

Study Session Three

Study Session Outline

Meaning & Concepts of Justice and Justice System

- I. The meaning of justice and justice system.
- II. Components of justice system
- III. Meaning of fairness
- IV. The meaning of equity
- V. The meaning of equality
- VI. The formal and informal justice
- VII. Access to justice

Study Session Duration

4 hrs of formal study time required

Unit Objectives

- ❖ Introduce students to the meaning of justice and justice systems.

Meaning & Concepts of Justice and Justice System

INTRODUCTION

Welcome to session three on the module ‘understanding law and justice systems’ This session in general introduces students to the meaning of justice system. More specifically it deals with the concepts of justice, fairness, the meanings of equality and equity, and finally discusses the notion of access to justice in the context of the countries included under this project.

Learning Outcomes of

Study Unit Three

After completing this study unit, you should be able to:

- *Describe the meaning of justice and justice system*
- *Explain the components of justice system*

- ❖ Acquaints students with the components of justice system.
- ❖ Discusses about formal and informal justice.
- ❖ Familiarizes students with the different terms of justice like that of equity, fairness and equality.
- ❖ Explains about the right to access to justice.

- *Discuss the meaning of fairness*
- *Distinguish the difference among equity and equality*
- *Discuss about formal and informal justice.*
- *Explain about the right access to justice.*

UNIT THREE

Meaning and Concepts of Justice and Justice System

3.1 Concept of justice system

3.1.1 What is Justice?

Justice in its broader sense is defined as the notion/system that entitle people to what they deserve. This concept of justice may have many extensive definitions and interpretations from different dimensions. its interpretation may lead us to what then establishes ‘deserving’ being compressed upon by numerous fields, with many complying perspectives including the notions of moral rightness based on rationality, equity, fairness, law religion, equity and fairness. (*John Rawls, 1971, P1-9*)

In other words, justice is means of moral correctness based on consciences, rational, law, natural law, religion, equity and fairness, as well as the administration of the law, taking into account in alienable and inborn rights of all human being and citizens, the right of all people and individuals to equal protection.

Whereas Justice **System** is a scheme that informs us to achieve the fair and equitable society interest and effective healing mechanism of the members of the society, and this justice system no matter what is in its back the final purpose is to make every one please at any cost. To accomplish

this final target of justice systems we may use the formal way which the state government is part through its formal structures of the justice system or by the informal ways but are helpful to complete the final targets of justice system. (Ayalew G.,2012

3.1.2 What do we mean by fairness?

Fairness is a term that owns various definitions depending on the different exact conditions and perspectives which we can use it accordingly. In particular, it was felt that the concepts, meanings and natures of this fairness is affected by the mere difference in between countries and the relation among those different countries, also the meaning of fairness depends on the actual nature of societies. Fairness comprises defending individuals and groups from any discrimination or abuse with a focus on elimination behaviors, prejudices. In the concept of fairness most of the time there are two views that shared by people. (*John Rawls, 1971, P1-9*)

- ❖ The equal principle (One is that fairness meant treating everybody the same) and
- ❖ Difference principle (The second is treating people differently) (*John Rawls,1971, P8*)

The first way of treating people everybody the same is led by the ideas that articulates people should treat others the way they want to be treated or they need to treat in a way everybody feel good or accepts; And with this perspective it is always explained that no matter the differences in between the members of a society the system should put similar opportunities for everyone. (*Ibid, 1971, P1-9*)

For example; in one imaginary society there may be people with different demands, and if you have to facilitate by this kind of approach, you may not be able to answer the demands of that society you may not satisfy half of the members, but if you try to use the second approach you may answer the issues of all members of the society. The reverse is true, if you find a community with similar demands you don't have to use the second approach. And treating people differently is providing the different services according to the demand of the different character of individuals. So that, we can't use the separate approaches of fairness to achieve its final target, even we can use both approaches at the same time. (*Ibid, P1-9*)

3.1.3 What is equality

When you try to find the meaning of equality it is attached with the common term 'equality of opportunity' Equality of opportunity was widely used term to direct equality. This was a visible

subject and it was also mentioned to as equal rights, chances or access. When equal opportunity was first introduced it was only on the providing the opportunity, the concern to define equality was serving or given the chance for everyone. One of the extensive debates in policy making and law enactment process are raised about these equal opportunities and this is because even government provides people with equal opportunities there are circumstances that ban individuals from the equal opportunity and this is the most common issue within policy debates. (Wondemagegn, March 2012, pp153-157)

When people talk about equal chances, they severely rely on various equalities mechanisms and talked about people having the same opportunities irrespective of their characteristics or background.

3.1.4 What is equity?

Equity has several but interrelated meanings. Generally, equity is the handling of others with justice and fairness, equity is then just and fair addition. (Steve Sheppard, *Equity and the law*, p2)

The objectives of equity should be to establish circumstances that allow all to reach their full potential. In a nutshell, equity creates a way from hope to change. (Steve Sheppard, *Equity and the law*, p2)



Picture 1; A picture that Shows the difference between Equality and Equity, (NRDC, 2019, P1)

3.2 Components of Justice System

In many countries, justice system contains of three constituents. **Law enforcement**, **courts** and **correction centers** deal with criminals at different phases of their criminal process. Each

component is able to operate independently or collaboratively to prevent, impeach and punish crime. Law enforcement officials are responsible for keeping the law on the ground. Law enforcement officials bring law breakers to justice. Law enforcement officials under the criminal or civil justice system for example, respond to public complaints. Investigate crimes, collect evidence and interview witnesses. Police detention and Correction centers also arrest suspected offenders, communicate with public prosecutors in criminal inquiries. Patrolling intern maintain public order and security, prevent and control crime within the community. *(UN, Criminal justice reform, September 2011, p9-14)*

Generally, Justice means the rightness of action taken from the bases of different moral values, rational bases, ethics and natural law; and when it comes to the formal law it is where the people of the country get fair treatment before the law, when they get equal access to their right and equal protection.

3.3 Formal and Informal justice System

Formal Justice Systems: The system and capability of formal Justice System depends on the mechanisms derived from formal laws, policies established by the state government, and regulations established by the state government. For the function and operation of this formal justice system state governments are responsible for the financial demands. The function of this formal justice system is that to understand and solve conflicts over the laws, as well as to regulate the responsibility for its violation, while this justice system operates its main purpose is that to facilitate the justice among the interested parties and this is mainly because laws or societal statuses may not give every member of the society the same final resolutions over conflicts that raise up on individual interests. *(UN, Criminal justice reform 2011, p103-109)*

The main actors in the formal justice system may contain police, prosecutors, judges, attorneys, court support staff, and those who provide services to survivors by court order. The formal justice system can also include mechanisms of dispute settlement outside the courts. Those include arbitration, mediation, or restorative justice. Incorporating those kinds of mechanisms lead to create some side whether those arbitration, mediation or restoratives are formal /or informal justice system but here we need to understand that those ways to get justice are incorporated under the formal justice system of most countries. *(Ibid, 2011, p103-109)*

Informal Justice Systems: Informal justice system emanates from community structures but those structures are not created by the formal government rather those various informal and local justice systems are emerged by the society and the community system and it also give services to the members of the society. These social/community structures may include specific ethnic or religious communities, traditions, and indigenous governance systems. In this informal justice system, the persons or those who made the decisions according to the local or ritual tradition elects to lead and made a decision that emanate from the community in order bring justice through informal mechanisms. They oversee in excess of occasions similar to courts of law, and the decisions given by those leaders will be implemented through the ways that are stipulated by the structure of that informal justice system. The leaders or the decision makers may act in a completely diverse method for example they may use a community based meeting or a private discussion way. (*Ibid, September 2011, p103-109*). For example, in Ethiopia, there are informal justice systems known as ‘‘the *Ghada Justice System*’’ in a region known as Oromiya, and ‘Sirit’ in Tigray regions, ‘*Ubuntu*’ in South Africa and ‘*Gacaca*’ in Rwanda which have huge contribution in solving disputes among the community.

<p>Activity- dear participants do you have informal Justice Systems in your locality? Discuss about the modes operandi of the informal justice systems with your colleagues?</p>

One of the basic difference between formal and informal justice is that about the payment of the actors who assist the justice system, for instance in the formal justice system the state government is responsible for the payment of the actors like the police, prosecutors and the personnel around court, but when it comes to the informal justice system the privileged or decision givers who are nominated from the community can receive payment from the parties or they can provide services free of any payment as part of their role in the community. While communities and societies use this informal justice system, the public participants can also play significant role in assisting the informal systems and procedures which has important contributions for the implementation of decisions at community grass root level. (*UN, Criminal justice reform 2011, p103-115*)

3.4 Access to justice

In a nutshell, the notion ‘access to justice’ is a means of assurance that everyone has access to an independent and impartial procedure and the opportunity to obtain a fair and just trial when that individual’s freedom is at stake. Nevertheless, access to justice doesn’t have to encompass judicial remedy, but it may also include the availability of accessible, affordable, timely, and effective means of remedies. (*Dr. Beamlaku Tadesse, Yeneneh Tesfaye, 2019, pp20*)

Access to justice cannot be achieved when; the economic, social or political sectors of the state don’t serve the people on equitable basis. Such kinds of discrimination may happen by law or by the justice system. And sometimes, law may not discriminate people of the state but if the ways to get justice are not accessible, the ultimate interest of the people to get justice and protect their rights will be affected. Generally, Access to justice is a means that guarantees individuals rights without any discrimination based in any status. (*See, generally, EU, Agency for Fundaments, Access to Justice in Europe, EU, 2011, pp3*)

States should not only ban the violence of rights of individuals but also, they need to work on safeguarding their citizens to use easy ways to get justice immediate after the violations of rights and abuses. And those justice systems must be very institutionalized and neutral. Sometimes even though, there is a system that allows individuals to walk to the stated justice system in written laws, practically to use those systems people got difficulties, and states must ensure not only to have access to justice they must check on the effectiveness. And then people may get the real chance to access the justice that is, as one key component of the rule of law, access to justice is an important part of civil, criminal, and administrative law. (*See for eg, Articles 2 of the ICCPR*). One of the approaches to access justice the following human right approach is the exemplary one.

Access to Justice and Human Rights

By the ratification and approval of international conventions on human rights, state governments vow to put those international conventions for human rights into national actions and legislation tuneful through their agreement-based obligations and duties. For instance, under the *Ethiopian* laws, for those which Ethiopia is a party on universal conventions of human rights the lawmaker (legislator) has to ratify first, even though the country is party to the convention the measures taken in response to abuses of human rights or any right the first law to apply on specific cases is the one which is ratified by the legislator.

Article 8 of the UDHR provides the right for effective remedy when legally guaranteed fundamental rights are breached. In this specific provision of the UDHR it clearly states that everyone is entitled to the right to go to capable tribunal for his/her violated rights which are granted under the UDHR or any law of that country. This provision is also granted for the people which their country is a party of the Universal declaration on human rights. Similarly, article 2 of the ICCPR also provides an effective remedy before the court of law.

And also art. 9 of the ICCPR declares about the right to a fair and public hearing, this indicator is also to protect the human rights of individuals to take cases for fair justice to succeed this individual are entitled to get fair and public trial. The Right to access to justice remains a universally accepted principle and it becomes specifically binding where the remaining partner states such as *Somalia, Sudan, and South Sudan* have signed and ratifies the instruments as part of their domestic legal system.

Transitional Justice:

Transitional justice has significant contributions especially in post conflict situations where gross human rights abuses have occurred. In many post conflict African nations, the transitional justice system has contributed significantly in addressing the gross human rights abuses, the application of transitional justice in South African and Rwanda can be mentioned as example.

The purposes of transitional justice may vary according to each situation; this is to mean that even the recognition of the rights and the dignity of individuals, the compensations and the admission of violations of rights, and the objective of preventing their duplication are constant. (*Alison Bisset, 2012*)

Transitional justice system mechanisms don't in principle replace the formal justice systems but complements the system. The transitional justice system in most cases focus on the following tasks.

- ❖ Identify violators and victims and streets the serious offenders to the formal justice system
- ❖ Arranges mechanisms of compensating those injured by the atrocity
- ❖ Facilitates the reconciliation of the parties to the dispute and contributes in the peaceful persistence of the community

Self-Review Questions

1. What is justice?

2. What is justice as fairness?

3. Try to discuss the difference between equity and equality?

4. What are the components of justice system?

5. Why do we need justice as a system?

6. Explain the difference between formal and informal justice systems?
