

Study Session 1

Unit-I Meaning of Justice and Justice of Law

Study Session Outline

- I. Definition of Justice
- II. The Justice of the Law
- III. Justice Organs

Study Session Duration -2 hrs. of formal study hours

INTRODUCTION

You are welcome to your first unit of learning in this module. This unit covers areas that are related to the meaning and notion of justice. Under this unit, you will also discuss the justice organs and the fundamental components of justice organs.

Enjoy attending this unit!

Learning Outcomes of study unit one

After completing this session/unit students are expected to

- Define and discuss the concept of justice
- Explain the different types of justice
- Appreciate the purpose and use of justice
- Elaborate the concept of justice of law and justice organs

Unit-I Meaning of Justice and Justice of Law

Introduction

The concept of justice is often associated with the notion of equality, equity and fairness. The notion of Justice in general encapsulates both the substantive and procedural justice. Accordingly, this module seeks to elaborate about the notion of justice, Justice Organs and Dispute Adjudication Mechanism by outlining justice institutions, dispute settlement and adjudication procedure in order for learners to have broader understanding about this module.

1.1 Meaning of Justice

Justice has been defined broadly by different scholars, with the definition. For example, Plato defined justice as providing some one that he/she deserves. (Plato, 2000). Aristotle also defined justice as moral disposition or virtue of righteousness or moral of justice (Aristotle, 1942).

Viewed from the above perspective, justice can be expressed in terms of substantive justice and procedural justice. Substantive justice is the outcome of the procedural justice. Procedural justice is about the process or procedure by which we employ in order to achieve the end/substantive justice.

1.1.1 Procedural Justice

Procedural justice in a nut shell implies the just or fair process or procedure. Therefore, any process or procedure to achieve certain decision should be fair and just. Hence justice is not only the end but also includes the process of achieving that end, that is the '*means*'. (Campbell, 2005).



Dear learner, do you understand what justice as procedure/ Procedural justice means? Discuss about it with your colleagues by giving examples?

1.1.2 The Justice of Punishment

International criminal Tribunals have developed the notion of justice of punishment under their criminal jurisprudence. **Deterrence** for example is one of the outcomes of justice as punishment in this case. By Deterrence we mean that rendering justice can serve as a means of deterring/preventing potential perpetrators from committing potential crimes.

The Other component of Punitive justice is **Retribution**. By this notion we mean that individuals should not be encouraged for their wrong doing by impunity, rather they should be punished for their wrong doings.

1.1.3 Justice as Recognition

Justice as recognition is also a well-established model under the jurisprudence of domestic courts and international tribunals. Courts and Tribunals use this model of justice by way of recognizing the harm done to the victim. For example, bringing the cases of survivors of sexual violence to the court of justice gives sense of justice to the victim. Whatever the output of the decision might be, mere submission of cases to the court and entertaining the case gives sense of recognition and justice to the victim.(Campbell, 2005).



Dear Learner, how do you define how recognition to the victim's harm addresses the issue of justice to the victim?

1.1.4 Justice as Reconciliation

The fourth model of justice as reconciliation conceives as changing not only the individual victim but also as changing the traumatized society itself. The jurisprudence of tribunal characterises peacebuilding and reconciliation among the affected communities as an integral part of justice. In the tribunals jurisprudence discovering the truth is a cornerstone of the rule of law and a fundamental step on the way to reconciliation, for it is the truth that cleanses the ethnic and religious hatred and begins the healing process. Operating similarly to truth and reconciliation the healing process of reconciliation involves establishing an accurate historical record of the conflict. However, the judicial function of the tribunal that assigns individual responsibility, accountability,

and punishment is also seen as a crucial element of this reconstructive task. For the tribunal is paramount importance for the restoration and maintenance of peace.

In this model, criminal justice functions as a therapeutic process, where the horror is told and the perpetrator is judged and punished. It understands the judgement and punishment of individual as preventing the emergence of primitive and archaic concept of collective responsibility which leads to further violence. In light of this model, the function of criminal justice is to provide a cathartic resolution of a traumatic violence so that the reconstruction of social connection is possible.

Justice as reconciliation resolution works through the effect of the victim, perpetrator and the communities that have been traumatized by social violence. This tries to figure out justice as a collective act of memory that can represent collective trauma, recreate social solidarity and reconstitute a traumatized society. This kind of justice is regarded as therapy.



Dear learner, how can recognition of the harm of a victim constitute as one element of justice? Discuss with your colleagues and present it in class

1.2 The Justice of the Law

All the procedural and substantive justice are reflected through law. That means law serves as instrument or means by which substantive and procedural justice are proscribed. In order to serve such purposes, law has to be founded up on reason, fairness, equity. That means law serves to bring about justice fairness and equity. Without regulating the conduct of individuals through law, or set of rules as instrument, it remains difficult to achieve order and justice. For example, civil law regulates the conduct of individuals in order limit injustice. In general law serves as instrument of securing justice. (Campbell, 2005).

2.3 Justice Organs

Justice organs- justice organs are organs either formal or informal that function as dispute adjudication organs. Under the formal justice system, the Judiciary is considered as the third organ of the government that is tasked with adjudication of disputes. In the process of dispute adjudication, the judiciary applies the substantive and procedural laws. Though Justice organs can be categorized as formal and informal, the following chart summarizes the fundamental components of justice organs under the formal justice system.

▪ Application of laws, regulation, and procedures
▪ Capacity to entertain cases/jurisdiction
▪ Resource, human resource and finance
▪ Enforcement of decisions
▪ Choice of forum

1.3.1 Application of laws, regulation, and procedures: Formal and informal ways of dispute adjudication require the application of laws, regulations and procedures. For the formal justice sectors the above set of rules and procedures are almost predetermined/ adopted by the formal law giving organ. The Informal justice sectors, even though they have rules and procedures to follow while giving decisions, those set of rules and procedures are almost traditional and not written and adopted by the formal law giving organ. The society practice and rely to the informal rules and procedures with the intent to be bound. Yet in all cases law and regulation are expected to be applicable. For example, informal rules of procedures are adhered in the Ethiopian customary courts and community-based decision-making bodies where decisions are applicable to formal court. In which case the appellate courts may consider the customary norms and moral values applied during the decisions of the lower tribunals. Such procedures are commonly applicable in many countries including Sudan, South Sudan. In a nut shell, procedures are vital components in rendering justice especially by courts and tribunals, be it formal or informal.

1.3.2 Capacity to entertain cases/jurisdiction: is the capacity of hearing and determining cases and of rendering justice in matters of complaint, it is also defined the right by which judge exercise their power. The capacity to entertain cases is among the important elements in both formal and informal dispute adjudication mechanisms. Formal courts and tribunals have priority determined capacity to entertain cases through the formal law giving organ. Therefore, the capacity to entertain cases may be determined either by the amount of the material/material jurisdiction (that can be determined based on the amount or values of the property) or the nature of the case (such as grave crimes, non-serious crimes etc.) Accordingly, some courts may entertain cases of smaller amount and others, often the higher courts may entertain cases of higher values. Similarly, some lower court may entertain non -serious crimes and other courts at the higher level may entertain series crimes. Similarly, the informal courts may also have different capacity to entertain cases according to their composition and abilities. For example, some informal courts may have the jurisdiction of entertaining family matters only, and others may see cases of succession, and crimes etc. The ‘Khadis’ courts of Kenya for the Muslim community can be mentioned as examples in this case.

1.3.3 Resource, human resource and finance: Human resource and finance are also important components in the formal and informal justice organs. The main tasks of the justice rendering organs mainly rely on human resource and finance to operate properly. When we see the cases of formal courts for example, the existence of trained judges is important in addition to other resources such as finance and material. This enables the courts to perform their tasks independently and efficiently. Similarly, the informal justice sectors also require human resource and other materials in order to properly function. In the case of Ethiopia, formal courts receive funding from the government. However, there are also community-based courts which are called’’ social courts’’ which are partly financed by the government and voluntary people especially the elderly serves as judges mostly without salaries except small amount of money that covers their basic costs while they render the services. Similarly, there are religious courts such as the *Sharia courts* which is also partly financed by the government and partly by the Islamic council.

1.3.4 Enforcement of decisions: Decisions given by the formal and informal justice systems should be enforced. Enforcement mechanisms are the final stages by which justice is made to the parties to a dispute. Under the formal justice systems decisions are enforced by the order of the decision givers/the courts or tribunals/. The enforcement of decisions gives the whole process a final stage where parties get the final relief. Enforcement of decisions may not necessarily be made by the courts only, once the court gives a decision to enforce the judgement other organs may also get engaged in the process of enforcement. Similarly, the informal justice organs also order enforcement decisions and the parties are bound to apply the decisions. The difference in the enforcement of the formal and informal justice systems is that the formal once adhere to formal and written procedures, while the informal once adhere to customary or religious rules and principles by which the society are bound.



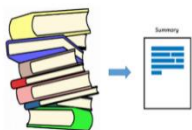
Dear learner, can you discuss how formal or informal justice organs in your locality enforce decisions?

Dear learners what is the distinction between the personnel participating in the formal and informal justice systems?

1.3.5 Choice of Forum: This is a process by which parties to a dispute select a dispute adjudication organ to settle their cases either before or after a dispute occurs. Choice of forum is an important element in dispute adjudication because it gives the freedom and option for parties to opt appropriate forum. Most of the times parties select a forum of their choice based on the convenience, cost of litigation, possibility of getting fair decision. Under the formal justice system, parties to a contract may insert a choice of forum clause when they enter in to contracts, or when

they encounter a dispute. Similarly, parties to a dispute under the informal justice organ may choose for example religious or customary dispute settlement organs depending on their options.

Dear learner, what are the basis by which parties to a dispute choose a convenient forum to litigate their disputes?



Unit summary

Dear learners under this unit we have seen the notion and meaning of justice. We have also seen that Justice has procedural and substantive aspects. The procedural justice refers to the process or means of achieving a certain decision or outcome. Whereas substantive justice refers to the decision or outcome. The jurisprudence of different international tribunals has also established the notion of justice as punishment, justice as reconciliation, and justice as recognition.

Justice organs are entities that are formal or informal, which are engaged in dispute adjudication. The Justice organs, either formal or informal, have the following components in common. Those are they rely on law (formal or informal) and regulation, jurisdiction, procedure and enforcement. All the above components are vital in order to properly achieve the objectives of justice organs particularly in rendering justice.

Self-Review Questions

1. How do you define justice?
2. What is the difference between substantive and procedural Justice?
3. List the components of justice (formal and informal) and discuss what they mean in practical sense?