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State law, dispute processing, and legal pluralism: unspoken dialogues from rural India
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Introduction

Carried out in the village communities of Gonjhé and the Dharamgarh valley, the ethongraphic fieldwork of Kalindi Kokal presents the system behind informal dispute processing within these communities. Within her book, Kokal explains in detail the hierarchical social structures that characterise the communities in question and explores their function and power dynamics. In doing so, she presents different case studies that illustrate dispute processing through non-state forums and which further provide an insight into how the members covering influential roles in the community's hierarchical social structure are involved. While looking at non-state forums and their role in dispute processing, Kokal explores questions of what factors provide such forums' legitimacy and how, if at all, does state law influence such forums and communities.

This book deals with a fundamental issue that is at the centre of socio-legal discussions, and which is also placed at the centre of debates between doctrinal legal scholarship and socio-legal studies. Such issue concerns the question of what is *law* and if we should conceptualise it in terms of *state law* or adopt a more *bottom-up approach* to the question and understand law in terms of societal practices and what Ehrlich would define as *living law* (Ehrlich 2002). Thus, this book provides an enlightening perspective to this discussion, showing how law should be understood as a hybrid system that does not rely solely on the state and its institutions but which is shaped

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around individuals' cultures, religions and communities' social structures (Kokal 2020, 62).

Interconnected legal systems

The author's main argument draws on the idea that non-state forums and state forums are not two parallel systems existing at the same time, but rather, they are interconnected. The author shows the latter point by reporting how the Supreme Court of India carried out a judgement in relation to a case involving non-state actors who engaged in informal dispute processing, and highlighted the vital importance of human rights within the Indian constitution and condemned the possible violation of human rights by non-state actors carrying out informal verdicts within non-state forums. However, the Supreme Court held within the judgement that non-state actors engaging in "constructive work does not offend the fundamental rights of an individual", thus, as the author argues, partly recognising the work of such non-state forums (Kokal 2020, 14-15). The author's mention of the Supreme Court judgement is evidence of how non-state forums engaging in informal dispute processing are interconnected with state forums and state law, who, even though do not comment on their legitimacy within state law, enable their responsible functioning (Kokal 2020, 15).

Between Ehrlich and Luhmann's theories of legal pluralism

To further strengthen her argument, the author shows through the case studies how non-state forums in the respective communities adopted particular values and procedures of state forums to increase their credibility, competence and to convince individuals within the communities to process their dispute within the layers of legality at the community level. This process, defined by the author as *structural adaptation*, aided the legitimation of non-state forums and made them a reliable resource. Interestingly, the author also speaks of *formal-informal legal binary* and non-state forums as *semi-autonomous* social fields; whilst the writer does not mention so directly, one could argue that this is a clear reference to Luhmann's system theory which conceptualises systems as existing concrete entities and places them in the sphere of society. Within his system theory, Luhmann conceptualises these specialised systems as autopoietic and as operating through specific binary codes (Deflem 2008, 168). He

believes that such systems can experience "structural coupling" but remain independent systems that do not interfere nor can be interfered with by other systems (Deflem 2008, 168). Such theory can be seen as being reflected in the case of non-state forums and state forums' interconnectedness within Kokal's book, especially when she speaks of non-state forums as semi-autonomous social fields, the formal-informal binary and structural adaptation (something seemingly related to Luhmann's concept of structural coupling).

Another critical element in the author's argument as briefly discussed earlier, is the question of legitimacy of these non-state forums. In the book, Kokal explains how such non-state forums do not gain their legitimacy from state law but rather from sources outside it. In fact, the author illustrates how the view of legitimacy as deriving only from state law can be misleading since, as she holds,

> such dominant perceptions and presuppositions run counter to the lived legal reality of common people, who are not just citizens of a state and, by extension in today's world, global citizens with rights anchored in international law and human rights, but remain also members of social groups and, of course, individuals with their own agency (Kokal 2020, 164).

Kokal's mention of individuals being members of social groups other than the state can be interpreted as a theoretical conceptualisation close to Ehrlich's theory of *living law*. Ehrlich conceptualises social relations as *social associations* (Deflem 2008, 90). Such social associations are dominated by *living law*, something clearly reflected in Kokal's research on informal dispute processing in rural India, where examples of internal regulation of communities by their members are evident. Thus, even though the author does not make a clear reference to Ehrlich's theory of living law, elements of such theory are present in the book as well as within the author's arguments. In fact, this research is an evident illustration within the socio-legal field of how legal pluralism dominates societies and how the *living law* of different communities and social associations regulates behaviour, and in the case of the book, informal dispute processing.

The author concludes her research by highlighting how people in rural India make use of non-state forums to settle dispute ranging from the

protection of their forests to domestic violence. The latter might in some instances involve individuals turning to state actors for a dispute resolution. The author argues that a complete ban on such forums might only contribute to pushing them "underground" and making them increasingly hard to understand and control. Instead, if those non-state forums were to be recognised by law, the author argues it could lead to a "centralisation of the law" and an imposition of it on communities that have built their own sense of order through religious and cultural values rooted in years of history (Kokal 2020, 169). In addition, the institutionalisation of non-state forums, the author argues, may draw individuals away from such forums and lead to the creation of alternative non-state forums. Thus, the author's proposed solution that was drawn from the research in question, leads to the idea of allowing a gradual absorption of state law into non-state forums, a process already in progress as proved by the empirical evidence within the book. The proposed solution by the author represents a significant contribution to the field of socio-legal and legal studies as it deals with a fundamental issue present in numerous societies. Thus, such book is an enlightening contribution to the topic of legal pluralism and to the discussion of how state actors should deal with informal legal systems whose legitimacy and function is rooted in communities sharing values rooted in culture, religion and tradition, elements which, as shown by the author in the book, are fundamental for the functioning of the inner system and order of social associations.

References

Deflem, Mathieu. 2008. *Sociology of Law: Visions of of Scholarly Tradition*, Cambridge University Press, ebook.

Ehrlich, Eugene. 2002. *Fundamental Principles of the Sociology of Law*, Routledge, ebook.

Kokal, Kalindi. 2020. *State Law, Dispute Processing, and Legal Pluralism: Unspoken Dialogues from Rural India*, Routledge, Epub.

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