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Popular justice in Sri Lanka: A sociocultural artifact

Abstract
Conceptualizing law broadly as ideology and practice relating to normative orders, prescriptive frameworks and markers of difference embedded in social, cultural, economic and political processes, this paper examines popular justice in Sri Lanka as a sociocultural artifact that is constructed or molded by the particular context in which it exists. As discussed in the paper, popular justice in contemporary Sri Lanka functions as state-sponsored, informal community-led forums of dispute resolution known formerly as Conciliation Boards and later as Mediation Boards. By analyzing the shifting and changing ideology, rhetoric and practice of popular justice within these forums, as represented in legislative debates and other documents, an attempt is made to theorize popular justice as a social construct that is reflective of the society in which it operates. From the initial establishment of Conciliation Boards as a law reform project to the subsequent re-enactment in the form of Mediation Boards and the many amendments to the law that governs them, the rhetoric and practice of popular justice evolved in tandem with the changing social, economic and political landscape. The assemblage of ideologies and practices surrounding these dispute settlement forums therefore suggests the need to understand popular justice as constitutive of particular social conditions of a sociocultural artifact, which can also be applied to similar laws and law-like processes as well.

Keywords: popular justice, dispute resolution, Sri Lanka

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Introduction

Law is generally conceptualized in relation to justice, rules, regulations, legal systems and other law-like processes that provide a normative framework for the maintenance of social order. Law is also perceived as constructing social categories, creating identities, maintaining boundaries, and reinforcing ideologies while operating at the intersection of multiple discourses and practices in diverse social, economic, cultural and political contexts in. Seen in this light, law is both normative and prescriptive, but also multidimensional that goes beyond its doctrine of codified and institutionalized values, as constitutive of the complex social and cultural factors in society. Law in this sense is intrinsically social and cultural; being produced under specific social conditions and simultaneously constructing meaning within particular contexts. The mutually constructed nature of the relationship between law and society, and law and culture in particular, provides the basis to conceptualize law as a cultural artifact (Darian-Smith, 2013) and more discursively, law as culture and culture as law (Mezey, 2001). Such conceptualizations of law suggest that law is inherently cultural and dynamic and responds and contributes to its shifting and changing meaning, structure and function. Expanding the idea of law as cultural to law as sociocultural, this paper defines law as more than rules, legislations, normative orders, prescriptions and markers of difference but also as embodying social, economic and political processes. Law therefore will be defined as a complex and dynamic sociocultural artifact[1] that is reflective of the society in which it exists.

The sociocultural perspective on law discussed above foregrounds this paper to examine popular justice in Sri Lanka as a sociocultural artifact. In many societies popular justice exists as an alternative to formal justice, often in contrast to, and sometimes as an extension of the state judiciary. Contemporary Sri Lanka's foray into popular justice sanctioned by the state began with the Conciliation Boards that existed for two decades from 1958. This was later replaced by the Mediation Boards in 1988 which function to date. Both these forums are community-led dispute resolution mechanisms that are premised on informal justice that emphasizes participatory and informal conflict resolution outside of the formal legal system. However, between these two forums, the practice of popular justice has been evolving and changing, adapting to the changing needs of the society. This shifting nature of popular justice and its status vis-à-vis the formal legal system provides a window through which to analyze the constructed nature of the ideology of justice and law as a sociocultural artifact. Hence this paper will

[1] Although both *artefact* and *artifact* denote the same meaning, this paper will use the American spelling of *artifact* as a reference to Darian-Smith's use of the term.

begin with an overview of popular justice followed by a discussion on Sri Lanka's practice of popular justice as an institutionalized dispute resolution process outside the formal legal system. Through an analysis of the shifting rhetoric, ideology and practice of popular justice in Sri Lanka as a sociocultural artifact, this paper intends to contribute to a broader discussion on law and society in contemporary Sri Lanka.

Popular Justice

Even though popular justice can be defined simply as the exercise of justice by individuals who are not legal professionals in settings that are participatory and informal, it does not fit neatly into a coherent classification of justice, as it is both an ideology and a practice that has multiple conceptualizations. From a legal perspective, it is a practice that is based on the principles of informal justice, often contrasted with the state legal system with formal codified laws delivered through lawyers and judges. According to legal scholar Richard Abel informal justice is legal phenomena or institutions that are distinct from formal justice, with fluid boundaries and characteristics such as "..nonbureaucratic structure and relatively undifferentiated from the larger society, minimize the use of professionals, and eschew official law in favor of substantive and procedural norms that are vague, unwritten, commonsensical, flexible, ad hoc and particularistic" (Abel, 1982, p. 2). Informal justice exists in juxtaposition to formal justice, and its distinct characteristics are based on its informality relative to formal legal mechanisms. The features of popular justice therefore are easily distinguished from state law since popular justice is practiced in forums and tribunals with minimum institutionalization and bureaucracy, managed by non-legal professionals and often in local community settings. Furthermore, these forums are made accessible to ordinary individuals, conducted in relatively non-threatening environments relying on non-legal discourses to settle local and mostly minor disputes. Popular justice is a clear point of departure from state law, conceived within a dichotomy between formal and informal, and state law and non-state law. According to Sally Engle Merry (1993) who analyzes popular justice from an anthropological perspective, popular justice is also differentiated from state law by the informality of its *reasoning* which is based on local norms, values and common-sense. Thus in addition to the informality of the structure, popular justice can also be differentiated based on the informality of its process as "… making decisions and compelling compliance to a set of rules that is relatively informal in ritual and decorum, nonprofessional in language and personnel, local in scope, and limited in jurisdiction" (Merry, 1993,p. 32).

While a clear demarcation seems possible between popular justice and state law, popular justice does not exist in complete opposition to state law;

rather, it is more like an intermingling of both as "located on the boundary between state law and local or community ordering, distinct from both but linked to each" (Merry &Milner, 1993, p.4). Being on the boundary, popular justice is sometimes seen as usurping state law by mimicking its forms while also adopting local values and norms that constitute informal social ordering. In this sense, popular justice embodies a mix of practice where processes in forums and tribunals are replete with actions, symbols and rituals borrowed from both the local community ordering as well as the state legal system thereby creating a hybrid practice of dispute resolution (Welikala, 2016). However, the reversal is also true where popular justice gets absorbed into the state legal system, as a form of colonizing by state law and becoming a part of the state legal system (Merry, 1993). This colonizing can happen organically as popular justice forums progressively adopt characteristics of state law both directly and indirectly as in the case of the Indian *Panchayats* that transformed into the bottom rung of the state legal system (Galanter, 1989). It can also be transformed through the "infiltration" of state legal concepts and forms as a general litigiousness trend in society such as those seen in American popular justice forums (Auerbach, 1983). The process thus shows that popular justice exists in tandem with state law and not as independent of state law. Therefore, conceptualizing the process of popular justice as existing in a hybrid state provides a useful framework within which to explore how popular justice operates in society.

While the structure and processes of popular justice is fluid and cannot be essentialized, its embeddedness to the social context can be described as "the just relationship between individual, community, and state" (Merry, 1993, p.34) highlighting the social and cultural dimensions of the informal justice system. Many similar conceptualizations of popular justice, as distinct from formal justice can be seen in various communities and cultures where popular tribunals and forums exist (Abel, 1982; Auerbach, 1983; Depew, 1996; Galanter, 1989; Merry & Milner, 1993; Scheper-Hughes, 1995; Tiruchelvam, 1984).

Ideologically, popular justice is also linked to notions of social transformation in different socio-political contexts. According to Merry (1993, p. 40-49), different political traditions perceive the transformative potential of popular justice in line with their own political discourses. For instance, in a liberal legal socio-political tradition, popular justice is often seen within a reformist ideology to improve the legal system through alternative informal forums. On the other hand, in a socialist tradition popular justice is premised on the empowerment of people through popular participation in informal tribunals and forums. In contrast to the liberal and socialist traditions, popular justice within a communitarian tradition is linked to indigenous forms of social ordering that are based on the idea of decentralization of normative order.

These are often organized by local lay people emphasizing the goodness of community social order and are found mainly in postcolonial societies. Moreover, in such contexts, popular justice exists as a critique of the centralized state legal system of the colonial regimes. Finally, within an anarchic tradition the ideology of popular justice emerges through a mass uprising in opposition to the existing state and social order. The anarchic popular justice is often fleeting, as a direct assault on the state legal system and the social hierarchy it represents. It is more like a social movement and remains entirely outside the state legal system as well as local communities. Hence the different socio-political contexts and political traditions provide different transformative possibilities of popular justice. Merry's analysis of how popular justice engages in social transformation also points to its social embeddedness as well.

In addition, popular justice also has a temporal dimension, fluid and shifting, responding to the changing social context (Merry & Milner, 1993). Even if popular justice was constructed under historically particular circumstances, popular justice has a dynamic nature that allows it to morph into different manifestations at different times. The possibility of popular justice transforming over time shows that it is not immune to social influence and pressure. This temporality of popular justice is significant in the contemporary dispute resolution landscape where globalization of legal discourses and processes have produced legal practices that are "constitutively linked to issues of global economic, political and cultural power as manifested in both within and beyond national jurisdiction" (Darian-Smith, 2013, p. 14). In this context, popular justice can also have the possibility of transforming and evolving into newer forms and practices dictated by global legal discourses such as neoliberal legality that reconceptualizes legal practices across societies through the rhetoric of market imperatives.

It is within this analytical framework that Sri Lanka's popular justice forums are positioned to understand how they can be seen as a site where social, cultural, political and legal factors intersect to produce a specific discourse on popular justice.

Popular Justice in Sri Lanka

The practice of popular justice in contemporary Sri Lanka can be seen in Mediation Boards that function across the Island to provide local level dispute resolution as participatory, informal and community-led forums. Although Mediation Boards were established through an Act of Parliament in 1988, the practice of state-sponsored dispute resolution out-side of the formal legal system can be traced back to Conciliation Boards, the antecedent of Mediation Boards, that functioned from 1958 to 1978. However, the idea of popular justice goes back even further to the *Gamsabhava* (village tribunals)

in the pre-colonial times. To explore the trajectory of popular justice as it evolved in Sri Lanka, this section will begin with the historical background of Conciliation Boards and discuss their emergence and dissolution. Thereafter the currently functioning Mediation Boards will be examined for their transformations over the years, to provide the context for the discussion on the shifting practice of popular justice.

Conciliation Boards

According to Neelan Tiruchelvam's work on institutionalization of popular justice in Sri Lanka, the establishment of Conciliation Boards in 1958 was a culmination of many historical and sociolegal developments beginning with the *Gamsabhava* in the pre-colonial era (Tiruchelvam, 1984). According to him, even though the *Gamsabhava* was initially a village administrative apparatus in the medieval times chaired by the village headman and a membership comprising of traditional rural leadership and functionaries, by the time of the British rule in the 19th century it had transformed gradually into a more judicial institution to maintain order and resolve conflicts at the village level. Tiruchelvam claims that in discharging its adjudicatory duties, the *Gamsabhava* was relatively informal and maintained an ethos subscribing to local customs and dispositions while promoting compromise and conciliation through a conservationist approach that focussed on upholding local integrity and autonomy from higher judicial forums.

While the *Gamsabhava* went into extinction after the establishment of the British rule in early 19th century, attempts were made by the colonial administration to replicate a similar local dispute settlement mechanism through various legislations and institutions. One such attempt was the Village Communities Ordinance of 1871 that established Village Tribunals, with the objective of relieving the police courts from petty offences and to simplify the judicial process, which many British officials perceived favourably as resurrecting an ancient village institution (Rogers, 1987). In addition to the Village Tribunals, there were other "quasi-judicial" forums established during the latter part of the British period that were founded on the idea that disputes are better settled by "peers of the disputants" such as those forums established under the Workman's Compensation Ordinance, Patents and Trade Mark Ordinance, Rent Restrictions Act, Paddy Lands Act, Industrial Disputes Act, Land Acquisition Act, Inland Revenue Act, Licensing of Traders Act, Muslim Marriage and Divorce Act (Marasinghe, 1980,p. 394). Although these are dispute settlement in a very broad sense, it can be argued that they are reflective of the need to settle disputes outside the formal courts of law. According to Tiruchelvam, the focus on law enforcement, rural reconstruction, informal conciliation mechanisms, and a new sense of revivalism along with the emergence of various schemes that promoted voluntary conciliation in the

first half of the 20th century all contributed to the interest in the ideology of popular justice and led to the establishment of the state-sponsored Conciliation Boards in 1958.

Conciliation Boards were established through an Act[2] in the legislature under the purview of the Ministry of Justice and its jurisdiction was defined by each village area as defined by the Village Councils Ordinance which was the smallest unit of the state administration[3]. The members of the Board or panel of conciliators were appointed by the Minister of Justice for a three-year term. Initially these appointments were based on recommendations made by officials of the local government authorities, Rural Development Societies, registered Co-operative societies, *Gramasevaka* or Divisional Revenue Officers in the particular village area with the only criterion for eligibility being a resident within the jurisdiction. Conciliation Boards and their panels were given the power to receive and examine oral and written evidence and summon people in disputes as specified in the Act. They were mandated to settle disputes of civil nature such as disputes related to movable and immovable property as well as disputes arising from an action that has taken place within the prescribed geographic area. For disputes arising from criminal acts, the consent of the Attorney General was required for any Conciliation Board to intervene. Additionally, according to the Act, for all disputes within its mandate[4] it was mandatory to be heard first by a Conciliation Board prior to proceeding to the formal courts where the disputants were required to produce a certificate of non-settlement[5]. The courts however ruled in 1968 that it was not mandatory to go through the Conciliation Board first as it was "not warranted under the provisions of the law"[6]. Yet, in a later case this decision was overturned, and the courts ruled that it was a prerequisite for disputes coming under the Act to be first referred to the Conciliation Board[7].

However, the mandatory nature of conciliation, along with the permissibility of evidence and the manner in which the conciliation process took place helped to shape Conciliation Boards into a more adjudicatory forum than what would have been envisaged as popular justice. More significantly, the politicization of recruitment and appointment of members created a sense of dissatisfaction among the local communities who saw Conciliation Boards as maintaining and reaffirming the traditional social hierarchy (Tiruchelvam, 1984). By the mid-1960s, local politicians were sending their lists of nominees

[2] Conciliation Boards Act No.10 of 1958
[3] See Section 2 of Conciliation Boards Act No 10 of 1958. However, as the Act was implemented on a trial basis Conciliation Boards were not established in every village.
[4] See Section 6 of the Conciliation Boards Act No.10 of 1958
[5] See Section 14 of the Conciliation Boards Act No.10 of 1958
[6] *Wickremaratchi v. The Inspector of Police* (1968) 71 NLR 124
[7] *Nonahamy v. Halgrat Silva* (1970) 73 NLR 217

to be approved by the Ministry of Justice. Moreover, a circular was released in 1972 that effectively removed the role of the District Revenue Officers in evaluating the nominees independently and placed the sole responsibility of vouching for the character of the nominees on the local member of parliament (Tiruchelvam. 1984, p. 133). Due to these reasons, Conciliation Boards became ineffective and the United National Party UNP) government that came into power in 1977 removed all members of Conciliation Boards thereby suspending its operations. It is said that the UNP was a vocal critic of Conciliation Boards claiming that it "bred untold political corruption" (Marasinghe, 1980,p. 411). Thus ended two decades of experimentation with institutionalized popular justice that was expected to replicate the traditional practice of settling local disputes.

Mediation Boards

After almost ten years since Conciliation Boards were repealed, a new informal dispute resolution mechanism was proposed by the same government that abandoned the earlier forum. The Act to establish Mediation Boards[8] was presented to Parliament in 1988 and came into operation in 1990 with the following mandate;

> *by all lawful means to endeavour to bring the disputants to an amicable settlement and to remove, with their consent and wherever practicable, the real cause of grievance between them so as to prevent a recurrence of the dispute, or offence*[9].

Mediation Boards are also community-led forums led by volunteer mediators who are appointed by the Mediation Boards Commission of the Ministry of Justice. The Act provides the statutory framework for Mediation Boards and distinguishes between mandatory mediation and non-mandatory or voluntary mediation. Under the category of mandatory mediation, the Act specifies the disputes that are required to be *mediated* prior to proceeding to any courts of law. These mandatory referrals are of three types: civil matters relating to movable or immovable property, debt and damage up to the value of Rs. 500,000[10]; criminal offences such as assault, trespass, defamation etc; and court referrals. Though a settlement is not required, these disputes need to have a *non-settlement certificate* in order to proceed to formal courts. The disputes that are categorized as voluntary or non-mandatory mediation are those brought to Mediation Boards voluntarily by the disputants. The Act also provides for disputes that cannot be mediated such as divorce, those involving

[8] Mediation Boards Act No. 72 of 1988
[9] See Section 10, Mediation Boards Act No. 72 of 1988
[10] Increased from the original value of Rs. 25,000 through amendments to the Act in 2011 and 2016

people of unsound mind, testamentary cases, and fundamental rights petitions[11], to name a few. However, disputants are not legally bound to participate in mediation and there is a maximum number of times a dispute can be referred to Mediation Boards. While there is no penalty for not appearing before a panel or non-compliance of the agreement reached, as mentioned, mediation is made mandatory if one wishes to proceed to the formal courts for specific types of disputes.

Currently there are over 300 Mediation Boards across Sri Lanka, established for each Divisional Secretary's Division. The Mediation Boards Act has been amended three times since 1988. The first amendment was in 1997 where several procedural changes were made and thereafter in 2011 and 2016 when the monetary value of disputes for compulsory mediation was raised ten times the original value and then doubled respectively[12]. In addition to these amendments, a new Act was passed in 2000 to establish a Commercial Mediation Center[13] while another Act was passed in 2003 to allow the Minister of Justice to establish Special Mediation Boards for specific purposes[14].

Shifting Ideology of Popular Justice

As discussed above, Sri Lanka's adoption and institutionalization of popular justice since independence initially as Conciliation Boards and subsequently as Mediation Boards suggest a preoccupation with informal justice and a desire for alternative practice of dispute resolution outside the formal courts of law. Throughout the nearly 70 years of this process, there have been various justifications with changing ideology by successive governments that reflect the prevailing discourse on law in society. Against this backdrop, this article will now turn to explore how the ideology of popular justice evolved over the years in response to social and political imperatives at the time.

Conciliation Boards were established in the 1950s primarily as a law reform project to improve people's access to law and to make law and justice more efficient and effective. However, there were diverse ideologies that supported the establishment of Conciliation Boards that made an impact on the course of its operation. It is claimed that the architect of the Conciliation Boards Act, M. W. H. de Silva was a Member of Parliament and a legal reformer whose purpose in proposing the setting up of Conciliation Boards was to reform the administration of justice by improving its efficiency in dealing with what was thought to be extreme litigiousness of the Sinhalese

[11] Schedule 3 of the Act specifies these disputes.
[12] Act No. 15 of 1997, Act No. 7 of 2011, and Act No. 9 of 2016
[13] Commercial Mediation Centre of Sri Lanka Act No. 44 of 2000
[14] Act No. 21 of 2003

population[15] (Tiruchelvam, 1984,p. 95). This disposition for litigation and the demand for legal professionals had created an over-burdened court system that was a cause for discontent and an issue that needed to be remedied. This can be seen in the way the Conciliation Boards Bill was introduced to the legislature in 1957 as,

> The purpose of this Bill is to provide for the amicable settlement of disputes …… litigation results not only in the expenditure of a great deal of time but also a heavy burden on the finances of the people who have to resort to the courts for settlement of their disputes (Sri Lanka, 1957,p. 1641).

Moreover, the focus on the burden of litigation also alluded to the role played by lawyers and legal professionals who were seen as profiting from dispute resolution, as expressed by many legislators during the debate on the Conciliation Boards Bill with such phrases as "justice has today become very expensive", "there are lawyers in Ceylon who are exploiting the people in the name of justice", "this will empty the pockets of exploitative lawyers" and "primarily intended to cut down costs of litigation and to bring justice within the reach of the poor people" (Sri Lanka, 1957, p. 1641-1678). Conciliation Boards in this context were seen by some as an "institutional by-pass" to reduce the dependence on lawyers, as part of the socio-economic reform programme of the State (Marasinghe, 1980). Conciliation Boards therefore were generally accepted as beneficial in order to improve dispute resolution. The amendments suggested to the Bill also show that there was general consensus on the need for reform, although concerns were raised with regard to the compulsory nature of conciliation and the appointment of members to Conciliation Boards.

According to Tiruchelvam however, law reform was not the only rhetoric used in support of Conciliation Boards; it was also about socialist imperatives that saw conciliation as a mechanism to make dispute resolution more inclusive, involving the masses in an effort to instil a new social consciousness (1984, p.96). The reference to the dominance of lawyers and the role of the *Goda Perkadoru* or Village Proctors in litigation can be seen as representing a socialist rhetoric that is intended to effect societal change through popular participation in dispute resolution. This is very much in line with the ideology of the left-of-centre government of the time. At a broader level, the institutionalization of popular justice is also an endeavour to adopt a social development framework with an orientation towards a socialist state.

[15] The litigiousness of the population has been identified historically in the observations of Robert Knox, but also by Rogers (1987), and Amerasinghe (1999) quoting records of John Davy (1821/1969) and J. W. Bennet (1843/1984).

And Sri Lanka's venture into Conciliation Boards is seen as an example of responding to this political ideology (Marasinghe, 1981).

Furthermore, Conciliation Boards were also supported by a revivalist ideology that saw these forums as bringing back the traditional ways of dispute resolution as practiced through the local *Gamsabhava* in the pre-colonial times. They argued that dispute resolution through formal courts with impersonal proceedings was a legal transplant that had very little relevance to society in Sri Lanka (Tiruchelvam, 1984). During the debate on the Conciliation Bill in 1957 it was argued that when a dispute is resolved with the participation of the local people, it can achieve the dual objective of conflict resolution and promotion of harmonious relationships within the community (Sri Lanka 1957: 1678).

Throughout the period of Conciliation Boards, these multiple ideologies existed with varying degrees of significance based on the prevailing socio-political contexts. Accordingly, in the initial years of its implementation, Conciliation Boards were rationalized as a socialist legal reform project while during the period of the conservatist government the ideology of revivalism in a nationalist context was used by pressure groups to argue for limiting what was perceived to be excessive judicial powers of Conciliation Boards. The return of the socialist regime in the 1970s saw the ideology shifting back to socialist values with emphasis on deprofessionalizing dispute resolution and endorsing popular participation as a social development strategy. However, with the vast socioeconomic transformations that accompanied the political regime change in 1977-78 where open and neoliberal economic policies were promoted by the conservatist government, Conciliation Boards were left without means to continue their work. As the new government was opening up the economy and embracing capitalist market ideologies, Conciliation Boards came to be seen as the relics of socialist development strategy. This along with the alleged politicization of Conciliation Board appointments, paved the way for their eventual dismantling by 1978.

While multiple ideologies surrounded Conciliation Boards at different times, its successor Mediation Boards have also been subjected to shifting ideologies and rhetoric. According to an early study done on Mediation Boards, it has been suggested that the need for an alternative dispute resolution seems to have arisen in response to a report on Laws Delays in 1985, and an inquiry by the Minister of Justice on the cases before the Primary and Magistrate's Court in 1987 (Hettiarachchy et al., 1994). The report by the committee appointed by the Minister of Justice in 1985 specifically is focused on debt recovery and related law and practices that do not "…enable the speedy recovery of debts, with adverse consequences on the supply and cost of credit, among other things"(Ministry of Justice, 1985, p. 1). This focus on speedy resolution of debt recovery for financial institutions suggests practical

concerns to support economic and commercial interests, which the report states as;

> *We agree with the proposition that it is a precondition of economic and commercial progress that suits concerned with business transactions should be disposed of by the Courts with the utmost speed* (Ministry of Justice, 1985, p. 1)

The concern for swift resolution of disputes was one of the justifications for re-establishing the practice of popular justice in the form of Mediation Boards in 1988. According to the proceedings of the parliament that passed the Mediation Boards Act, references are made to "law's delays", "speedy disposal of cases" and "financial relief". The new forum was also justified as;

> *(to) provide relief to the Courts of First Instance in that high pressure of work, congestion and over-loading will be eased to some extent* (Sri Lanka, 1988, p. 2296)

During the debates on the amendments to the Act in 2011, the then Minister of Justice stated that the need to increase the monetary value of mandatory disputes is due to an increase in conflicts arising from loan repayments with Banks and also to facilitate and resolve dispute resolution among small entrepreneurs. It was also stated that the previous amount was too low and was easily manipulated by interested parties who tried to avoid mediation and proceed directly to courts. The amendment received positive comments from many legislators who praised the contribution Mediation Boards make towards reducing the caseload in the courthouses.

A further amendment to the Act was passed in 2016 to expand the monetary value of mandatory disputes to LKR 500,000[16]. In parliament, the Minister of Justice stated that there are two factors that underlie the amendment; firstly the success of the mediation mechanism in Sri Lanka when compared to other countries with a similar practice, and secondly the "law's delays" that plague the legal system (Sri Lanka, 2016, p. 245- 412). Moreover, he stated that with the amendment it will be possible to reduce the "unneccesary cases that are a waste time for the judiciary" (Sri Lanka, 2016, p. 414). The majority of parliamentarians who contributed to the debate was of the view that Mediation Boards have reduced the number of litigations in courts and welcomed the amendment. It was even suggested that the value be increased further to LKR 1,000,000 (Sri Lanka, 2016, p. 415-416).

While the focus on expansion seems to be centered on the monetary value of disputes, many suggestions have been made in the parliament both in 2011 and 2016 for formalizing both the structure and process of community

[16] Mediation Boards (Amendment) Act No.9 of 2016

mediation. For instance, it has been suggested to provide a permanent secretariat for Mediation Boards rather than conducting sessions at public places such as temples and schools, and to facilitate a proper maintenance of records and documents (Sri Lanka, 2011, p. 1027-28). Moreover, there were also suggestions for a better mechanism to deal with non-compliance and absentee disputants, provisions to issue writs (Sri Lanka, 2011, p. 1024-1033) as well as adopting measures of professionalizing mediators (Sri Lanka, 2016, p. 245:436).

These reformist concerns center on the efficiency and effectiveness of Mediation Boards and reflect the need to improve its delivery of justice by expanding the scope, jurisdiction and structure. It can be argued that the constant reference and the demand to make Mediation Boards more streamlined and cost-effective resonates with neoliberal policies and market driven economic imperatives that require governance based on principles such as rule of law. The repeated amendments to the Mediation Boards Act since its inception primarily to expand the scope as well as the increasing number of financial and commercial disputes that are being forwarded for mediation[17] indicate, Mediation Boards are firmly established as a viable alternative to the costly litigation in formal courts of law. In this sense the contemporary reformist ideology of popular justice is conflated with the demands of effective dispute resolution and the political economy of the neoliberal state.

On the other hand, similar to the debates on Conciliation Boards, it has also been claimed that the establishment of Mediation Boards was a move similar to the colonial judicial structure's desire to bring back the "native concept of amicable settlement and conciliation" and described as,

> *…a community based institution for settling disputes amicably and through conciliation, based very much on the ideals of the native institution of Gamsabhava, and not at all different from the Village Tribunals introduced in 1871 both in structure and function* (Hettiarachchy et al., 1994, p.8)

Even during the debate on the Amendment to the Act in 2011, reference to heritage and cultural claims are deployed as;

> *…..the Mediation Boards Act was introduced as far back as in 1988 but we must not forget the fact that this conciliation procedure was a part of our legal system, which had been ingrained even during the colonial period* (Sri Lanka, 2011, p. 1030).

[17] There has been a steady increase in the number of disputes relating to financial and commercial disputes that are forwarded to Mediation Boards. For instance, in 2016 of the total number of disputes 57% of were referred by Banks and Financial Institutions according to data from the Mediation Boards Commission.

Interestingly, even the advocates of Mediation Boards who justify its work on the basis of improving access to justice and efficiency make reference to the *Gamsabhava* and the conciliatory dispute settlement of the past as part of Sri Lankan heritage (Asia Foundation, 2012; Gunawardena, 2011; Jayasundere & Valters, 2014; Munas & Lokuge, 2016). The reference to *Gamsabbhava* can be seen as a revivalist rhetoric of resurrecting the traditional mechanism of dispute resolution by members of the local community.

The multiple ideologies and rhetoric that have evolved over the years vis-à-vis popular justice in Sri Lanka show that there is a national-level preoccupation with informal justice which has been embedded into the social fabric of local communities as indicated in the increasing number of disputes being forwarded to Mediation Boards[18]. These disputes are mediated as a social process involving local normative orders (Welikala, 2016) thus signifying the connection between national level discourse on popular justice and the local dispute resolution practices. The multiple ideologies of popular justice therefore can be seen as feeding into the dynamic and social practice of popular justice and in turn as a sociocultural artifact.

Conclusion

The evolution of Conciliation Boards and Mediation Boards shows how multiple ideologies exist within the practice of popular justice in Sri Lanka and the rhetoric that promote and justify such law-like mechanisms are reflective of the sociocultural context in which they operate. Theoretically, popular justice is an informal means of resolving disputes as a participatory forum involving third party mediation in a collaborative and non-adversarial environment. In in many instances, the practice of popular justice in local tribunals and forums suggests that popular justice is conceptually located on the boundary between formal and informal law, reflecting of both forms of justice, in its structure and function. Moreover, popular justice has a temporal dimension that reflects the changing social context in which it exists.

As discussed in this paper, these aspects of popular justice are embedded in the practice of popular justice in contemporary Sri Lanka, institutionalized firstly as Conciliation Boards, and subsequently as Mediation Boards. Using techniques of mediation and negotiation among the disputing parties, these forums were distinct from the formal courts of law in how they attempt to settle disputes. Although the two forums emerged and functioned during different times, the analysis of the rhetoric and discourses that accompanied each, primarily at the legislative level, suggest that there were

[18] According to available statistics from the Mediation Boards Commission, the total number of disputes in Mediation Boards increased from 108,457 in 2009 to 223,116 in 2016. Although the settlement rate declined from 57% in 2009 to 42% in 2016, it still signifies that close to half of disputes are mediated by Mediation Boards.

multiple ideologies that informed these practices. Importantly, these ideologies were seen to be shifting and changing according to their particular socio-political context. In both Boards, there were reformist ideologies that reflected on the need for improving efficiency, effectiveness and access to justice. On the other hand, there were rhetoric that appealed to revivalism, reminiscing the ancient *Gamsabhava* in an effort to re-establish the tradition of participatory community dispute resolution of the past. The point of departure for the two forums seems to be that while Conciliation Boards were initiated partially on socialist imperatives, Mediation Boards are premised on neoliberal market imperatives that define its structure and functions. These are reflective of the political regimes within which these forums emerged and progressed and shows the dynamic nature of law and dispute resolution in society. More importantly, the plural ideologies that are embedded in the practice of institutionalized popular justice shows the intertwining of ideologies as they are appropriated and articulated in responding to the shifting social, political and economic processes in society.

The assemblage of ideologies of popular justice as converged on Conciliation Boards and Mediation Boards in contemporary dispute resolution landscape in Sri Lanka shudaows a need for a nuanced understanding of law with emphases on law *in society*. Hence the emergence and the evolution of popular justice in Sri Lanka as seen through its shifting ideologies and practice provides a backdrop to explore the constructed nature of law in society. This constructed nature of law and law-like processes including popular justice suggests that law does not exist in a vacuum; rather law is a product of particular sociocultural conditions. Law is reflective of the context in which it operates and therefore is beyond mere normative and prescriptive frameworks; law is a sociocultural artifact.

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