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Informal Justice System; Implications on Muslim Societies in Pakistan, Afghanistan, China and Central Asia

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Abstract
This study explores what is informal justice system and how it is being exercised in the modern times. the case studies of this reasearch are Pakistan, Afghanistan, China and Central Asian republics. The more significant point is; not only the US-installed governments but united States itself prefers informal justice system in Afghanistan regarding resolving local affairs. Likewise, technological advancement in China could not incline Uyghur community in Xinjiang to prefer Chinese modern courts system. On the other hand, Pakistan and Central Asian republics have also long history of informal justice system.

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Introduction

The Informal justice system is neither a new idea nor a new mechanism of settlement of disputes. It was created by human beings since ancient times. It is a mechanism of justice that functions outside State's formal judicial structure. In this system of justice, disputes are being adjudicated not through written laws, rather all the way through the use of common sense, local traditions and principle of consensus (Ricken, 2019). It has been reported that both in developed and developing countries, almost 80% of the cases, criminal and civil, are resolved through the informal justice mechanism (Wojkowska, 2006). The scope of the informal justice system covers a range of areas, such as, family matters, land issues, property disputes and claims regarding livestock. Informal justice system also extends to social disputes including various rights of citizens (United Nations Development Programme, 2015).

The origin of informal justice can be traced to ancient civilizations, such as, Africa, Asia and the Far East and could resolve disputes of various natures, at a time, when modern nation state and its formal justice system were not yet introduced (Fiadjoe, 2004). Various devices and forms of informal justice, in these communities, based on local custom and traditions, could be found in use and enforced by the chief of the community. A more detailed discussion on various forms of informal justice system is discussed in this chapter. However, after the emergence of a more organized administration, especially among the settled communities, the justice system was also reformed and slowly conducted through a regular court and a formal judge (Fiadjoe, 2004). In this way, the place of informal justice was taken by a more formal one. The early remnant of formal justice could be traced to Pharaohs in Egypt (1539–1292 BC)[1]. During this period formal justice system was introduced through the regular courts for civil and criminal cases. The ordinary cases, civil and minor, were resolved by the chief of the tribes and more serious cases, such as, murder were decided by the ruler or *wazirs* (the chief minister of the ruler) (Malik, 2020). Sub-Saharan African societies and Sub-Saharan Nilotic people (people who lived around river Nile) of ancient Egypt historically resolved their disputes through arbitration, a well-known device of informal justice system, reported to practice in various societies (O'Sullivan, 2019, p. 211). In the U.S., in 1960's an initiative was taken to institutionalize and strengthen the informal justice system and since then it has been playing a constructive role in civil right disputes resolution. Now, in the U.S., lawyers and attorneys are working together to employ twenty different informal legal mechanism of disputes resolution (Nosyreva, 2001, pp. 2-3). Moreover, in forty States of the U.S., 150 minor informal dispute mediation centers have been established for settlement of minor disputes. Besides, the court-based arbitration (a form of Informal justice system) is operational in State's courts (Edwards, 1986). In a number of States in the U.S., almost every court of law has an informal mechanism of justice, in form of arbitration. The judges refer parties' to arbitrators to settle their issue outside the court. And such parties are bound to appear before the arbitrators. If the parties are not satisfied with the decision of the arbitrator then they can take their case to the formal court. In the United States, inside the American Bar Association and local Bars Association, there are 120 special sections and committees that employ informal justice system (Sanders, 2007, pp. 84-85).

Moreover, in other Western European countries, a variant device of informal justice system, Conciliation or Family Mediation (the two terms interchangeably used for it), is very effective, especially in cases related to family matters. In these countries National Family Conciliation Council (NFCC) founded in 1982, as a charitable institution to tackle issues regarding family matters. The more recent Family Mediators Association (FMA) was set up in 1986 to provide 'comprehensive mediation' (in child-related and property issues). By as early as mid-1992, the Conciliation Council was rendering fifty independent services mainly related to mediation services and solution of child related disputes. The Council also runs pilot projects by extending mediation services in property matters. (Sanders, 2007, p. 85). Both agencies run mediation training schemes. It is also worth noting that a vast literature, critical of mediation, is available in Canada and the U.S. (Sanders, 2007, pp. 85-87). In Australia, among the various devices of informal justice, mediation is the most practiced mode (Nadja, 2010). Similarly, the current Chinese government has been making maximum utilization of the informal justice system for the promotion of its economy, in subjects, such as, settlement of business disputes in the country. In China the three dominant modes of informal

[1] Available online at: https://www.britannica.com/topic/pharaoh , Retrieved on July 10, 2021.

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justice system, mediation[2], arbitration[3] and litigation[4], modes are available for domestic and foreign investors to solve their business issues (Wang, 2005).

However, the robust informal justice system was practiced from the time when Afghanistan turned into a battle ground for superpowers in 1980s, the country's formal judiciary has been in shambled (Wardak, 2016). Moreover, due to continuous political instability the institution of formal justice could not be developed as expected. Therefore, informal justice remained the only window open to public, it was more accessible to people to resolve the disputes (Crews, 2008).

Although in Afghanistan the *Jirga*, an ancient institution of the informal justice that exists, however, during the Taliban rule (1996-2001) their informal courts established at district level were reported very effective. These courts held hearings one or two days a week. Various researchers observed that Taliban courts were a preferable alternative, because they were accessible and less corrupt than formal courts. Taliban had established Justice Committee which operated as a court. The procedure adopted, first a party or petitioner would register a case in written to the District Committee. And in return, he or she would receive a written chalan. Depending on the complexity of the specific case and availability of Taliban's judges, the court could take a few days to hear the cases (Gregori, 2020).

Thus, it can be concluded that both in ancient communities and the current informal justice has been playing and remained an effective mechanism of dispute resolution. Various ways and devices of informal justice system have been adopted by various societies, such as, negotiation, mediation, conciliation and arbitration. An essential inquiry need to focus first, on understanding various forms and devices of informal justice system adopted by various communities. Secondly, more important is the rationale of informal justice system, parallel to regular formal courts and current time. Thus, in the following text, the common devices of the informal justice system and the reasons for it will be discussed.

Various forms and devices of Informal Justice System: Negotiation, Mediation, Arbitration and Conciliation

Four dominant mode of informal justice mechanisms have been observed followed in most of the states and societies. They are negotiation, Mediation, arbitration and Conciliation.

Negotiation

The term negotiation is defined as a form of decision making in which two or more parties talk with one another in an effort to resolve their disputes (Lewicki Roy J, 2016, pp. 02-03). Among the procedures adopted for dispute settlement, negotiation, is one of the most instrumental and flexible method through which the individuals, groups, organizations etc. resolve their disputes. This procedure does not involve any third party intervention and best mode to resolve issues (Shaw Malcolm N. 2008, pp.10-15). The device of negotiation is free and no payment is incurred or expected from parties. Negotiation is conducted out of the court through a mutual understanding and in the light of agreed upon terms and conditions acceptable to both the parties (Kochan, 2018, pp. 15-19).

[2] Mediation is conducted between the concerning parties on a voluntary basis and has no legal binding effect.
[3] In legal terms arbitration is defined as" settlement of dispute outside the court room."
[4] A civil law suit file by a person in a formal court.

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The process of negotiation could be arranged in any form i.e. verbal or non-verbal, explicit or implicit, direct or indirect (through intermediates), oral or written, face to face, ear to ear, by letter or email (Patton Bruce, 2005, p. 279). Moreover, the process of negotiation is very flexible, no hard and fast rule is followed by the parties to reach a resolution of dispute. Negotiation is a planned relationship between all the parties. For successful negotiation, party must know how to build a durable position, deal with challenging circumstances, influence his/her counterpart, and conclude the issue (Benoliel Michael & Hua Wei, 2015 p.39).

Contrary to negotiation, if disputants approach the court for the settlement of a dispute, they might face challenges of prolonged court procedure, attorney's fee, court costs, time consumption including mental as well as physical suffering. Nevertheless, if both the parties agree to negotiation then the issue can be resolved in a less expensive manner. Negotiators are provided with space to listen, understand the arguments and positions of each other and to decide the issues on an agreeable terms and conditions of the dispute settlement (Kochan, 2018, pp. 15-19).

Christopher Moore in his book *Handbook of Global and Multicultural Negotiation* argued about negotiation as an organized device which is usually adopted and concludes the issue or settles a dispute. In these discussions the disputant parties convince each other about their requirements and interests. Eventually, to accomplish jointly agreeable arguments and even grave issues can be settle between the parties. If the process of negotiation is difficult to initiate settled by the parties or if it gets unsuccessful and both the parties could not accomplish the desired initiated objectives then the parties may adopt another mean of informal justice to settle the issues (Moore Christopher W., 2014, p.24).

Mediation

Mediation has been defined by the United Nations as "the process whereby parties request a third person(s) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship". The mediator does not have the authority to impose upon the parties a solution to the dispute (O'Sullivan, 2019, p. 209). This mode of informal justice system is very effective and beneficial for the parties through which issues are resolved amicably out of the court (Kochan, 2018, pp. 20-21).

Mediation is a non-binding, voluntary based negotiation procedure between the parties to a dispute (Atlas Nancy F, Huber Stephen, K. Trachte, E. Wendy & Huber 2000, p.05). In mediation, a third person brings the parties face to face for discussions and deliberations to achieve agreeable terms and conditions and settle dispute. In contemporary era, the scope and benefits of mediation is very extensive (Kochan, 2018, pp. 20-21). Moreover, it is elaborated in this mechanism, the mediator is as an advisor, who does not decide the issue himself, but acts as a bridge between two parties and the issue is resolved amicably through talks between the parties (Keshavjee Mohamed M., 2013, p. 87).

Parties have complete control over the settlement and less stress as compared to arbitration. The relationship between the parties isn't overly damaged. Mediation proceedings are kept confidential and this process resolves the dispute quickly (Kochan, 2018, pp. 22-23).

Since decision is at the discretion of the parties, there is the possibility that a settlement between the parties may not arise. It lacks the support of any judicial authority in its conduct. In the absence of formality mediation proceedings are lacking in any procedural formality since they are not based on any legal principle. The truth of an issue may not be revealed (Kochan, 2018, pp. 22-23).

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Conciliation

There is no uniform definition of Conciliation. According to Black Law Dictionary, Conciliation has been the settlement of a dispute in an agreeable manner. A process in which a neutral person meets with the parties to a dispute (labor) and explores how the dispute might be resolved (Bryan A. Garner, 1999, p. 284). Another definition of conciliation is an alternative dispute resolution mechanism that is designed to resolve a dispute among the parties through a non-adjudicatory and non- antagonistic way. It involves the neutral third party who makes the disputant parties arrive at a conclusion and a satisfactory dispute settlement. All the cases of civil nature are more appropriate to be resolved through conciliation. Moreover, conciliation is an affordable mechanism other than the conventional way of litigation and the formal court rooms. Conciliation is processed in a way in which the disputant parties with the support of third independent and impartial person tried to settle the issue. The conciliator could be one or more than one who analysis the disputed issue and construct choices, contemplate alternatives in order to reach agreeable conclusion that addresses the interest of both the parties (Wenying Wang, 2005, p. 421).

Jack J explained the term as Conciliation may connote in some settings the work of a Commission which, after fact-finding, issues a report containing possible terms of settlement before conclusion (J Jack. Coe, 2005, p. 14). Shafi Fazaluddin has argued that in contemporary practice formal method which fundamental purpose is to settle dispute via conciliator (ADR), is more suitable to safeguard the long term relations rather than court trail which might damage the relations of the parties (Fazaluddin Shafi, 2016, p. 234). From the above discussion it is explicit that the process of conciliation is adopted for the dispute settlement by the parties with the help of an independent, impartial third person to bring both the parties on compromise agreement (Kochan, 2018, p. 24).

Conciliation offers the opportunity to combine it with different aspects of other means of dispute settlement, such as mediation, inquiry and arbitration. With mediation it shares the fact that what the conciliators do is just to make a proposal to the parties without any binding character; with inquiry the capacity to proceed to an investigation of the relevant facts and elements of the dispute; with arbitration the feature that in general it is the product of a collective body akin to a tribunal, that a pre-established procedure is followed in which the equality of arms of the parties is guaranteed, although, as mentioned, the final product is not a binding award but nevertheless constitutes a reasoned and motivated proposal (Kohen Marcelo G., 2020). Interestingly, Japan in recent times has further developed its 'conciliatory' tradition, thus showing that even a highly industrialized society can very well adapt itself to co-existential justice (Kochan, 2018, p. 24).

Arbitration

Arbitration is the third tool to which informal justice system is carried out. It is defined as a method of dispute resolution involving one or more neutral third parties who are agreed to by the disputing and whose decision is binding (Bryan A. Garner, 1999, p. 100).When a case is submitted to a neutral, impartial and independent person at the will of the disputant parties to resolve a dispute on reasonable and justifiable means the process is known as arbitration. A person who decides the case is known as arbitrator. An arbitrator is bound only by his own will and no appeal is laid against arbitrator’s decision (Steven H. Gifis, 1998, p. 27). There are two types of Arbitration as given below.

(a) Binding arbitration is that where the parties to the dispute surrender their right to lawsuit, willingly accept the final award of the arbitrator and there is no right of appeal to the award. If there is a clause of binding arbitration in an agreement, the issue must be referred to arbitration

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and there would be no lawsuit (Atlas Nancy F, Huber Stephen, K. Trachte, E. Wendy & Huber 2000, p. 13).

(b) Non-Binding arbitration is that where the parties can request a trial if they do not accept the arbitrator's decision. Some courts will impose costs and fines if the court's decision is not more favorable that awarded in arbitration. Non-binding arbitration is gradually rare. Arbitration is suitable for any dispute that involves an evaluative solution. Non-binding arbitration provide the disputant solution from which they can bargain, while binding arbitration gives a binding award (Atlas Nancy F, Huber Stephen, K. Trachte, E. Wendy & Huber 2000, p. 13).

Arbitrator's role is unprecedented in the process of arbitration. He or she can act as an extraordinary adjudicator elected by the contested parties on agreeable terms and conditions to adjudicate any differences between the parties. There is a difference between word Arbiter and Arbitrator as pointed by Thomas Willing Balch in his writing. According to him the word Arbiter means the one who carry the procedure as per the Law and Equity while Arbitrator connotes the one who decides the matter as per his discretion, to perform without seriousness of the procedure or course of decision by the contestants a hearing before arbitrators, award (Balch Thomas Willing, 1915, p. 591).

Arbitration is a private dispute resolution process that parties may choose as an alternative to going to court. The arbitration process is consensual in that the parties must agree to refer their dispute to arbitration. The arbitration agreement is usually contained in the main contract between the parties. However, parties may separately agree to arbitration after a dispute has arisen (Balch Thomas Willing, 1915, p. 591).

Participants choose arbitration because they consider it to be a speedy and inexpensive form of dispute resolution as compared to litigation as it uses efficient procedures to reach an outcome based on principles of law, equity, custom, and practices. An arbitrator's function was to judge, while that of a mediator was to adjust a dispute (Balch Thomas Willing, 1915, p. 593).

Application of Negotiation, Mediation, Arbitration and Conciliation in Different States and Societies

Pakistan

As Pashtun and Baloch culture is being experienced by people around the Durand line, not only Baloch and Pashtun populated areas but Saraiki and Sindhi communities in South Punjab and Rural Sindh also prefer informal judicial system as the tool for rapid justice. However, Pashtun and Baloch societies use the term "*Jirga*" while, Saraiki and Punjabi communities use the term "Panchayat" (also "Kath") in this regard. In fact, *Jirga* or Panchayat is the traditional social institute where head tries to mediate or takes the decision after listening the viewpoints of both parties. However, rather than to impose decision on anyone or both parties, an educated head (sometimes called "mashar" or "wadera") is always keen to negotiate among both parties and tries to maintain balanced (Siddique, 2013, pp. 1 & 41-101).

Not only in Pashtun and Baloch social cultures, community mediators have also existed in almost all the socio-cultural segments in entire Pakistan. They are also referred to with the words as "Number-dar", "Sar-panch", "Salis", and "Wichola" (Siddique, 2013, pp. 41-101) (Rizvi & Bangash, 2019).

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The function of reconciliation is not only the subject of tribal chief (also Sardar or Nawab) but people also contact any feudal lord, religious scholar or Imam Masjid for ensuring reconcilement among them. And, this culture is widely experiencing in entire Pakistan even it has no constitutional or legal support (Siddique, 2013, pp. 41-101).

Similarly, service rules issued by establishment division of Pakistan do not authorize bureaucracy to resolve local issues through reconcilement among parties, however, assistant commissioners and district commissioners (in several cases) perform their role in this regard (especially when they appoint in backward areas of Rural Sindh, South Punjab, Balochistan and Khyber Pakhtunkhwa) (Rizvi & Bangash, 2019).

Currently, there are two laws dealing arbitration in Pakistan. These are;

- The Arbitration Act (1940), introduced by British Indian government, and
- The Recognition and Enforcement Act, 2011 (also called Foreign Awards Act).

In fact, no one government in Pakistan is still looking arbitration as the tool of providing rapid justice in Pakistan, but provide dispute resolution only to foreign investors under CPEC context (Rizvi & Bangash, 2019). Therefore, critics find the prime objective of Foreign Awards Act is only to facilitate foreigners rather than to improve legal system of Pakistan for common people. However, unofficial ways for arbitration have existed in the territory currently called Pakistan have existed since centuries, where social institution (called *Jirga*, Panchayat or Kath) provides service of arbitration between the two parties. Both parties in *Jirga*, Panchayat or Kath are ethically bound to respect whatever decision has to be announced (Rizvi & Bangash, 2019).

Afghanistan

In Afghanistan, a very old established informal justice system has been functioning in the form of *Jirga* (elderly council), as a tool of dispute resolution. *Jirga* and *Sharia* (Islamic Law), are some of the main features of Afghan society and culture (Siddique, 2013, pp. 41-101). Moreover, the *Jirga* is conducted through various forms of informal justice system, in Afghanistan, briefly discussed as follow;

- **Mediation**
  Jirga system in Afghanistan, also offers the mediating facility between two or more than two parties for their dispute resolution (Akhtar, 2014)(Safi, 2019). *Jirga* is generally headed by tribal chief or any senior religious scholar belong to respective tribe, ethnicity or city (Akhtar, 2014)(Safi, 2019).
- **Arbitration**
  The practice of arbitration, a mechanism and a form of *Jirga*, in the form *Jirga* can be traced back 500BC and within the territory currently called Afghanistan. By getting facilitations by arbitration, Afghan communities find solution to their disputes. According to BBC journalist Karin Zarindast (dated August 09, 2012), Afghan people including women are being facilitated by arbitration through local family/tribal courts (called *Jirga*) under supervision of clerical figures or local elders (Safi, 2019). Thus arbitration in Afghanistan is conducted both under tribal leaders and clerical figures.
  "Arbitration Law" was announced by Afghan government to ensure fair, prompt and neutral resolution of economic and commercial disputes, through arbitration on January 30, 2007. This

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law was hoped to facilitate local population and foreign investors in Afghanistan. Likewise, to promote the process of arbitration Afghan government promotes the process of arbitration by Article 69 (for establishing Special Court for Proceedings against the President), Article 78 (for constituting Special Court for Proceedings against a Minister), Article 88 (for making Special Court on Commercial Contracts and Sale of Property) and Article 127 (for designing Special Court for Proceedings against the Chief Justice and Members of the Supreme Court). However, Article 122 describes that no one formal or informal court/*Jirga* can take any decision as contradictory to any constitutional provision (Safi, 2019). Thus Afghan government introduced arbitration law for the benefit of foreign investors. The Afghan constitution also promotes the process of arbitration clearly mentioning in five different articles mentioned above.

At the same time, within the article 2(2) of Arbitration Law 2007, there is written that "Arbitration is a binding proceeding whereby an arbitrator or arbitrators perform neutral services pursuant to a request by the parties or court in order to resolve disputes under contracts for economic or commercial transactions"(Safi, 2019). In 2016, Afghan Government has also amended Private Investment Law 2005 (inherited from Commercial Procedure Code of Afghanistan 1965), and incorporated it with Arbitration Law (Safi, 2019).

China

- **Negotiation**

According to Richard Brike, within the mainland of People's Republic of China, less than 5% of all civil nature cases are filed in the court of law for decisions while the rest of the cases are settled through negotiation (Brike Richard & Fox Craig R., 1999, p.01. Likewise, autonomous entities in China such as, Tibet, Xinjiang and Mongolia has been practicing the informal justice through negotiation. Negotiation, is a device of settlement of issues and is also considered as a part of religion in Xinjiang and Tibet (Cao, 2013, pp. 112-138). As majority of population in Tashkurgan, Tajik autonomous region, in China, is following Ismaili Islam and resolve their disputes under the norms of *"Jamat Khana"* (worship place). Under these norms *Mukhi* who invite and chair negotiation between the parties and find a solution (Roofi & Asim, 2017).

In the case of Tibet, believer in Buddhism appear before senior monks, present their cases to them and after hearing the monks deliver justice in the light of religious teachings. Several followers of Chinese sect of Buddhism, Mahayana, in mainland China, take their cases to the senior monks for justice (Cao, 2013, pp. 112-138).

The same pattern is practiced in the Chinese part inner Mongolia where 80% followers of Mongolian folk religion (Shamanism), believe negotiation as an effective device for solution of their disputes and avoid taking their cases to the formal courts (Cao, 2013, pp. 112-138).

- **Mediation**

China is recently undergoing with five kinds of mediation. The most common kinds among them are;

- People's Mediation or Civil Mediation, conducted by social elites,
- Judicial Mediation, conducted by judges,
- Administrative Mediation, conducted by government officers,
- Arbitral Mediation, conducted by arbitral administrative bodies, and,
- Industry Mediation, conducted by group(s), or association(s) within any industrial network (Heping, 2020).

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As mediation in Chinese society has also religious roots since the emergence of Confucian ethics, Chinese constitution is therefore authorized "People's Mediation Committees" (PMCs) to conduct People's mediation (Heping, 2020). In addition, provincial government of Zhejiang has also launched a comprehensive dispute online resolution medium by inaugurating yundr.gov.cn which offers diversified facilities like arbitration, consultation, mediation and evaluation. Similarly, the first Internet court was established in Hangzhou in 2017 which offers dispute resolution services related to internet or online businesses (Heping, 2020).

- **Conciliation**

Still majority of people in Xinjiang, Tibet and Inner Mongolia believe in conciliation or reconcilement under the leadership of their religious, ethnic or tribal heads. However, people having dogmatic attitude, look towards senior religious head in this regard for the solution of their problems. Therefore, Muslims among them contact Imam or Mukhi, Han or Tibetan Buddhists find their senior monk while, Shamanists prefer to go towards expert Shaman in terms of having more spiritual powers (Cao, 2013, pp. 112-138).

- **Arbitration**

A growing China as an emerging market as well as sustained strategic power considers arbitration as the part of Chinese legal culture that provide rapid solutions of the disputes between the Chinese people; in terms of their socio-economic disputes and conflicts regarding business and trade (Fan, 2013, pp. 02-03).

From the above discussion it can be concluded that the reason for current prevailing robust informal justice system in china is the out of court settlement through negotiation. Negotiation is mostly employed, followed by mediation, conciliation or arbitration for the settlement of disputes in china. 95 % of the cases are resolved outside the court specifically through negotiation. Moreover, religious reason can also be associated to the informal justice system and specifically the autonomous regions of china such as Tibet, Tashkurgan inner Magnolia.

Central Asia

- Negotiation

Tajikistan

As Gorno-Badakhshan Autonomous Region is geographically associated with Xinjiang whereas; it is Ismaili-Muslim populated region covering one of the four parts of Badakhshan region (also called Pamir mountain range). This region is experiencing traditional system of negotiations for dispute settlements under the centuries old Pamiri traditions. Although, numerous Ismaili Muslims follow the same practices what the Ismaili Muslims in Tashkurgan Autonomous County in Xinjiang follow, but remaining all the socio-cultural, ethnic or religious segments follow their regional Pamiri terms and conditions for dispute settlements under the supervision of inherited or appointed 'Mir' (Roofi & Asim, 2017). Thus, the region is practicing negotiation, under the centuries old Pamiri traditions.

Uzbekistan

Uzbekistan has centuries-old common history but Tsar Russian occupation of this region affected traditional practices including informal justice system. However, majority of people in Surxondaryo Region of Uzbekistan (especially Muzrabot District, Sherobod District and Termiz District) are still practicing negotiations as a tool of traditional informal justice system. Tribal elites in the respective region usually leads negotiations. However, sometime, involvement of imams or religious scholars have also been recorded in this regard (Masadikov, 2020) (Asim, 2020). It can

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be concluded that in Uzbekistan both traditions and religion support negotiation mechanism for settlement of disputes.

Turkmenistan

Turkmen society also relies on negotiations as conflict resolution mechanism. Majority of people in Turkmenistan, especially in Lebap Region and Mary Region prefer informal justice system of negotiation for resolving their conflicts. The method of negotiation has been inherited either from Uzbek or Afghan society, in a significant territory of Turkmenistan, Lebap Region, which was once part of Bukhara and Khiva khanates, (Blackwell, 2013, pp. 12-13). Moreover, even in current times, in other regions of Turkmenistan, such as, districts Bayramaly, Carjew, Darganata, Danew, Dowletli, Garagum, Farap, Halac, Hojambaz, Kerki, Koytendag, Murgap, Oguzhan, Sayat, Sakarcage, Serhetabat, Tagtabazar, Turkmengala, Wekilbazar and Yoloten, rely more upon negotiations as informal procedure under the leaders of a family, which is religious or tribal elite (Blackwell, 2013, p. 13). Thus, in Turkmenistan, the culture of negotiation as a form of informal justice came down from Uzbek and Afghan society and also has some element of religious faith.
Thus, negotiation as a mechanism of informal justice system, in Central Asia, especially in countries like Tajikistan, Turkmenistan and Uzbekistan, have its roots in local traditions, religion and under certain influences of Uzbeks and Afghans.

- Meditation

Tajikistan

Tajik society in general in Gorno-Badakhshan Autonomous Region in particular is experiencing development and peace because of the use of three forms of mediation which are briefly discussed below:

1. Traditional mediation,
2. Cultural mediation, and,
3. Islamic mediation (Zartman, 2020).

The traditional mediation in Tajikistan is the product of different eras such as Kara-Khanid Khanate (999-1211)[5], Emirate of Bukhara (1785-1920)[6] and Khanate of Kokand (1709-1875)[7] facilitated Tajik society to design their unofficial informal judicial system for rapid resolution of their disputes. On the other hand, cultural mediation belongs to the tribal norms; strictly experiencing among the Pamiri ethnic community speaking distinct dialectics of Pamir languages within Gorno-Badakhshan Autonomous Region of Tajikistan. Similarly, Islamic mediation is also the subject of Ismaili Muslims, mainly settled in the Gorno-Badakhshan too (Zartman, 2020) (Asim, 2020).

Uzbekistan

The role of mediation has been performed by "Aksakal" (an elite or older person within any community) since centuries. Constitutionally, Uzbek law entitled "On Mediation" has legal grounds for mediation that is endorsed by national legal system; approved by Ministry of Justice in the Republic of Uzbekistan. It applies on civil cases such as, labor disputes, business disputes or individual disputes (Masadikov, 2020).

[5] Sala, R. (2018). Ахмет Ясауи: өмірі, сөздері және оның қазақ мәдениетіндегі маңызы. *Вестник КазНУ. Серия историческая*, *89*(2), 115-138.
[6] Wilde, A. (2017). The Emirate of Bukhara. In *Oxford Research Encyclopedia of Asian History*.
[7] Rano, N. (2020). Folk Festivities during Kokand Khanate. *International Journal on Integrated Education*, *3*(4), 28-31.

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However, article 05 of the act entitled "On Mediation" sets some parameters of mediations. These are:

1) Secrecy
2) Voluntariness
3) Cooperation and equal rights of the parties
4) Independence and impartiality of the mediator

Similarly, article 12 of the respective act sets the requirements for a mediator, must be served free of charge (Masadikov, 2020).

Turkmenistan

According to Carole Blackwell (2013), as Turkmen society has experienced broader Persian and Turkic cultures along with somewhat the rule of Bukhara Khanate, Turkmen society experiences similar methods of mediation as existing in Uzbekistan (Blackwell, 2013, p. 13). certain influences of Uzbeks and Afghans.

- Conciliation

Tajikistan

In Tajikistan, the mechanism of conciliation, for dispute resolution, is practiced on the pattern of Xinjiang autonomous region of China where conciliation is at place under the leadership of its ethnic, religious or tribal head. Moreover, not only Ismaili Muslims but the entire Pamiri ethnic community of Tajikistan looks for reconciliation as a mechanism for resolving their disputes. However, as Tajikistan is widely practicing Ismaili Islam, Jamat Khana (worship place for Ismaili community) the second name of Jamat Khana 'House of Reconciliation' (Roofi & Asim, 2017) (Asim, 2020).

Uzbekistan

In Uzbekistan the method of conciliation is in practice since centuries. At the moment the conduct of conciliation is a prime duty of local *Mahalla Councils*. *"Mahalla"* as a unique social unit and its territorial demarcation is based upon households that are settled in the same street. *Mahalla Councils* are usually supervised by a chairman, elected by the residents of *Mahalla.* The prime duties of respective councils are not only provided their services for conciliation among two or more than two parties. The council also managed disputes between the parties. They also manage disputes related to neighborhood and even handle the cases of divorce among the members of *Mahalla* (Masadikov, 2020).

Turkmenistan

Like Tajikistan and Uzbekistan, Turkmen society is also experiencing out-of-court disputes resolution. Besides getting inheritance from Soviet legal system, Turkmen society also follows centuries-old tradition of conciliation in case of dispute between two or more than two parties. However, appointment of mediator depends upon the customs and norms of family, tribe, or ethnic group (Birken & O'Sullivan, 2019).

- **Arbitration**

Tajikistan

In Gorno-Badakhshan Autonomous Region of Tajikistan, Mukhi or Imam in Jamat Khana provides his services for arbitration among two parties for resolving their disputes (Brachotte, 2021).

Uzbekistan

Since the inauguration of Mirziyoyev Presidency in 2016, national courts in Uzbekistan are now accommodating arbitration as a tool for dispute resolution among parties; especially in economic

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affairs. In order to become investment-friendly, the Uzbek government has introduced several amendments in the Economic Procedural Code (EPC) for local and international investors. This amended code created space for arbitration as a mechanism of resolution of trade and business problems. For this purpose, economic courts have been established which have resolved several disputes; such as, a famous dispute between "Alliance Capital K/S" and "Corsan Corviam Construction S.A" (Sharipov, 2019). Moreover, arbitration is also being experienced by all the social segments under the leadership of either Aksakal or any family/tribal/religious elite (Sharipov, 2019). The current Chinese government employs arbitration as tool of informal justice system. Currently there is a shift of policy of Uzbek government to involve informal justice system arbitration to resolve disputes related to the trade on the basis of china.

Turkmenistan

The first court of arbitration of Turkmenistan was established on February 14, 2000 by President of Turkmenistan Sparmurat Turkmenbasha. This court has been incorporated in the formal judicial system that provides rapid justice to the people of Turkmenistan. Moreover, the economic procedure code and civil procedure code of Turkmenistan now has been associated legally to the responsibility of Arbitration Court (Turkmenbashi, 2000).

Conclusion

Informal justice system is a man-made mechanism since ancient times. Informal justice system is a source for dispute resolution through the use of common sense, local traditions and customs. It resolves different issues related to family matters, land, property, livestock and social disputes. Thus, historically the informal justice system was created by the communities themselves and it took various forms in various cultures and civilizations. Even in current times, the informal justice is in vogue both in many advanced and modern communities such as, the United States and less developed countries of Africa and Asia. On the other hand, numerous Chinese, Pakistani, Tajik and Turkmen social segments are following informal justice system as per their cultural, ethnic, regional or religious norms and traditions.

Informal justice system works through four devices including negotiation, mediation, conciliation and arbitration. The main difference between negotiation and mediation is that in negotiation the negotiators are the parties themselves and there is no third person involved in it while in mediation there is a third party which assists and supports the process of negotiation and does not pronounce any decision. In arbitration the third party decision become binding on the two parties in dispute, while conciliation is again a dispute resolution through a third party, the decision of which is determined by law but in a confidential way.

Thus, negotiation as a mechanism of informal justice system in Central Asia, especially in countries like Tajikistan, Turkmenistan and Uzbekistan, has its roots in local traditions, religion and under certain influences of Uzbeks and Afghans.

Uzbekistan where courts respect the decisions taken by the informal justice system as they culturally, ethically, politically or constitutionally regard the post of Aksakal as a head of Mahalla Council in Uzbekistan. . Hence, Uzbekistan is mediation practicing by elite person/ askal. In Tajikistan mediation is practiced in three ways, traditional, cultural and Islamic mediation. On the other hand, in Uzbekistan mediation is practiced by an elderly leader who enjoys legal cover extended by the state. Moreover, the areas of application, such as, labor, business or individual disputes, have been specified. In Turkmenistan, Turkmen practice mediation as an informal justice system and has been mainly adopted

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under the Uzbek influence. Hence, mediation is used in Central Asia as a dominant informal system of justice.

In Uzbekistan conciliation is a very ancient tool for settlement of disputes and at the moment conciliation is practiced even at the smallest unit of society, the *Mohallah council.* It is practiced in Tajikistan as part of religious principle supported by local traditions.

Arbitration as a rapidly developing out-of-court dispute resolution mechanism has many momentous advantages over the established judicial system under the constitution. Arbitration has significance not only in Afghanistan but also in other regional countries as a historical and traditional custom. However, now not only local people in respective countries but foreign investors, businessmen and traders are also being accommodated by respective tools of informal justice system. It has been widely observed that international investors are avoiding Afghan courts due to red-tapism, non-professional attitude and irrational decisions. Therefore, they also prefer to pursue *Jirga* system in Afghanistan for securing their financial transactions and other related affairs.

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