

Tazreena Sajjad. 2013. *Transitional Justice in South Asia: A Study of Afghanistan and Nepal*. London: Routledge.

“Justice is decidedly a messy affair” (p. 139). Perhaps this statement by Tazreena Sajjad in her new book *Transitional Justice in South Asia: A Study of Afghanistan and Nepal*, sums best the nature of politico-administrative justice in countries like Afghanistan and Nepal. This messy nature of political justice, as indicated also by Elster (2004), is replete with various contestations played out in national, subnational and local levels. Transitional justice is no less a political justice, and in muddling through this in post-conflict situations, there are various actors at play, from transnational to national/local levels.

In this book on the relevant field of transitional justice in Afghanistan and Nepal, Sajjad purports to fill the gap in transitional justice scholarship, which to her has been over-focused on presenting the “static local” or the “cultural practices, rituals, and traditions which international actors involved in human rights, democracy and transitional justice promotion assume to be venerable and unchanging” (p. 5). Instead of focusing on this “stagnant quality” of justice (p. 5), what matters most for justice is the “dynamic local,” i.e., “the local histories, politics, institutions, and power structures that shape the nature of legal and justice system” (p. 7), the author suggests. In other words, more than purely cultural factors which shape the course and discourse of local justice, it is important to examine the role of various actors (explicitly political or otherwise).

This dissertation-turned-book is replete with thick theoretical discussions and literature review of transitional justice and various actors

shaping it. Regrettably, these theories are loosely connected with the cases that are presented in the book. The analyses of two South Asian states, Afghanistan and Nepal, begin from chapter two, where the central claim is that impunity and failed legal-judicial institutions of the past in these two states have actually dampened the present and future spirits to seek accountability, justice, and peace in both states. In other words, impunity and unaccountability have predated conflicts and wars in Afghanistan and Nepal, and therefore rather than essentializing the post-conflict era with impunity, efforts must be made to find the roots and antecedents of the problems. While this argument is without doubt, the readers would benefit more had there been some reflection on the actors who shaped the institutionalizing of impunity and unjust structures. That would better exemplify the “dynamic local” – the book’s thematic focus – in pre- and post-conflict contexts.

Discussions on formal and informal legal/justice systems in Afghanistan and Nepal fill the third chapter of the book. Here, the author presents the picture that both Afghanistan and Nepal still have influential informal justice sectors, and although the states have a formal judicial system, and are signatories of important human rights instruments, people are less dependent on the formal sector. In Nepal’s case, as the author argues, customary laws and practices of *badghar*, *maulānā*, *kacahari*, *bhalmansā*, *mukhiyā* prevail over formal systems in different parts of the country. Although I know little about the corresponding situation in Afghanistan, I contend that the author’s presentation of customary laws in Nepal is rather overblown. Customary laws have traditionally had a huge influence in Nepal in the past, but in the recent decades, formal justice systems have significantly broadened. Even practices such as community mediation have been formalized into Nepal’s judicial system. One would not fully believe that, as she puts, the practice of community mediation is a Western idea, external to Nepal’s local contexts. Here, the argument about dynamic local as shaped by actors in both formal and (more so) informal systems is clear, but the links between these customary practices and transitional justice systems are left vague.

The fourth and fifth chapters endeavor to portray local understandings of justice in Afghanistan and Nepal, and the role of various actors (including international) in shaping justice discourses. Interesting here is the argument that the South African Christian model of reconciliation and forgiveness was pushed hard into the discourses of truth commission in a Hindu-dominated Nepal. But because of varied interests of donors, political parties, civil

society and even victims themselves, the conceptualization and application of justice have not been uniform. Left from the mainstream is the poor stratum of society, which has suffered the most through the cycles of violence, and their meaning of justice (or reparations) is heavily drawn from their pressing economic needs of subsistence and livelihood. But their palpable economic expectations from transitional justice have been grossly ignored. The author underscores the fact that all schemes of reparations (financial and otherwise) have been hijacked by different actors, all the way from the central to local levels, rendering transitional justice politics “insensitive to the contextual contingencies” (p. 117) and the “voice of the margins.” Although this analysis of socio-economic dimensions of post-conflict setting is true, the writer could have situated this better in light of financial schemes that the Government of Nepal actually offered (and continues to offer) to those affected families.

The sixth chapter features national human rights institutions (NHRIs) in the two studied states, and tries to show their limited ability to live up to the expectations of creating just states and establishing human rights norms. While Afghanistan’s NHRI looks more active in negotiating between different international and national actors, Nepal’s has been able to provide avenues to address concerns of transitional justice stakeholders such as victims, whose agency is otherwise curbed in other forums. Although both NHRIs are plagued with certain limitations, such as the lack of sufficient funds or dependence on foreign funding, and certain ambiguities in their mandates, they still remain important actors in the stage of transitional justice. In addition to being active actors, they themselves are a stage for different agencies, only contributing to enrich the “dynamic local.” However, from an institutional perspective, non-state human rights organizations (HROs) have also been actively engaged in challenging the role played by the state and non-state conflict parties, and in lobbying for conformity to worldwide human rights principles in transitional contexts. For instance in Nepal, HROs like Advocacy Forum and Informal Sector Service Center (INSEC) have been active since the early 2000s in advocating and writing extensively on the issues of enforced disappearance, unlawful detention, custodial torture, the victimization of women, and the lack of abidance of human rights norms. During these active engagements, these HROs have not only established themselves as active actors in the field of Nepal’s transitional justice, but have also been significant conduits through which the international/

universal values made inroads in shaping the “dynamic local” in Nepal. Some reflections on this could have enriched the book under review.

This book comes just before Nepal’s actual ‘transition’ to transitional justice (and the surrounding politics) with the enactment of Truth and Reconciliation Commission (TRC) Act, and the subsequent formations of the Truth and Reconciliation Commission and the Commission for the Investigation of Disappeared Persons in 2014. In recent times, the judiciary has had a quite proactive role in shaping Nepal’s transitional justice through its interpretation of the TRC Act, and denying amnesty to serious war crimes (as provisioned in the Act). The judiciary was not dormant even during the period (pre-2013) when the author was doing her research. For instance, in deciding the case of *Rajendra Dhakal v. Government of Nepal and Others*, in 2007 the Supreme Court of Nepal had ordered the Government of Nepal to criminalize enforced disappearances, and also directed the government to form a commission of inquiry on disappearances.<sup>1</sup> During the same year, the Court also decided to criminalize torture. Importantly, in 2012, it decided that no security personnel with records of past wrongdoing should be promoted, and in 2013, disallowed any politicians to contest in the Constituent Assembly elections if they had a criminal background. Although a few of its decisions have gone unheard, it is certainly true that the judiciary is another significant player in defining the course of Nepal’s transitional justice. By not including this important angle, the book has somewhat missed in its purported aim to capture the complexity of the “dynamic local.” Similarly, some light on the diversity and roles of victims’ organizations could have added more insights to the main arguments of this book.

Further, the book is not free of factual errors and typos. It was not the Unified Communist Party of Nepal-Maoists (UCPN-M), but the CPN(M) which signed the peace agreement with the government (p. 2). The People’s Movement is variably referred to as “Gono Andolan” (p. 36), “Jana Andolan” (p. 37), “Jana Andalan” (p. 37), “Jano Andolan” (p. 69). Variations in spelling also include “Chetri” and “Chhetri” (pp. 61–62) and “Hofer” and “Hoffer” (p. 62). Other mistakes are evident in “Gayanendra” (p. 38), “Muluk Ain” (p. 62), “61 ethnic groups and 45 indigenous populations of Nepal” (p. 61),

<sup>1</sup> Rabindra Prasad Dhakal on behalf of Rajendra Prasad Dhakal (Advocate) v. Government of Nepal and Others, 2007. Available at [www.icrc.org/applic/ihl/ihl-nat.nsf/0/5EAB6202E55A6FF3C125753F003A5722](http://www.icrc.org/applic/ihl/ihl-nat.nsf/0/5EAB6202E55A6FF3C125753F003A5722).

“1992 Constitution” (p. 63) and the incorrect assertion that “Kirants still practice kipat” (p. 64).

Despite these oversights and despite Nepal’s transitional justice taking more significant strides after the book’s publication in 2013, the author deserves praise for giving a synoptic yet fairly detailed picture of post-conflict politics beginning 2006 in Afghanistan and Nepal. In addition, for the breadth of philosophical moorings and extensive literature review on transitional justice, the book certainly serves as a handy reference for scholars trying to understand the nuts and bolts of this idea, and how it has operated in two South Asian states with different socio-legal backgrounds.

## **Reference**

Elster, Jon. 2004. *Closing the Books: Transitional Justice in Historical Perspective*. Cambridge: Cambridge University Press.

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