



# Indigenous Form of Dispute Settlement: Relevance in Present Perspective

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## ABSTRACT

The cases in the Court of Law are getting piled up every day, the judiciary is overburdened and according to statistics about 45 million cases are pending before the Courts to decide. Former Chief Justice of India (CJI) N.V Ramana while speaking earlier at the India-Singapore mediation Summit said that “Disputes were often resolved by the chieftains or elders of the community. Similarly, disputes relating to business were resolved by merchants, either by direct negotiations or through merchant bodies. However, **the establishment of the British court’s system, in 1775, marked the erosion of community-based indigenous dispute resolution mechanisms in India.**” The former CJI emphasized a system wherein mediation is the first mandatory system before approaching the Courts.

India since time immemorial has had traditional conflict resolution mechanisms, as one can witness in epics like Mahabharat and Ramayana. Alternate Dispute Resolution methods are cost and time efficient and resolve the methods amicably without creating enmity among the parties. The globe is home to many cultures and each of these has its unique indigenous method of resolving the dispute. The formal court system came into existence many centuries after humanity came into existence, earlier the communities used to follow their own traditional methods to settle disputes. These traditional methods of conflict resolution can aid the formal system of adjudication, as the one who settles the dispute in a traditional system is better able to understand the culture and beliefs of the people, but these traditional methods of conflict resolution can be used after certain modifications are incorporated in these systems to make it more impartial and efficient.

Indigenous method of dispute resolution, Alternate Dispute Resolution, and Traditional Methods of Conflict Resolution.

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## I. GENERAL INTRODUCTION:

India since time immemorial envisages the traditional dispute settlement methods. Epic like Mahabharat and Ramayana provide us with evidence of dispute settlement by a third impartial party. Lord Krishna in Mahabharat attempted to resolve the dispute between Kauravas and Pandavas through the “Sandhi.” In Hindu law, the most precise evidence of arbitration is made in “Brhadaranayaka Upanishad.”<sup>2</sup> The Upanishad provides for three kinds of bodies for arbitration and those bodies are Puga, Srenis, and Kulas, these are respectively local courts, the people conducting similar businesses or professions used to appoint a person to settle disputes and the members who worried about the social issues of a specific community. These three bodies collectively form Panchayats. The Privy Council in **Vytla Sitanna vs. Marivada Viranna**<sup>3</sup> recognized the award given by the Panchayat. The Privy Council noted that the parties had requested that the panchayat settle the matter and that the panchayat had done so. Furthermore, their lordships noted that the panchayat's decision was a fair and honest resolution of a dubious claim based on both ethical and legal considerations.

The evolution of arbitration further took place and the Bengal Regulation Act 1781 contained a provision regarding the recommendation of matters to arbitration by the judges. Later, in the year 1899 Arbitration Act was enacted which was similar to the English Arbitration Act. The Code of Civil Procedure, 1908 contains provisions regarding arbitration under section 89. With the passage of time a new law was exclusively enacted, The Arbitration and conciliation Act, of 1940. Later on, to deal with the shortcomings of the beforementioned law and on the 76<sup>th</sup> report of the Law Commission of India, November 1978 The Arbitration and Conciliation Act, 1996.<sup>4</sup>

From the above-mentioned discussion, it is ascertainable that India has a long history of dispute resolution outside the court. Undoubtedly in India, dispute settlement without a formal procedure is not new, this helps in amicably solving disputes, and speedy disposal of the disputes and it is an economical and time-saving method. Since India is a country of cultural diversity, it is very difficult to tailor a method for everyone by the legislature. India has its own traditional dispute resolution mechanism, Panchayat, which is well-equipped to deal with the cultural diversity of our nation and settle disputes amicably. For instance, if there is a dispute between two groups in a village then the head of the village, who is from the same village can resolve the matter and understand the parties better. The Indigenous method of dispute resolution holds relevance in the present time as well but after incorporating some amendments in this method of dispute resolution.<sup>5</sup>

<sup>2</sup>Mediation Embedded into Indian Ethos, British Rule Eroded Indigenous Dispute Resolution Mechanisms: CJI Ramana, available at: <https://swarajyamag.com/insta/mediation-embedded-into-indian-ethos-british-rule-eroded-indigenous-dispute-resolution-mechanisms-cji-ramana> (Last visited on April 2, 2023)

<sup>3</sup> (1934) 36 BOMLR 563

<sup>4</sup> Alternate Dispute Resolution in India, available at: [https://legallaaffairs.gov.in/sites/default/files/arbitration-and-mediation\\_0.pdf](https://legallaaffairs.gov.in/sites/default/files/arbitration-and-mediation_0.pdf) (Last Visited on April 2, 2023)

<sup>5</sup> Panchayati Raj, available at: <https://byjus.com/free-ias-prep/panchayati-raj/#:~:text=Part%20IX%20of%20the%20Constitution,can%20function%20as%20self%2Dgovernment>. (Last visited on April 3, 2023)

In this paper, the relevance of the indigenous form of dispute settlement will be discussed from the present perspective. In furtherance to the theme of the paper, the breakup of this paper is as follows: Part I deals with different traditional conflict resolution methods around the world, further it is divided into two sub-parts which are the strengths and weaknesses of the traditional methods of dispute settlement and further how the traditional methods can be modified to make it relevant in the present time and finally the concluding remarks.

## II. TRADITIONAL CONFLICT RESOLUTION METHODS

As there is high pendency of cases in the courts, the judges of the Supreme Court are often seen speaking at various forums about the need to establish a culture of alternative dispute resolution methods to bring down the pendency of the cases. In this part of the submission, there will be a brief discussion about the various traditional conflict resolution method in India.

### A. INDIA

We all currently live in a time of numerous conflicts. Whether it is interpersonal, intergroup, interstate/intra-state, or on a global scale. Our democracy, civil society, as well as our national and global security, all face the greatest need and challenge in resolving these disputes.

India, the biggest democracy in the world, has a long history of dialoguing with individuals who disagree with the government and what it stands for. According to Amartya Sen, the dialogical traditions, heterodoxy, and public reasoning in Indian ethos are responsible for India's democratic yearning for peace. India's culture of diversity, humanism, and openness, as well as its capacity for adaptation, are all noteworthy. The teachings of Buddhist, Hindu, Medieval Sufi & Saints, Vedantic, Advaitic, and Jain philosophers all encourage peace and love in the ancient Indian tradition.<sup>6</sup>

- **THE PANCHAYAT SYSTEM**

India's Panchayati system predates independence but it still exists today. The village panchayat has been the primary political body in rural India for many years. Panchayats were typically elected bodies with both executive and judicial authority in ancient India. The influence of foreign powers, particularly the Mughals and the British, as well as spontaneous and imposed socioeconomic development had diminished the significance of village panchayats.

The Panchayati Raj System's development was given a boost after independence and the Constitution's formulation. "The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government," the Indian Constitution's **Article 40** mandates. One of the primary goals of Panchayati Raj is rural development, which has been implemented in all Indian states with the

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<sup>6</sup> Conflict Resolution Practices, Skills & Orientations in the Indian Context, *available at:*

<https://www.wilsoncenter.org/article/conflict-resolution-practices-skills-orientations-indian-context#> (Last Visited on April 3, 2023)

exception of Nagaland, Meghalaya, and Mizoram, as well as all Union Territories with the exception of Delhi. These areas consist of:

- tribal regions and scheduled areas in the states
- Manipur's hilly region, for which a district council is in place, and
- West Bengal's Darjeeling district, for which there is a Darjeeling Gorkha Hill Council

**The 73<sup>rd</sup> Constitutional Amendment Act of 1992<sup>7</sup>**, added Part IX to the Constitution, “The Panchayats” and also added the Eleventh Schedule which consists of the 29 functional items of the panchayats. **Article 243 to Article 243 O** are included in Part IX of the Constitution.<sup>8</sup>

**Article 40<sup>9</sup>** of the Constitution (directive principles of state policy), which directs the state to create the village panchayats and give them powers and authority so that they can operate as self-government, is given shape by the Amendment Act. With the passage of the Act, Panchayati Raj systems are now governed by the Constitution's justiciable provisions, and each state is required to implement it. Additionally, the Panchayati Raj institutions' elections will be held without regard to the wishes of the state administration.

**The tribal people in North East India uphold and use their native institutions for governing and resolving disputes. These distinctive norms, practices, and institutions are further upheld and shielded from outside influence by the sixth schedule of the Indian Constitution, commonly referred to as the "mini-Constitution". As a result, indigenous conflict resolution systems continue to exist today.**

The indigenous Khasi, Jaintia, and Garo Tribes of the state of Meghalaya use their own traditional mechanisms, such as **Nokma** (considered peacemakers as they are called first to resolve minor disputes, thefts, and cases of marital discord), and **Dorba** (a three-level governance structure giving directives on daily administration and disposal of cases on community conflicts).

#### • **NOKMA IN MEGHALAYA (GARO TRIBE)**

The second-largest tribe in Meghalaya, the Garos make up one-third of the state's population. The property belongs to one of the Machong (clans), which are matrilineal communities with villages spread out over a large area. These settlements or clusters of villages are governed by a clan and are known as A'king. According to the traditional law of matrilineal inheritance, the title of A'king Nokma belongs to a woman, but the husband is the one who actually manages the A'king's

<sup>7</sup> 73<sup>rd</sup> Constitutional Amendment Act, 1992, available at: <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-seventy-third-amendment-act-1992#:~:text=Provided%20that%20no%20person%20shall,the%20Legislature%20of%20the%20State>. (Last Visited on April 4, 2023)

<sup>8</sup> Panchayati Raj, available at: <https://byjus.com/free-ias-prep/panchayati-raj/#:~:text=Part%20IX%20of%20the%20Constitution,can%20function%20as%20self%2Dgovernment> (Last Visited on April 4, 2023)

<sup>9</sup> Article 40, Constitution of India, 1950.

government. As a result, the A'king Nokma is the guardian of the land that belongs to the Machong; no important choices may be made without the Nokma's or the family's male members' approval.

After Nokma dies, the next in line organizes a gathering of all the Machongs and their representatives from around the Garo Hills, wins their approval, holds a feast, and only then is he allowed to use the title. Even with the traditional laws of inheritance, the Machong has the authority to call a meeting of all Garo Hills representatives to remove a Nokma from his position and bestow it on another person of the same matrilineal line if it is discovered that they are engaging in activities that are harmful to the A'king. A Nokma was therefore traditionally held responsible to the Machong and required to uphold the highest standards in his position and authority.<sup>10</sup>

- **DORBAR IN MEGHALAYA (KHASI TRIBE)**

The three-level institution of Dorbar serves as the center of gravity for the TIs (Traditional Institutions) in Khasi and Jaintia Hills. The Headman or Rangbahshnong is in charge of the Village Council at the lowest level, Dorbar Shnong; the Sirdar is in charge of Dorbar Raid; and at the highest level, Dorbar Shnong; The top position within the TI hierarchy, Syiem (King), is in charge of the Dorbar Hima, which is the highest level of the ruling clan region. The husband of the youngest daughter of the ruling clan is only permitted to hold the post of Syiem. The Syiem typically holds office for a lifetime, though occasionally it may only be for a brief five-year period. He is chosen by the Myntris (Ministers), a traditional executive body, together with the Syiem's Dorbar (court) is made up of headmen.

The traditional Kuki institutions of Hemkham (the current cease-fire), Toltheh, and Salam Sat are employed in the state of Manipur to settle family-related disputes. One of the world's swiftest tribunals, the Kuki Village court allows the sinner to return to his or her regular life with no cases outstanding. Native village dispute settlement systems, such as the Nyaya panchayat (council of Justice/village Courts), Gram achahari's, Khap Panchayats in the North West, and Katta Panchayats in Tamil Nadu, are also carrying on their customary dispute resolution procedures.<sup>11</sup>

To properly examine and address the capabilities and compatibilities of these historic institutions of conflict resolution and peacebuilding in connection to their contemporary state-based counterparts, however, is today's main problem.

## **B. CO-EXISTENCE OF TRADITIONAL AND MODERN METHODS OF DISPUTE RESOLUTION**

By safeguarding the state under the Sixth Schedule of the Constitution, independent India continued the colonial traditions of recognizing tribal autonomy. Indigenous representatives now have access to authority over administration and policymaking as a result of the maintenance of smaller "culturally defined states" like Meghalaya. However, this has also made it difficult for the TIs to

<sup>10</sup>Traditional Institutions of Dispute Resolution in India, available at: <https://berghof-foundation.org/library/traditional-institutions-of-dispute-resolution-in-india-experiences-from-khasi-and-garo-hills-in-meghalaya> (Last Visited on April 4, 2023)

<sup>11</sup> Traditional Institutions of Dispute Resolution in India, available at: <https://berghof-foundation.org/library/traditional-institutions-of-dispute-resolution-in-india-experiences-from-khasi-and-garo-hills-in-meghalaya> (Last Visited on April 5, 2023)



make the required changes in order to cooperate with state-based institutions and carry out their responsibilities under a democratic government.

The lack of knowledge about the roles and obligations to the other is a frequently cited challenge in resolving anomalies and inconsistencies between traditional institutions and non-traditional institutions. In the Khasi Hills, for instance, every Dorbar is required to collect a monthly tax (ka fund shnong) from its inhabitants. But Article 265 of the Indian Constitution makes such private tax collecting unlawful. It is obvious that the Dorbar officials either are unaware of it or continue to do it unlawfully. Native American conflict resolution provides a number of benefits over formal or court-based dispute resolution, including being quick, accessible, culturally relevant, and sensitive to the needs of the underprivileged. Ethiopian Human Council also stated that native conflict resolution is beneficial because it involves active participation from the parties involved, increases public interest and awareness, leads to a permanent resolution of the conflict, and employs a non-discriminatory approach to its conduct.<sup>12</sup>

Indigenous conflict management and resolution methods put local conflict resolution before or in instead of external conflict resolution, lowering dependency on external systems. Native American mediation aids the community in maintaining control over the resolution of the problem. This strategy offers a low-cost, empowering way to resolve issues in a manageable amount of time without the need for complex party structures or pricey campaigns. Elders have innate authority in facilitation, arbitration, and outcome monitoring in many civilizations. Indigenous conflict mediators frequently have high moral standing, authority, objectivity, and community respect; they are well-liked by all sides and have leadership skills. All parties involved generally accept and respect resolutions.<sup>13</sup>

In situations where there are no female elders, some women may feel that male elders are biased against them and that this would show in their judgments, weakening some indigenous conflict resolution initiatives. The aforementioned notion may therefore suggest that indigenous authorities are generally not progressive forces for social change.

Indigenous methods of resolving disputes will enable community members to seek redress and settle disputes outside of court while maintaining their cultural traditions. Since they are founded on the practices and traditions of the group in question, they are more culturally appropriate than litigation. Indigenous cultures have been using them since the dawn of time. Courtroom litigation is typically pricey; due to lengthy case backlogs, sporadic delays in the determination of motions

<sup>12</sup>Approach to Integrate Indigenous Dispute Resolution Mechanisms as Restorative Justice in Ethiopian Criminal Justice System, available at: <https://www.hrpub.org/download/20190830/SA3-19613247.pdf> (Last Visited on April 5, 2023)

<sup>13</sup>Could traditional dispute resolution mechanisms be the solution to reducing the volume of litigation in post-colonial developing countries – particularly in Africa available at: [https://www.researchgate.net/publication/343274589\\_Could\\_traditional\\_dispute\\_resolution\\_mechanisms\\_e\\_the\\_solution\\_to\\_reducing\\_the\\_volume\\_of\\_litigation\\_in\\_post-colonial\\_developing\\_countries\\_-\\_particularly\\_in\\_Africa](https://www.researchgate.net/publication/343274589_Could_traditional_dispute_resolution_mechanisms_e_the_solution_to_reducing_the_volume_of_litigation_in_post-colonial_developing_countries_-_particularly_in_Africa) (Last Visited on April 5, 2023)

or claims are rather typical. A more significant factor is that litigation, with its adversarial orientation, basic elements of confrontation, fault-finding, and judge-made decisions.

Indigenous dispute resolution has numerous obstacles from various angles, although having its own socioeconomic benefits for people, organizations, societies, and communities. Lack of clear legal mandates, limited financial support from various national and international governments, and limited capacity for system performance oversight are the main issues that affect indigenous conflict resolution methods, all of which can jeopardize their ability to increase societal access to justice.<sup>14</sup>

### III. CONCLUSION

Reformers should look for chances for strategic interventions that enhance the performance of informal or customary justice systems and facilitate the effective integration of the formal and informal systems in order to strengthen the state justice systems. The state must commit to allocating funds for the Indigenous Dispute Resolution Methods establishment and integration processes. The research and suggested means of utilization will be useless unless the funding constraints are resolved. The regional state must provide a sufficient budget for this. Additionally, there is a chance to get financial assistance from several NGOs. From the above-presented discussion, it can be ascertained that the indigenous dispute mechanism has the following characteristics: Considerable longevity; historical evolution within a society, locally inspired, and locally driven, A Custom-based; informal & open to the community; process-oriented A Non-state, pre-state, and/or autonomous of the state A Centrality of relationships and key persons.

A multi-ethnic society may employ varied and multifaceted methods in its traditional ways to conflict resolution. These systems might not be flexible and occasionally even contradict one other. Traditional methods cannot and should not be assumed to be uniform. There may be numerous traditional systems that operate according to various norms and ideas, even within a single nation. Traditional institutions face fresh difficulties in today's globalized society, where colonization, urbanization, and the spread of educational opportunities are all becoming more tangible. While some institutions and systems experience a loss of authority and legitimacy, and some are even in danger of going extinct, others are able to adjust to the new conditions. Having many conflict resolution options available to citizens, providing more options for conflict resolution, and holding the mechanisms more accountable are all positive benefits of coexisting conflict resolution methods on the processes and outcomes of dispute settlement.

More information on the options available to citizens for resolving their conflicts would be very valuable. This holds true for everyone in the community, not only the traditional authorities or those employed by the formal justice institutions. They should have more opportunities to learn about the fundamentals of governance and the formal justice system, the use and operation of conventional systems, and perhaps most

<sup>14</sup> Approach to Integrate Indigenous Dispute Resolution Mechanisms as Restorative Justice in Ethiopian Criminal Justice System, available at: <https://www.hrpub.org/download/20190830/SA3-19613247.pdf> (Last Visited on April 5, 2023)

importantly, how to navigate the various systems and what can reasonably be expected of each system through awareness-raising campaigns or targeted trainings.<sup>15</sup>

Overlap in jurisdiction and/or a lack of clarity regarding separate tasks and obligations are two of the most frequent issues that arise when mechanisms coexist. This may be brought about by inconsistencies in the law, a lack of awareness of one's role and responsibilities, or an intentional intrusion into or interference with the authorities of others. Such circumstances might cause tension and rivalry and prevent the efficient coordination of dispute resolution procedures. Encourage system reform, if necessary, and improve the formal institutionalization and documenting of coexistence as a strategy to get rid of jurisdictional overlaps and ambiguity over roles.



<sup>15</sup> Peaceful Coexistence? 'Traditional' and 'Non-traditional' Conflict Resolution Mechanisms: available at: <https://d-nb.info/113570189X/34> (Last Visited on April 5, 2023)