings.

Understanding what these elements imply involves engaging with the varied nature of law that is characterised by legal pluralism as a whole. It also highlights the degree to which legal spaces are intertwined with wider social and political demands that include complicated power relations that must not be overlooked in the process.

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