

The Utility of Traditional Justice System of “Panchayat” in Resolving Pakistan-India Interstate Conflict

Abstract

By employing the analogy-making approach, this paper seeks to examine the psycho-dynamics behind the traditional system of conflict management “Panchayat” in the Asian subcontinent and presents it as an analogous model to resolve interstate conflicts between India and Pakistan. By examining the psychological and moral structure of Panchayat system, this paper develops a conceptual work to make use of indigenous psychology behind the success of this local justice system in the conflict resolution process between two neighbour states. Panchayat system links both societies through this centuries-old model of conflict resolution which predates the British colonial justice system. People in the subcontinent tend to map the psychological and moral structure of their indigenous institutions onto other institutions in the outside world. Accordingly, by learning the psychological mechanism operating behind Panchayat institution, the international mediators can build a better conciliatory framework to manage the conflicts between both countries. This paper proposes that the Panchayat system does not need to be used in its original shape, but only the psycho-dynamics of Panchayat must be included in modern conflict resolving techniques in Pakistan-India case.

Key Words: India-Pakistan, Conflict Resolution, Panchayat, Indigenous Psychology, International Mediation

Introduction

The Pakistan-India conflict has been raging for about more than 70 years, and there have been many attempts by the international mediators/arbitrators to get both the parties to sit down and work out their differences. All such attempts have been failed so far because the mediators have not properly assessed the psychological nature of the problem. They have also largely ignored the traditional conflict resolution systems in the subcontinent of India and Pakistan. If international peacekeepers were to delve deeper, they could take hope and inspiration from a smaller, older and more local justice/conflict resolution system “Panchayat”, which has been effective in mediating disputes in warring territories since ages. For millenniums, people in the subcontinent have been psychologically tuned to seek management for their conflicts through the institution of “Panchayat”. This paper suggests that the study of traditional wisdom used within the Panchayat system can help international mediators to adopt a better approach towards conflict management between these two rival states. Sustainable peace is always required to be accepted and owned by the people based on their indigenous system of conflict resolution (Gohar, 2018).

There are a variety of culturally constituted methods for handling conflict around the world. Different cultures develop their own formal and informal ways of handling conflict – such as *Ubuntu/Gacaca* and *Mato Oput* in Africa, *Jirga* in Afghanistan and *Sulah* in the Middle East (Adebayo, Benjamin, & Lundy, 2014). Ironically, the traditional models have been ignored by the international mediators because they can make conflict resolution more complicated as each specific cultural model has its own perception of conflict and techniques for resolving it. Therefore, these models are not considered much effective to resolve conflicts between nation-states.

However, it is also evident that a large number of intractable conflicts in the world are between culturally similar groups. This paper argues that the psycho-dynamics of traditional systems of conflict resolution could be very useful while searching resolution of the conflicts between such nation-states whose people had lived side by side in the past (e.g., North-South Korea, Serbia-Croatia-Bosnia, and India-Pakistan). Usually, such warring nations/groups possess similar traditional approaches to manage and resolve their conflicts. For example, Pakistani and Indian societies are linked through an age-old model of conflict-resolution, i.e. Panchayat system. The traditional methods of conflict resolution must not be ignored in the peacebuilding process between these countries inhabiting people possessing more or less similar cultural values, shared past, and identical conflict resolving institutions such as Panchayat.

Panchayat system is a South Asian political and justice-providing system mainly in India, Pakistan, Bangladesh and Nepal. As a colonial legacy, culturally similar groups were divided into different nation-states in the Asian subcontinent. Therefore, despite numerous ethnic diversity and religious differences, both Indians and Pakistanis share common history, geographical proximity, similar cultural gene pool, identical kinship institutions (S. Kakar & Kakar, 2009), and identical local justice system. Although, Panchayat model is still to be applied in respect of resolving interstate conflict, the relevance of Panchayat system cannot be overemphasised for the people of Pakistan and India who parted their ways into new territorial states after living together and who have been resolving their disputes through this local justice system for centuries.

Doubtlessly, the intergroup conflicts between culturally similar groups are, sometimes, more difficult to be resolved as compared to the conflicts between culturally dissimilar groups as well as states (Ross, 1997, 2004). It partly explains why international arbitrators have been failed so far to resolve the conflict between India and Pakistan. One of the reasons for this

failure lies in assigning both groups diametrically opposite religious and cultural identities. Secondly, the mediators have often ignored the indigenous knowledge of culture, conflict perception, and conflict resolution methods, which is common in both groups. The mediators often miss the psychology behind traditional conflict resolution system in the subcontinent.

Methodology and Theoretical Framework

The main objective of this paper resides in exploring the psychological attributes of the local Panchayat justice system and utilising them for interstate conflict resolution processes. Therefore, the analogy-making approach has been used in this paper to compare the indigenous conflict resolution mechanism to that of the interstate conflict resolution process. The “analogy-making” method follows Aristotle’s saying that ‘to be a master of metaphor is a sign of “genius”, since a good metaphor implies an eye for resemblance’ (Lancaster, 2015). Analogy is a form of scientific method that uses one set of behaviour to analyse and explain the behaviour of other phenomena (Morlidge & Player, 2010, p. 287). The analogies are used to relate known knowledge to unknown experiences, to uncover similarities once some basic resemblances are noted (O’Conner, 1971).

Several inferences emerge by analogizing the typology of intragroup/inter-group conflicts to interstate conflicts, since to paraphrase Zimmerman and Jacobson (1993): while the conflict between families and groups is inevitable; as families are systems, so are groups; and, intentions matter, as does how people interpret reality. Therefore, by employing the psycho-dynamics of Panchayat system, this methodology will help me to compare the interpersonal/intergroup conflict dynamics to that of interstate conflicts between Pakistan and India, and manage them in a better way. It is imperative to mention here that certainly Panchayat has no history of resolving interstate conflicts in South Asia. However, the inclusion of psycho-dynamics operating behind this local justice system into an interstate conflict

resolution process can affect the overall discourse on war and peace in the region. This methodology enables us build a fresh conceptual framework to re-assess the conflict management procedure between both nations.

The remaining section is aimed at building a theoretical case that how by learning the indigenous psychology behind a traditional justice system such as Panchayat can prove beneficial for international mediators to build an “indigenous-theory” for resolving interstate conflicts. The strategies adopted by these indigenous justice systems are not only relevant but in many cases they can give better results. No doubt, ‘conflict’ is inherent in human nature but conflict resolution can be regarded as more a cultural phenomenon than a biological or universal. While conflict is universal, the ways in which it is expressed and managed are not (Fry & Bjorkqvist, 2013). Humans have always been inventing ‘indigenous’ methods for resolving their conflicts according to their society’s norms, practices and institutions., and these traditional methods have endured through ages.

Arguably, the culture-specific responses to conflicts remain invisible between culturally similar groups (Pakistan-India case). However, such groups are hardly ready to accept any conflict resolution proposal, which is inconsistent with their own cultural norms regarding conflict resolution. The mediators can overcome this issue by deeply studying the psychodynamics of traditional conflict resolution systems which have been providing time-tested solutions to the local people. Such study requires an observation of local people’s worldviews regarding conflict perception as well as resolution, and, society’s overall emotional climate.

As conflict means perceived divergence of interest or a belief developed by parties that cannot be achieved simultaneously (Rubin, Pruitt, & Kim, 1994, p. 4), therefore, an effective approach of conflict resolution requires that mediators should convince the parties that their perceptions of divergent interests are not correct. To a great extent, parties’ conflict perceptions are shaped

by culture, like Ross, (1993) observes that: “any society’s specific norms, practices, and institutions regarding conflict provide a framework for people’s perception of conflict” (p. 19). It implies that conflict-resolution must be culture-specific which is termed as ‘culture of conflict resolution’ as noted by Avruch (1991).

Avruch and Black (1991) advocated the inclusion of culture and traditional wisdom to resolve conflicts and critiqued culture-blind theoretical approaches. They propose that indigenous common-sense or understandings of conflict must be included in the inquiry which may form 'native theories' of conflict and conflict resolution. It is necessary to know before analysing or managing conflict that how do the parties conceptualise conflict and how do they approach its management or resolution. In India and Pakistan, the psychological imagery related to conflict, violence, conflict resolution and peace emanates from *within* the kinship institution (Kadir, 2019), which must not be ignored as it is another identical institution between two nations. In brief, the local ‘common-sense’ about conflict and conflict-resolution distributed among individuals in culturally similar groups can help to understand the nature of conflict and its management in a better way. Avruch and Black (1991) refer to such cultural knowledge or common-sense about conflict as “ethno-conflict theory”, and such indigenous conflict resolution techniques and practices as “ethno-praxes”.

Ledarach (1995) also maintains that conflict mediation attempts should not be against the relevant cultural understanding: “[t]he greatest resource for sustaining peace in the long term is always rooted in the local people and their culture” (p.10). He points out that simple resolution approaches may be too narrow to bring about lasting peace because they are not inclusive. On another place, he cautions the conflict resolvers that attempting to mediate within a culture different from their own, need to be both flexible and sensitive to avoid acting like the proverbial bull in a china shop (Lederach, 1991). He observed that western (North

American) conflict resolution training and practices could not be effectively exported to other cultural settings. (Lederach, 1991, 1995) supports the proposal of this paper that conflict resolution techniques must use disputant's frame of reference to understand how the participants interpret the boundaries and context of their conflict. The psycho-dynamics of indigenous conflict-resolution methods such as Panchayat in India-Pakistan case, therefore, needs to be properly analysed and included in conflict resolution techniques at interstate level.

The History of the Panchayat System of Conflict Resolution

Panchayat means a court of arbitrators, usually consisting of community's elders; traditionally, their number was supposed to be five (*panch*) – hence “Panchayat” (Pandey, 1990). This term has been used since ages for the traditional ‘village-assemblies’ in the Asian subcontinent which have been acting as the justice-providing/conflict-resolution institution. It is imperative to mention here that the Panchayat system is not a colonial model and it predates the western colonial justice system. There are several types of Panchayats based on their scale and jurisdictional area: Family Panchayat, Inter-family Panchayat, Village panchayat, Inter-village panchayat etc.

Rural societies in India and Pakistan are structurally similar, if not identical in every detail (Alavi, 1972). Both are agrarian societies and basic needs, including justice, have always been provided to people at the village level. These village communities have been termed as ‘little kingdoms’ (Cohn, 1976, pp. 139-42). Thomas Metcalf, a British colonial administrator, aptly remarked for these village communities that they are ‘little-republics’ having nearly everything they want within themselves including the justice system, and, almost independent of any foreign relations’ (Cohn, 1965, p. 96). The panchayat system of conflict resolution is still practised in many parts of India and Pakistan as most of the people still live in villages despite massive urbanization during the last decades. Panchayat is one of many common institutions

in both countries and enjoins both societies psychologically in the sense that people on both sides of the border are culturally trained to resolve their conflicts through this indigenous model of conflict resolution.

The available ethnographic-legal literature suggests that the western legal system was tried to 'impose' on Indian people by the British administration (Chaudhary, 1999, p. 1). The attempts were also made during the British Raj to centralize the autonomous Panchayat system (Baxi, 1982, p. 286). Despite these efforts, Panchayat system had sustained in both formal and informal ways in British India. In the recent past, India has made serious attempts to revive its traditional justice system of Panchayat in its true spirit (Ananth, 2014).

The colonists had promoted the modern justice system of 'courts' as a part of their 'civilizing mission' which promised to provide 'equal justice' to indigenous people. However, not only did this system fail to provide equal justice, but it also deprived poor people of "relative" justice they managed to get from their traditional Panchayat justice system. Sadly, modern justice system also drastically dismantled the local cultural norms and values resulting into imploding the centuries-old social harmony and solidarity in the subcontinent, the detail of which is out of the scope of this paper.

Indigenous Psychology behind Panchayat System

Naturally, people are mentally programmed to settle their disputes according to their social environment and value system. For example, in British society, the system examines one distinct dispute under 'laboratory conditions' in which disputants lose their social status (Moore, 1985, p. 6). Nonetheless, in South Asian hierarchical social structure, people are not supposed to be born equal and they have widely differing inherent worth (Cohn, 1967, p. 155). Therefore, the local justice system in the subcontinent attempts to provide a win-win situation

for all the parties than providing them with equal justice. Moore (1985) described the gist of indigenous psychology behind the working of the Panchayat system:

“In the village council (Panchayat), a dispute is seen as part of the emotional environment from which it grew. Not only individuals, but their families, the community and the histories that led to the discord are also put on trial. The community participates in open discussion and the decision arrived at by a core of respected leaders, focuses on compromise” (p. 6).

The Psycho-Dynamics of Panchayat: Building a Model for Interstate Conflict Resolution

By employing the analogy-making method, this paper proposes that international peacemakers need to know what the secrets behind the success of the Panchayat system are before utilising them into their modern conflict resolving techniques. The salient features and psycho-dynamics of Panchayat system are briefly discussed here as an analogous model to build a conceptual framework for interstate conflict resolution between India and Pakistan:

The success of *Panchayatees*¹ (Panchayat jury) largely depends upon both their scale of ‘respect’ and ‘status’ within parties. It is not only the social standing of the jury members that enables them to impose their verdicts, but the ‘honour’ bestowed upon them by the disputant parties. As an indigenous saying explains: “even the prostitutes are filthy rich, but have no prestige”. Therefore, a person having good moral values is more desirable as a jury member to a person having more wealth/power. The *Panchayatees* are always well known for their positive and fair qualities (Chaudhary, 1999, pp. 95-96). It could partly explain why superpowers like USA or USSR have failed to permanently resolve the conflict between India and Pakistan because both are not honoured equally by the people on both sides. As a

¹ The local name for five Panchayat judges (or jury members) is *Panchayatees* or *Panchs* while the chief jurist is called *Ser-Panch*.

prerequisite, international mediators (or arbitrating state) must be respected unconditionally by both warring states.

In contrast to western principles of equality, Panchayat system provides “relative” justice to the individuals as well as the groups. Panchayat members provide ‘face-saving’ solutions to both parties by offering them relatively different ‘doses’ of honour and material benefits. The weaker party is usually privileged in terms of material benefits while the powerful party is promised an elevation in status if it accommodates the weaker party well. This aspect may seem strange to western arbitrators as an arbitration tactic, however, it needs proper attention of the arbitrators by assuming Pakistan as a weaker party.

The honour (*Izzat*) and social status of disputant parties matter much in arriving at decisions (Chaudhary, 1999, p. 178). Panchayat decisions aim more to save the honour of both parties, than tending to facts. Panchayat members know exactly that people in the subcontinent can bear the material loss, but not the loss of honour. The enforcement of those decisions is difficult, which may hurt the honour (*Izzat*) of either party. The honour of both parties has always been a strong bearing on the final decision – rather than sticking very closely to the facts. It implies that both the parties (states) need to be convinced by the mediators that the acceptance of a certain resolution of the conflict would enhance their status in the community of nations.

Panchayat system deals with both socio-economic and emotional aspects of the conflict. One strategy involves hearing the grievances of those in dispute repeatedly to help desensitize the problem. This technique helps *Panchayatees* to ‘de-escalate’ the conflict. The prolonged discussions covering all potential perspectives facilitates a kind of emotional catharsis for the disputants. The dissipation of the emotional content of the dispute through repeated recalling and ‘re-experiencing’ of the conflict, aids to the resolution of material and social components

of the conflict. It is appropriate to mention here that the trauma of partition-1947 – which took more than a million lives – is an important contributor to India-Pakistan conflict that still haunts the people on both sides.

The ‘History’ of conflict is a major factor considered very seriously by the *Panchayatees*. The history of conflict and past wounds are often of more concern to the warring parties than the actual conflict itself. The material part of the conflict is only a fraction of the years-old enmity between two groups. Gulliver (1969) states that: “there are three main stages of conflict in subcontinent: the prehistory of the dispute, the dispute itself, and the social consequences that follow settlement” (p. 15). Cohn (1967) also observed: “The case which is the crux of the dispute is only a minor expression of a long-standing antagonistic relationship between two families or groups” (p. 156). Therefore, long hearings in the presence of the entire community help to dissipate much of the emotions through this repeated recalling and re-experiencing of the grievance. The psychology behind this is to uproot the enmity from the hearts of the disputants. Here, International arbitrators need to provide both parties with such a platform where they can sit peacefully and talk out their hearts as a catharsis process.

Panchayat decisions are not abrupt but a gradual development of their meetings with both parties in the presence of community. If a compromise is arrived at and is accepted by both parties, they are made to stand up to embrace each other and shake hands. It is a symbol of ending the conflict. The parties are asked to take oath on sacred books (Quran, Bhagavad Gita, Granth etc.) to abide by the decision of the Panchayat. This tradition has far-reaching results as breaking oath is considered a very low-esteem act not only from the religious perspective but it is also considered as lowering one’s own ‘status’; a thing much sought after in this region. Such oath-taking bindings upon rival parties can be used as a tool by international mediators in India-Pakistan case.

In Subcontinent India and Pakistan, the whole community gets involved in disputes based on their closeness with the disputants. Many village conflicts continue for generations, thus leading to the involvement of the whole community. A colonial administrator, Walsh (1929) wrote about the nature of crimes and conflicts in British India:

“In England, a very large proportion of crime is committed single-handed, and the average number of offenders per crime must be under two. The average number per crime in the united provinces (UP, present India) must be nearer ten than two. Even the conflicts which start between individuals, soon become group conflicts due to mutual obligation of kinsmen or fellow villagers” (p. 10).

Therefore, Panchayat involves the entire community of the disputant parties, because they know that the single disputant cannot take a decision at its own. And even he does so in the absence of his group members; he is likely to revert from his decision due to pressure from the other members. It is therefore understandable that why (every) ruling parties have to face the wrath of the opposition parties in both countries when they tend to reconcile differences with their traditional rivals. It implies that international arbitrators must engage all the stake-holders – all the leading socio-political and religious factions in both countries – simultaneously while tending to the mediation process.

Another very important factor behind conflicts in the subcontinent is ‘Land’, which is very casually treated just as a “commodity” in the western world. People, in the subcontinent, develop emotional attachment to the land as it provides food and status. The land is no less than a ‘*Maa*’ (mother) to local people. *Panchayatees* take this emotional perspective into consideration before proposing a resolution of conflict involving land. International arbitrators also need to pay attention to this aspect. This aspect can give useful insights to resolve the intractable Kashmir dispute between India and Pakistan.

To sum up, the main difference between Panchayat and modern justice system is that modern system punishes, leaving the enmities as they were, while Panchayat resolves the enmities permanently, addresses its root causes, reconciles and rehabilitates the parties. The elders help to soften the hearts and minds of the conflicting parties and make them think about the consequences of violent conflict. The main purpose of the Panchayat is to contain conflict, and focus on reconciliation rather than providing absolute justice. Both parties are assured somehow that resolving the conflict would enhance their 'status' within the community. Similarly, both India and Pakistan must be ensured by the international arbitrators that settling their mutual issues would not harm their credibility in the global power structure.

Conclusion

Before the emergence of the nation-state system, each community in the world was governed through centuries-old traditional methods. Similarly, Indian communities have used their indigenous knowledge for centuries to resolve their intra/inter-community conflicts. The community elders have been using the indigenous values to resolve the conflicts through the Panchayat system in many parts of South Asia. The Panchayat system has been much successful in reaching a consensus or amicable settlement of disputes. Therefore, the possibility of effective international mediation between India and Pakistan is only a question of understanding the psycho-dynamics behind this micro institution of Panchayat and utilising it onto macro level interstate conflict resolution mechanism.

What is not being proposed here is that the original Panchayat system should replace the institutional layers of the modern international state system, nor am I proposing that international mediators should replicate the old-fashioned style of proceedings by summoning both parties in a ground or a hall. However, the emphasis is on the utilisation of micro-level psycho-dynamics of Panchayat as an inspiration to develop a workable model for interstate

conflict resolution between both countries. Such a model can borrow from the traditional knowledge and psychological/moral structures of this centuries-old justice system. It is also worth mentioning that psychologically, people in the subcontinent, tend to transpose the psycho-cultural moralities learned through their primary social institutions into every other institution present in the outside world (Kakar, 1978). This aspect gives credence to the proposition that the moralities of the Panchayat system could be useful in resolving interstate conflicts as well. Lieven (2012) also puts forward that Pakistanis conceptualise themselves as ‘one’ large kin-group in the community of nations and grant Indians a special rival status of ‘another’ such kin-group.

This paper has argued that the main reasons behind the failure of international mediators – to bring peace in this emotionally charged region – lies in ignoring the indigenous psychology behind traditional conflict resolution systems. Following the traditional norms may eliminate the trust gap between the mediators and the parties, and increase the respect-level of the former. Therefore, this paper proposes that it is time for international arbitrators to utilise the subcontinental indigenous ‘common-sense’ of conflict resolution into their modern mediation techniques. An Indian cultural psychologist, Nandy (2002) also argues that south Asian ethnic conflicts owe to similarity and nearness rather than differences.

Finally, this paper pointed out that the psychology behind “Conflict-Resolution” does not differ much for intra-group, inter-group or interstate conflicts within the same cultural milieu. There is no reason that interstate conflicts cannot be compared to conflicts in older and more traditional societies. They cannot be studied in isolation from their past. Therefore, traditional strategies are relevant to resolve them. After all, it is always the size of the snake-catching stick that varies for catching either a small snake or a giant anaconda; while the shape and contours of the stick always remain the same. Similarly, although Pakistan-India inter-state conflict is at the top of the continuum scale when compared to intra-group and inter-group conflicts in the

subcontinent, but the characteristics appear to be the same for both micro or macro level conflicts.

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