

**INDIGENOUS METHODS OF CONFLICT RESOLUTION IN  
SIKKIM: A STUDY OF THE DZUMSA**

*Dissertation submitted to Sikkim University  
For the partial fulfilment of award of the degree of*

**MASTER OF PHILOSOPHY**

Submitted by

**Ganga Maya Tamang**

Roll No 13MPPC02



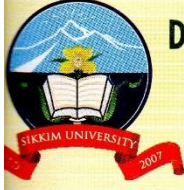
**Department of Peace and Conflict Studies and Management**

**School of Social Sciences**

**Sikkim University**

**Gangtok 737102**

**2015**



**DEPARTMENT OF PEACE & CONFLICT STUDIES & MANAGEMENT**  
**SCHOOL OF SOCIAL SCIENCES**  
**SIKKIM UNIVERSITY**  
*[A Central University established by an Act of Parliament of India, 2007]*

Date: 28<sup>th</sup> February 2015

**DECLARATION**

I declare that the dissertation entitled “**Indigenous Methods of Conflict Resolution in Sikkim: A Study of the Dzumsa**” submitted to Sikkim University for the award of the degree of **Master of Philosophy**, is my original work. This dissertation has not been submitted for any other degree of this University or any other university.

  
**Signature of the Research Scholar**

Ganga Maya Tamang

Roll No 13MPPC02

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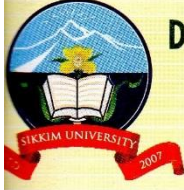
**Head of the Department**

अध्यक्ष  
Head  
शांति एवं द्वन्द्व अध्ययन एवं प्रबंधन विभाग  
Department of Peace and Conflict  
Studies and Management  
सिक्किम विश्वविद्यालय  
Sikkim University



**Supervisor**

**Dr. Salvin Paul**  
Assistant Professor  
Peace & Conflict Studies and Mgmt.  
SIKKIM UNIVERSITY  
6TH MILE, TANDONG GANGTOK,  
SIKKIM-737102



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Peace & Conflict Studies and Mgmt.  
SIKKIM UNIVERSITY  
6TH MILE, TANDONG GANGTOK,  
SIKKIM-737102

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Ganga Maya Tamang

## **List of Abbreviations**

ADC – Autonomous District Councils

AFSPA – Armed Forces Special Power Act

ASI – Assistant of Superintendent of Inspector

BSC – Bordoloi Sub-Committee

CR – Conflict Resolution

ICJ – International Criminal Justice

ICMR – Indigenous Methods of Conflict Resolution

MCR – Modern conflict resolution

NATO – North Atlantic Treaty Organisation

NE – Northeast

NSCC – New Sudan Council of Churches

RJ – Restorative justice

SDM – Sub-Divisional Magistrate

TCE – Traditional Cultural Expressions

TK – Traditional Knowledge

TRC – Truth and Reconciliation Commission

UNECA – United Nations Economic Commission for Africa

UNITAR – The UN Institute for Training and Research

WMD – Weapons of Mass Destruction

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# Chapter I

## Introduction

Conflict is an inevitable feature of human interaction. Conflict occurs across all social levels; intrapsychic, interpersonal, intragroup, intergroup, intranational and international. Conflict can be of various types such as, personal, racial, class, political, values and interests, communal and non-communal, ethnic, ideological, cultural, economic and social. Conflict can arise because of differences in personal preferences, group interests and aims. It can take different forms like quarrels, disputes, feuds and armed fight. Throughout the human history, there have been different kinds of conflicts in different societies, culture and civilization and it differs from place to place over a time period such as conflict over resource, territory, power, culture, religion, ethnicity, ideology etc. Therefore, in order to resolve conflict, one must come up with innovative and creative ideas to manage and transform it in ways that prevent its escalation leading to destruction. The mechanism which solves the conflict is called *conflict resolution*.

Many of the contemporary societies have dual mechanism of conflict resolution such as *modern/western* and *indigenous/traditional*. Modern is formal institution which developed in west especially in North America and Europe. Indigenous is local, traditional, and informal in nature and is based on the customs and cultural values of particular society. Indigenous conflict resolution mechanism use local actors (elders, chiefs, clergy men etc), community based judicial and legal decision-making mechanism to resolve conflict whereas western mechanism use formal institutions such police, courts and various other institutions. They are diverse and differ from one community to another and context specific such as; *Shuras* or *Jirgas* in Afghanistan, *Sulha* in Middle-East and *Mato Oput* in Northern Uganda.

Processes of colonialisation, westernization, modernization and globalisation marginalized the traditional methods of conflict resolution and modern formal institutions are universalized. Western approaches are universally applied to resolve all forms of conflicts around the globe. Resolving conflicts by indigenous mechanism using local actors and traditional community based judicial and legal decision-making mechanisms within or between communities have not been given much importance. But there are serious flaws in modern system of conflict resolution. It cannot

sufficiently address all the contemporary conflicts created by modernization and globalization. Instead, it contradicts with indigenous cultural values and priorities, because, these two methods are culturally different from one another.

Modern system is rooted in European worldviews based on retributive philosophy that is hierarchical, adversarial, punitive, and guided by codified laws, written rules, procedures and guidelines. In this process, victim is seen as sufferer, therefore, criminal has to suffer and punishment is used as solution to appease the victim and to satisfy society's desire for revenge. Law is applied through an adversarial system that places two differing parties in the courtroom to determine a defendant's guilt or innocence and result is declared on win-lose situation.

The indigenous mechanism is based on a holistic philosophy, guided by the unwritten customary laws, traditions and practices that are learned primarily by example and through the moral teachings of tribal elders. The holistic philosophy is a circle of justice that connects everyone involved with a problem or conflict on a continuum, with everyone focused on the same centre. The restorative and reparative method is used while resolving the conflict. They emphasize more on reparation of damaged personal and communal relationships. The victim is the focal point, and the goal is to heal and renew the victim's physical, emotional, mental, and spiritual well-being. It also involves deliberate acts by the offender to regain dignity and trust, and to return to a healthy physical, emotional, mental and spiritual state, and to restore personal and communal harmony. Resolution is made on truth based compromises on the basis of honesty, justice and fairness with social harmony as the greatest objective to achieve rather than punitive actions leading to win-lose situation.

Due to cultural differences in worldview and its universal application, modern legal system deprives to provide justice and rights to the indigenous people. In this regard, many of the indigenous methods of conflict resolution are reviving as an alternative. Indigenous conflict resolution is providing local solutions to local problems that challenge the methodologies and epistemologies of modern mainstream conflict resolutions. Therefore, to interrogate indigenous methods conflict resolution and their positive effects to maintain harmony society has become more imperative in the contemporary conflict ridden society.

This study tries to understand diverse application of indigenous approaches to conflict resolution in different parts of the world. The study looks into the relevance of indigenous methods of conflict resolution in different regions of the world as well as in the tribal societies of India by examining how Dzumsa as an indigenous conflict resolution mechanism function in Sikkim.

### **Rationale and Scope of the Study**

Many of the indigenous methods of conflict resolution are marginalized in the wake of westernization and globalization that universalized western model of conflict resolution. At the same time, the importance of indigenous methods of conflict resolution is increasing in the contemporary society to resolve those conflicts created by western industrialization and capitalism around the globe. Formal institutions of conflict resolution have failed to resolve conflict effectively but rather become counter-productive and contradicts with indigenous cultural values and priorities. Two methods of conflict resolutions are rooted in different cultures and formal conflict resolution mechanism is based on retributive justice whereas traditional on holistic and restorative justice.

A critical assessment of global conflict trends indicates that since post-World War II, there have been more local (intra-state) conflicts than interstate or global conflicts. However, indigenous people are more suffering from local conflicts that are caused by agents of globalization. Ethnic conflicts are created by nation-building process; environmental and natural resource conflict caused by national and transnational companies'; displacement due to construction of dams, highways, national parks, farming, mining, and occupying indigenous land and spaces. Thus, indigenous people are victim of human rights violations. Examples of such conflicts are common in Middle East, Africa, Asia and Latin America where the conflict involves indigenous versus non-indigenous groups. In most of the conflict, conventional western approach is prioritized. Indigenous community is marginalized within this formal legal system, which is often used as a tool by powerful interests to seize and further disenfranchise them. In most cases, modern legal system failed to provide justice and rights to the indigenous people.

In this regard, many of the indigenous method of conflict resolution mechanism is reviving as an alternative by mainstreaming indigenous conflict resolution by providing

local solutions to local problems that challenge the methodologies and epistemologies of mainstream conflict resolution. Therefore, to interrogate the relevance of indigenous methods of conflict management have become more imperative in the contemporary society especially by examining the experience of Dzumsa.

In this regard, study tries to explore how modern conflict resolution is being implemented and become counterproductive. Then it tries to see how indigenous conflict resolution is conceptualised and being practiced in different region by different people and its application in resolving conflicts in the contemporary world. Finally, it tries to analyse what are the challenges IMCR face by examining experience of Dzumsa.

### **Conflict Resolution: A Review**

Modern conflict resolution is a well-defined practice in post-cold war era that is in 1950s and 60s as foundational period and further in 1970s and 80s by handful group of scholars and practitioners in North America and Europe (Ramsbotham et al., 2003). This modern way of conflict resolution is based on formal institution of courts, law and orders, facts and evidences which are very complex and time consuming. Western-based model of conflict resolution involves diplomacy, negotiation, conciliation, arbitration and mediation whereas indigenous paradigms calls for a rejuvenation and reclamation of ways in which disputes may be resolved according to the culture and customs of the indigenous party involved (Victor, 2007).

In modern term, conflict resolution refers to the termination of a conflict or dispute through the elimination of the underlying bases or cause of the conflict (Burton and Dukes, 1990). Conflict Resolution (CR) is oriented toward conducting conflicts constructively, even creatively, in the sense that violence minimized; antagonism between adversaries are overcome; outcomes are mutually acceptable to the opponents; and settlements are enduring (Kriesberg, 1997). But, it does not always take a constructive course (Deutsch, 1987).

Conflict resolution is a burgeoning field of policy research and action and it is conceptually differentiated from conflict prevention, conflict management and conflict settlement. While conflict resolution aims at dealing with the root causes of the conflict and eliminating them even by altering and restructuring the institutions, systems and

forces that breed, nurse and perpetuates such conflicts whereas prevention, management and settlement of conflicts can be seen as different stages of conflict resolution (Muni, 2003). Critical theorists, post-structuralists and others criticize conflict resolution for being incapable of serving a truly emancipator purpose, because it is limited to 'problem-solving' that takes the world as it finds it and seeks to do no more than manage existing structures (Ramsbotham et al., 2011).

Realist saw conflict resolution as soft headed and unrealistic, since in their views international politics is a struggle between antagonistic and irreconcilable groups in which power and coercion were the only ultimate currency. Marxist and radical thinkers from development studies saw the whole conflict resolution enterprise as misconceived, since it attempted to reconcile interests that should not be reconciled, failed to take sides in unequal and unjust struggles and looked for analysis within a popular global perspective of the forces of exploitation and oppression (Mial, et al., 2002).

Western conflict resolution is material; revolve around the socio-economic development. They think that, sufferings and discomforts are bad whereas comforts and pleasures are good. They focus on individual rather than society. Therefore, to resolve conflict basic human needs need to be addressed through political and economic solutions. Western and indigenous cultures are starkly different from one another. Western model of conflict resolution is criticized as culturally inappropriate for indigenous people due to differences in worldview underlying the techniques, sometime it may contradict from indigenous understanding of conflict and conflict resolution (Walker, 2004; Irani, 1999).

Conflict resolution theories were developed in response to symmetric conflicts (Kapila, 2003). But, all modern conflicts are not symmetric. Therefore, most approaches of conflict resolution could not have adequately taken the important differences between the core and peripheral conflicts. They may help to manage the former, but fail to address the causes and the nature of the latter. Distinguishing between the political conditions in the core and the periphery should have major implications for the feasibility of conflict resolution and approaches to it. Conflict resolution could be organized and instrumental in the corner, but messy and difficult in the periphery in fact. International intervention continues to fuel violence in the periphery. To regain its validity, research on the resolution of conflicts must take their transformation much

more seriously, especially in the periphery. Intervention succeeds only if the domestic conflicts in the periphery are restructured in a manner that at least some of their root causes are eliminated (Vayrynen, 1999).

Modern conflict resolution is Euro-American model, dominated by western ideologies and interest, because, conflict resolution as an academic discipline is dominated by experts from global north, it is top-down process (Ginty, 2011). It is state-centric, metro-centric and demo-centric. It is autocratic, technocratic, bureaucratic and authoritative. Peace promoted by this is authoritative peace. They do not take local interest into consideration while resolving the conflict. Western Conflict Resolution assumes that conflict occur due to failure of the state, therefore, it focuses on state-building, and democracy and economic liberalization as solution of conflict (David, 2011). It is always linked to security, development and democracy (Huges, 2010).

Western conflict resolution theory and practice operate within macro-political context (Salem, 2007). Conflict resolutions always prevail within a realm of political discourse and activity (Hayward and O'Donnell, 2011). Conflict resolution could not be politically neutral, rather it is a means of social control. Modern conflict resolution is narrow based on interest of power politics which had completely failed in Rwanda and Darfur, (Piparinen, 2010; Scimecca, 1987; Burton, 1987).

The deep structural understanding of conflict resolution contains troublemaking mechanism which continues to fail in resolving conflict. Instead there is a requirement of holistic approach that considers the entire level of deep structures of our society, civilization and decision-making, including bureaucratic rationalization and normalization processes (Piparinen, 2010). One mechanism is not sufficient however, in order to be innovative or effective there is a need of hybridization of both modern as well as traditional (Ginty, 2011). Concept of conflict resolution is often conscientiously applied to processes outside the realm of political activity, rather it has to be creative. Creativity is defined as unconventional capability or a social and epistemological process where an actor or actors involved in the conflict learn to formulate an unconventional resolution option and procedure for resolution (Arai, 2009).

## **Indigenous Methods of Conflict Resolution: An Understanding**

Indigenous conflict resolution is traditional way of resolving conflict based on culture, practices beliefs, faiths and rituals in a holistic manner. It refers to institutions that are created outside western influences or communities that are encapsulated into modern states as marginalized and subordinate populations (Tuso, 2011).

The term '*indigenous*' means local, folk, traditional which is emerged or originate from the multiple sources, including traditional teaching, empirical observation and its culture that carries historic experience of people, adapts to social economics, environmental, spiritual and political change. Indigenous means holistic, relational and spiritual. Indigenous people are aboriginal groups, mountain people, tribal clans, cultural minorities, hill tribes and highland dwellers (Osi, 2008). The term both indigenous and traditional are used as interchangeably as they similar connotations. Traditional approaches do not mean opposite to modern that include simple, savage or static rather it is a certain approach which do not belong to western and modern institutions that claim to be an alternative to modernity (Boege, 2011). Indigenous people are capable of adopting new techniques and sometime it has been forced to adapt to changing circumstances and engage in processes of conflict resolution to survive or prosper (Mag Ginty, 2011).

Indigenous conflict resolution mechanism as social capital, defined as the capability of social norms and customs to hold a members of group together by effectively setting and facilitating the terms of their relationships. Sustainability facilitates collective actions for achieving mutually beneficial ends (Fred-Mensah, 2005: 1). Indigenous conflict resolution is the healing processes in which all stakeholders individuals, families and communities involve to re-establish or re-build social harmony (Wolff and Braman, 2009). Indigenous conflict resolution involves key elements like a) family representation of the individual; b) ritualistic symbolizing respect and humility towards the offended family, c) the use of respected elders or chiefs as mediators; d) the payment of institution of inquiry or harm and e) a symbolic agreement between the families in an effort to restore peace.

Among the indigenous people, conflict resolution not only mean to resolve violence between two parties but also to mend the broken or damaged relationship, and rectify

wrongs, and restore justice where dispute is not only between the disputants but community as a whole (Utne, 2001).

Conflict is viewed as a communal concern. Conflict resolution followed conflict patterns as embedded in the norms and customs of a society. Resolution processes, therefore, were culturally prescribed. Emphasis was placed on reconciling the protagonists with each other, rather than on establishing right and wrong, winner or loser. Thus punishment was not aimed at retaliation, but at restoring equilibrium, usually through the mechanisms of restitution, apology and reconciliation. There was emphasis on justice and fairness, forgiveness, tolerance and coexistence. The approach thus emphasizes healing of emotional wounds created by conflict and restoration of social relationships. The negotiation or reconciliation process in the traditional setting was seen as a re-establishment of relationships between people where elders play critical roles in promoting and containing social cohesion, peace and order in societies. In contemporary society, respect for the elders, customs and values have been diluted through westernization (Osamba, 2001).

According to Okrah (2003), traditional societies resolved conflicts through internal and external social controls. The internal social controls use processes of deterrence such as personal shame and fear of supernatural powers. External control is sanctions on associated with actions taken by others in relation to behaviours that may be approved or disapproved. Spiritual and cultural process, institution and values have played an important role in indigenous conflict resolution (Hwedie and Rankopo, 2009)

Indigenous conflict resolution has been supported and encouraged by mainstream funding agencies and research institution to make the conflict resolution more effective and to assist the people to achieve a range of justice, social, cultural and economic goals (NADRAC, 2006). There has been a different type of traditional conflict resolution which differs from context to context, because people are diverse and distinct across the continent.

### **Relevance of Indigenous Methods of Conflict Resolution**

The Indigenous Methods of Conflict Resolution (IMCR) around the globe have been relevant and effectively being practiced in different region especially among the tribal groups of Latin America, Africa, Middle-east, and Asia including India especially in its



tribal zone of Northeast. Traditional approaches do not have universal application, rather it is context-specific with specific techniques of dispute resolution or reconciliation that involve rituals, symbols and functional practices (Ginty, 2011).

The indigenous conflict resolution is practiced in various forms around the globe. Some of them are in organized or some of them are not and do not have formal tangible offices as such, but, practices are in symbolic rituals, dialogue, mediation, relationship and community based approach and spiritual forms as an ultimate way to resolve local conflict other than modern formal institution. Such as oath taking and biting tiger tooth among Dimasa and Karbi Tribe in Assam and Lotha in Nagaland (D'Sousa, 2011).

Organized in the sense, that some societies have their own formal body, codified customary laws and solved by councils (which include family, extended family, clan, and neighbour) and councils of elders. They are socio-political organization of community. These indigenous/traditional institution function as conflict resolution as well as government and conflicts resolved by these institutions are conflict over pasture, grazing land and water resources, often leading to cattle rustling or raids and family disputes (Rabar and Kamini, 2004).

These institutions are known by different name at different communities such as *Kokwo* amongst the Pokot and Marakwet tribes in Northern Kenya, the *tree of the men* amongst the Turkana and *Nabo* among the Sambaro communities. *Gacaca* in Rwanda. *Kappa Mende* (truth and reconciliation commission) in Serra Leone, *Bashingantahe* (facilitation of the peace agreement, the word mean men of integrity who are responsible for settling conflicts at all levels, from the top of the hill to the courts of kings) in Burundi. Formal institutionalize judicial system resolve the social conflict in both traditional and contemporary society of Burundi (Odwong, 2011), *BanyBith* in the Dinka Community, *Kuar Kwac* in the Nuer community in South Sudan. *Jo Likweeri* in Pari community, *Abakumba* in Azandi community (Wassara, 2007). These included a ritual reconciliation ceremony *MatoOput* among Acholi in northern Uganda, a traditional justice system *Gacaca* in Rwanda and a traditional consultative and judicial meeting *Kgotla* in Botswana (Ginty, 2008).

Indigenous Conflict Resolution mechanism is relevant in rural areas only where formal legal system has failed to reach. People prefer indigenous mechanism because it is free from corruption, easily accessible, culturally acceptable and morally binding. The rule

of natural justice is observed and nobody is condemned or unheard. The system is regarded as community owned as it is backed and based on customary law, norms and culture. (Radar and Kamiri; 2004). Indigenous mechanism of conflict resolution is practiced as private affairs in Micronesia, Island of America (Wolff, et al., 2006). In Sierra Leone, people prefer traditional justice system because of high expense and time consumption in formal legal system. In Afghanistan, people go for traditional dispute resolution because formal institution fail to provide justice to local people in satisfactory manner (Gang, 2011; Dempsay and Coburn, 2010; Lappia, 2000). *Gadda* system in Ethiopia resolved historical conflict over scarce water resources in Borona region of Ethiopia among Oromo people (Edossa, et al., 2007).

Indigenous court function as autonomous body at local level and at higher level, it works cooperatively with modern institution that is either supported by government or funded by external sponsor or non-aboriginal international agencies specifically who controls this process and becomes its gatekeeper. Therefore, it raises the question of authenticity, (Victor, 2007; Ginty, 2011). For example, in South Sudan faith organizations such as the New Sudan Council of Churches (NSCC) had combined both traditional and modern values of conflict resolution to build peace in Dinka and Nuer communities of Upper Nile and in Bahr el Ghazal during the period of active warfare (e.g. the Wunlit people-to-people peace process). This trend continues in the post-conflict period (Wassara, 2007). Truth and Reconciliation Commission in South Africa that is converted into act as TRC Act, 1995 as restorative conflict resolution mechanism after the end of Apartheid and *Gacaca* in Rwanda, rituals of *Sulh* (Settlement) and *Musalaha* (reconciliation) in Middle East (Odwong, 2011; Irani, 1999).

In Canada, Africa and Afghanistan, indigenous mechanisms of justice, peace, and reconciliation are reviving as an alternative to western or modern institutions because they have failed to resolve local conflicts or to provide justice to local people and to restore peace among the indigenous people (Gang, 2011; Run, 2013). Such as ritual reconciliation ceremony *MatoOput* among Acholi in northern Uganda, a traditional justice system *Gacaca* in Rwanda and a traditional consultative and judicial meeting *Kgotla* in Botswana (Ginty, 2008; Kadenyi, 2008). The recovery of the traditional mechanism in Africa, far from being a non-modern alternative to western modernity, is the expression of a claim to an alternative (Boege, 2011).

## **Challenges of Indigenous Methods of Conflict Resolution**

Due to westernization, modern civilization and development thinking, the role and efficacy of the traditional conflict resolution mechanism has been greatly eroded, marginalized, and diminished. In some places, it has become totally irrelevant, because of individualism, people prefer modern police and court system. The system is regarded as an archaic, barbaric, uncivilized and outdated mode of arbitration. Young people have lost faith on elders, traditional institutions and customary laws saying that, they belong to the old generation. External factors and opportunist tendencies largely influence customary methods of brokered peace. Indigenous customary laws cannot be practiced by other than the particular community. This limits the impact of the traditional conflict resolution mechanisms (Radar and Kamiri, 2004; D'Souza, 2011).

Indigenous mechanism of conflict resolution is effective at grassroot level only and it is mainly confined to rural areas among indigenous people. Their relevance or development beyond local level was combinedly blocked by colonial experience and neglect of post- colonial state (Economic Commission for Africa, 2007; Obarrio, 2011). It is on the sharp decline on local level too, because of the lack of recognition in formal courts and because of the spread of Christianity, which condemns the practice as unethical. Further, it is due to influx of outsider and influence of foreign culture, the value amongst the indigenous community have changed. Lack of proper and efficient enforcement instruments and technique in traditional mechanism unable to deal with new forms of modern conflict such as environmental conflict and ethnic conflict created by nation building process, land dispute and conflict over natural resources that are confronting with indigenous people. It could not resolve the conflict locally so conflict has to be taken outside the village (Wassara, 2007, NADRAC, 2006; Maria et al., 2007).

Different regions have different reasons of declining indigenous mechanism of conflict resolution such as; modernization and civilization among the Pakot community. Diminishing role and efficacy of customary mechanism of conflict management among the Marakwet people is one of the main weaknesses of the system. Civil war in South Sudan brought radical change in social behaviour. Because traditional chiefs were forced to take up the arms and the people who have fled from their village and people have to set up their own rules and values of Conflict resolution institution that are not compatible with ancestral one. When they return back, they undermine traditional system as well (Radar and Kamiri, 2004; Wassara, 2007). Run argues that colonialism

is the main reason of silencing indigenous thought of conflict resolution in Africa (Run, 2013). Wenona Victor argues that aboriginal method of conflict resolution is marginalized due to unequal power, language barrier and wrong interpretation of culture as well as other things and one dimensional European approach to conflict resolution (Victor, 2007).

Methodologically, indigenous world view of conflict resolution marginalised through westernisation because in practice, training and research western model of conflict resolutions are promoted as appropriate to all cultures. Colonialism helped to dominate the western epistemology and ontological values (Walker, 2004). Kadenyi argues that basic methodological assumption and framework of western approaches need to deconstruct, and the means to rediscover and make applicable indigenous African approaches (Kadenyi, 2008).

As per the background of above literature review or survey, many research had been done on indigenous mechanism of conflict resolution in Africa, Latin America, Australia, Afghanistan and Northeast India, but research on Dzumsa as IMCR in Bhutia community of North Sikkim has remain unexplored. Therefore, this study tries to examine how Dzumsa system sustain, relevant and function as an IMCR in the contemporary society.

## **Objectives of the Study**

- To understand the various perspectives of Conflict Resolution.
- To theorize the restorative justice of indigenous Conflict Resolution.
- To understand the relevance of IMCR in contemporary society.
- To analyze the effectiveness and consequences of IMCR in Northeast India.
- To understand how Dzumsa as an IMCR function in Sikkim.

## **Research Questions**

- What are the various perspectives of Conflict Resolutions?
- How to theorise the scope, relevance and limitations of Indigenous Methods of Conflict Resolution in the contemporary society?
- How effective IMCR in Northeast India?
- How does Dzumsa function as an IMCR in Sikkim?

## **Hypothesis**

- Relevance of Indigenous Methods of Conflict Resolution appears to increase in the contemporary society.

## **Research Methodology**

**Area of Study:** The study is based on two remote villages of North Sikkim namely; Lachen and Lachung that are exclusively inhabited by Bhutia Tribes having a total population of 2,923 and 2,800 as per the census of India, 2011 respectively. These two villages in Sikkim still practice Dzumsa as an Indigenous Method of Conflict Resolution.

This study has employed both qualitative and quantitative methods to collect primary and secondary data. Data has been collected from secondary sources such as books, journals, articles, newspapers etc.

Primary data has been collected from the field with the help of structured questionnaires and interviews from various stakeholders such as *Pipon* and members of Dzumsa, and police who are deployed in the outposts of villages. The sample size is 200 from both the villages that include random selection of male, female and youths.

Data analysis focuses on exploring informants and participants' descriptions and opinions regarding individual disputes, patterns of dispute, causes, and selection of resolution processes to understand the relationships between community and district actors in conflict management and transformation.

## **Chapterisation**

### **Chapter I: Introduction**

This chapter outlines the nature of the study, rationale and scope, objectives, research questions and methodology. The study delves into scope of Dzumsa as an Indigenous Method of Conflict Resolution in Sikkim.

### **Chapter II: Conflict Resolution: An Understanding**

Second chapter delineates conceptual analysis and historical evolution of conflict resolution mechanism by drawing various perspectives to compare the formal and informal conflict resolution mechanism. The last section deals with philosophical foundations of formal and informal conflict resolution mechanisms by examining retributive and restorative justice.

### **Chapter III: Indigenous Methods of Conflict Resolution (IMCR)**

This chapter analyses the IMCR at global, national and Northeast India to comprehend the customary laws, sixth schedule of the Indian constitution, and types, nature and status of IMCR in Northeast India. The objective of this chapter to examine how does IMCR function, its relevance, limitations, challenges etc. in the contemporary society.

### **Chapter IV: Dzumsa as an Indigenous Method Conflict Resolution**

This chapter examines the evolution of Dzumsa, its functions, administration and procedures followed in the villages of Lachen and Lachung in North Sikkim. The last section of this chapter presents the data and its interpretation to understand Dzumsa as an Indigenous Conflict Resolution Mechanism.

## **Chapter V: Conclusion**

This chapter summarises the study and ends with the major findings, recommendations and further scope of research in the area.

## Chapter-II

### Conflict Resolution: An Understanding

#### Introduction

The term conflict resolution has become a buzz word in contemporary scenario, both at international and national level, due to mushrooming of new conflicts across the globe. Recent history has witnessed two World Wars, inter-state wars, genocides, and civil wars. So far the scholarship on conflict resolution has not been able to develop effective mechanisms of conflict resolution and is still waiting for an inclusive conflict resolution mechanism that will be effective to successfully resolve all conflicts. Many researches are going, on both academically and non-academic, funds and scholarships are given for the innovation of flexible conflict resolution. Theoretical and practical trainings are being provided to resolve conflicts peacefully. Conflict is inescapable in human society. Therefore, in order to resolve the conflicts various methods of conflict resolution have been developed. All informal mechanisms are replaced by modern conflict resolution mechanisms that are developed in West. Modern conflict resolutions are applied in all kind of conflicts based on liberal ideology. Despite the irresistible influence of Western, formal, rational-legal approaches to conflict management, indigenous approaches of conflict resolutions are not only relevant but also in many case, they are better suited. Indeed, conflict management professionals have realised that peace sustains and settlement lasts when parties participate in, and own the process of the resolution of their dispute. Since the 1990s many scholars have come to accept the centrality of culture to the resolution and transformation of conflict. Terms like Ubuntu, *Gacaca*, *Jirga*, *MatoOput*, and *Sulha*, have become common words or vocabulary in conflict studies, especially in serious discourses on appropriate, non-Western conflict management strategies. Modern conflict resolution has failed to address all types of conflicts. Sometimes it lacks legitimacy at local level. Nature of conflict is changing from traditional international-war, inter-state war over territory to environmental conflict, conflict over natural resources, terrorism etc. It demands new innovative, flexible, democratic and inclusive mechanism of conflict resolution.

This chapter details the conceptual framework, history of conflict resolution and evolution of conflict resolution. The second section discusses the evolution of modern



conflict resolution, its universalisation and drawbacks and critical analysis of modern conflict resolution from the perspective of peace and justice.

## **2.1 Conflict Resolution: A Conceptual Understanding**

This section will discuss the evolution of conflict resolution in the society, development of modern conflict resolution, various perspectives on modern conflict resolution and difference between formal and informal conflict resolution.

### **2.1.1 Society and Conflict Resolution**

Conflict is a natural and inevitable part of all human social relationships. Conflict occurs at all levels of society—intrapsychic, interpersonal, intragroup, intergroup, intranational and international (Laue, 1987: 17). Conflict can be of various types such as personal conflict, racial conflict, class conflict, political conflict, conflict of values and interests, communal and non-communal conflicts, ethnic conflicts, ideological conflict, cultural conflicts, economic conflicts and social conflicts, etc. (Burton, 1986: 5-75). There are various types of conditions which can create conflict, such as scarce resources, inequality, political, social and economical and various kinds of discriminations. Conflict creates unwanted situation like war, genocide, holocaust and others which effects normal life in the society, therefore, in order to restore peace, there should be some mechanism to resolve conflict. Everyone wants peace. Peace is always overvalued than conflict. Through the conflict resolution mechanism conflicts, rivalries, disputes and incompatibilities can be checked and minimized and peace can be established (Wani, 2011: 108).

Conflict resolution as a discipline of peace studies emphasises that, all conflicts of human society should be resolved by peaceful and non-violent methods such as diplomacy, communication, negotiation, summits, conciliation, arbitration, mediation and through cooperative and confidence-building measures, etc. In contemporary world the role and primacy of conflict resolution cannot be ignored, it is justified. It is well known that “violence begets violence” and humanity can be preserved and protected from the onslaught of war and holocaust, only when conflicting parties are made to adopt conflict resolution mechanisms for solution of their disputes. Nelson Mandela once addressed South African people saying, “Friends, Comrades and fellow South Africans, I greet you all, in the name of peace, democracy and freedom for all” (as it is cited in Mail et

al., 1999: 152). The pope, Drogheda of Ireland, says in Ireland in 1979, “On my knees, I beg you to turn the path of violence and return to the ways of peace. You may claim to seek justice. But violence only delays the day of justice. Do not follow any leaders who train you in the ways of inflicting deaths. Those who resort to violence always claim that only violence brings change. You must know that there is a political and peaceful way to justice” (ibid, 52-53). In brief, it can be said conflict resolution has played a vital role among conflicting parties and in war zones. In other words conflict resolution is the best device of balance and equilibrium among the disputed parties. Conflict resolution is an integral part of social justice and social transformation which aims to tackle the human crisis and divisions through the peaceful means and avoid conflicts among the nation states. It can be argued that conflict resolution mechanism is the protector, guardian and custodian of the peace, harmony, social justice, world brotherhood and equity across the globe (Wani, 2011: 108). Conflict resolution is an integral part of development, peace and cooperation. It is such a mechanism which paves way towards prosperity, tolerance, brotherhood and humanity. Conflict resolution is a weapon which protects succeeding generations and posterity from the onslaught and scourge of war (ibid, 110). Therefore it is necessary to have mechanism of conflict resolution in the society.

### **2.1.2 Perspectives on Conflict Resolution**

Conflict resolution is an umbrella term. It includes various perspectives of managing or resolving conflicts such as realist (coercive diplomacy), liberal (political, military, economic) and social (humanitarian) (IGNOUa, 2011: 68-70). These approaches are used to end war or to resolve massive physical violence and to restore peace. Realist approach use coercive methods to deal with conflict. It includes both the violent and non-violent forms of coercion—war and diplomacy. These approaches were mainly used after the end of cold war. Liberal approaches use combination of political (democracy), military and market economy as solution to all types of conflict. Social approaches to humanitarian crisis consolidate appeals for protection of human rights and to provide humanitarian aid for maintenance of international peace and security.

**Coercive Diplomacy:** Coercive diplomacy involves the use of threats and limited force in order to convince an actor to stop or undo actions already undertaken. Coercive diplomacy has become part and parcel of western conflict management from the end of

cold war to promote their interest. US employed coercive diplomacy against Iraq, Iran, Libya and North Korea to terminate its Weapons of Mass Destruction (WMD) programme and in Pakistan to stop supporting Taliban (Jakobsen, 2010: 277-81).

**Political perspective:** The political perspective of conflict resolution argues that democracy is the best solution to resolve conflicts both at national and international level. The relationship between democracy and peace is articulated by political philosopher Immanuel Kant. Democracies never go to war against each other because democracies are devoted to resolving issues through compromise, (Muni, 2003: 195). It has become integral part of liberal democracies' foreign policies. On the eve of 9/11 attacks US proposed a war to end terrorism in large part, by promoting democracy in the Middle East. Western countries vigorously encouraged democracy throughout the former Soviet empire in Eastern Europe to help ensure the area will be peaceful (Morgan, 2010: 42). The Western approach to peace building in societies torn by civil war is intervening to, in part, promote rule of law, political parties, elections, and active media, and civil rights as the proper recipe for creating stable societies and responsible governments (ibid). Even within the nation also democracy gives space to all marginalised voices and incorporates peace. It gives freedom of expression that allows the minorities' voices to be heard and can come up in the various forms of social movements. Like in India Dalit movement, women's movements, peasant movements, tribal movements, backward caste and caste movements, human rights movements and environment movements. Another argument of Kant is that at domestic level, democratic system creates constraints against the state going for a war. These constraints arise from the fact that democratic societies enjoy peace and prosperity. They do not want to disrupt peace by going to war nor do they want to bear the economic burden of war. Democratic decision making is a consensual process which makes it difficult to reconcile divergent and conflicting interests among the citizens of the democratic states so as to arrive at a war decision (Muni, 2003: 195).

**Military perspective:** It tries to give military solution to the conflict like use of direct military force to establish demilitarized zones (National Research Council, 2000: 3). It applies organised violence as a means of resolving conflict. Such as US increased response to 11<sup>th</sup> September, 2001, terrorist attack on New York and Washington DC and declared war on terror. It also indicates growing social concern on militaristic approach to national and international affairs that for too long given a privileged in

public discourse (Christensen, 2010: 1). Another approach of military perspective is the use of peacekeeping force. UN Charter of Chapter VI and Chapter VII authorise the function and use of peacekeeping force to restore peace in conflict situation (Jeong, 2000: 124). Peace keeping forces, interposed between hostile forces, attempt to sustain an end to fighting; the operations are temporary measures and are intended to be provisional. Rather than determining the outcome of conflict their task is oriented towards creating conditions in which conflict can be resolved by peaceful means or to neutralise dynamics of conflict which perpetuate the cycle of hostilities so that peaceful resolution can occur (ibid, 124-25).

**Economic perspective:** It tries to give economic solution to conflict and gives strong support for private property and free enterprise – a market economy. The underlying argument is that economic interdependence will ultimately bring peace. For e.g. European Common Market is a forerunner of the EU, with integration undertaken not just for greater economic well-being but to promote better political relations among the member so that warfare among them would disappear (Morgan, 2010: 37).

**Humanitarian perspective:** ‘Humanitarian Intervention’ refers to the use of military force by external actors for humanitarian purposes, usually against the wishes of the host government for violating the international human rights. It is mainly applied when there is serious humanitarian crisis accompanied by violent internal wars created by political, military and social factors such as genocide, ethnic cleansing, massive civil war, dictatorship, terrorism and other types of violence against humanity (Jeong, 2000: 135). Humanitarian intervention support for the delivery of humanitarian relief to endangered civilian such as security to refugees, giving food, medical facilities, prevention of massacre, rape, loot, and driving people away from their homes because delivery of relief aid has become an important international security issue as well as an ethical imperative (De Mello, 1995: 138). Examples of humanitarian intervention are USA, UK in Iraq (1991), USA/UN in Somalia (1992-93), France in Rwanda (1994), NATO intervention in Kosovo (1999), EU and France in Democratic Republic of Congo (2003) etc. (Bellamy, 2010: 360-61).

All these approaches as part of modern conflict resolution focus on resolution of violent conflicts that is absence of physical conflict without solving the root causes of conflict. These approaches promote negative peace. Preventing war is a necessary condition for

establishing real peace, but it is not sufficient. A world without war is certainly desirable, but even this will not really guarantee a world at peace. Therefore, positive peace must be part of a broader, deeper effort to rethink the relationship of human beings to each other and to their planet (Barash and Webel, 2009: 371), and the means of resolution of conflict should be peaceful and nonviolent (IGNOUb, 2010: 13). Approaches of modern conflict resolution are top-down, peace imposed from outside or external actors. Local ownership or bottom-up approach is necessary condition of peace building in post-conflict societies (Lederach, 2003). Modern conflict resolution approaches are guided by liberal ideology. The dominant thinking is that liberal peace, stresses ceasefire, elections, and short run peace operations carried out by international institutions, western states, and local political elites. But the liberal peace is not enough. A just and sustainable peace requires a far more holistic vision that links together activities, actors, and institutions at all levels (Philpott and Gard, 2010).

### **2.1.3 Conflict Resolution: Formal and Informal**

There are two types of conflict resolution i.e. formal and informal. Formal is western or modern and informal is traditional or any resolution mechanism which operates outside the purview of modern legal system. These two mechanisms are different from each other in terms of mediation, value judgement, adjudication etc.

#### **2.1.3.1 Formal Conflict Resolution**

Formal conflict resolution is embedded in western values and custom basically Europeans and Americans. Formal signifies the modernity which is mainly legacy of colonialism. It is guided by codified laws and constitution. Justice is dispensed through trained professionals, lawyers, highly sophisticated and hierarchal institutions. Formal conflict resolution is universal in all technicalities other than few codified laws. Focusing on individual rights, the judgement is based on punitive justice lose-win situation. Formal system adopts the rational approach and hence emotion is never addressed. Furthermore formal legal system is based on individual interests and responsibilities. Participation is not mandatory and the goal is punishment rather than rebuilding of society. Professional training and neutrality is also regarded as the sources of legitimacy and consequently power is the fundamental aspect of conflict resolution in modern systems (Tuso, 2011).

Formal justice system or formal conflict resolution system refers to processes of addressing conflict created and run by States. These may include systems such as the police, the court, and penal code (Gang, 2010: 6). Within the broader formal justice category, western/modern conflict resolution systems are those formal system designed by and typically associated by west. These do not include Western informal conflict resolution introduced through religions, community models and economic practices (Gang, 2010: 7). Mediation, adjudication and arbitration is mainly done by an outsider where as in informal system third party mediator is close to victim offender (Magfarlane, 2007: 505). The process of arbitration replicates the litigation process by promoting an adversarial culture. Decision-making is rigid and inflexible and the process has an individualised focus. Traditional dispute resolution practices consist of a co-operative process where discussions are based on consensus rather than authoritarian procedural requirements. The procedures are flexible, non-coercive, non-punitive and decisions are made for the community (Pringle, 1996: 254).

Informal resolutions seek a change of heart, a transformation and a healing of relationship and spirit. Settlement is related with the community, not a settlement that is separated from the whole of the community, and which pertains to the individual. Sauvé asserts, ‘what needs settling or redress is not issues, but relationships’ (Sauve, 1996: 11), because settlement means reconciliation with the inner (the source of illness), reconciliation with the other (disputants) and the community (clans from all sides). Thus, the goal of individual settlement is merely a by-product to the essential goal, which is reconciliation with the community as a whole.

### **2.1.3.2 Informal Conflict Resolution**

Informal conflict resolution is traditional and culturally established process to address conflict with the intention to resolve conflicts. Informal conflict resolution is based on local culture, values, customs, tradition, practices, connected with nature and supernatural power, familial relationship and knowledge which have been passed over from one generation to the other from centuries. Indigenous is informal because mostly it lacks the recognition of the states, therefore it operates informally among tribal and indigenous communities across the globe. Unlike formal process it is context specific and dispensing of justice is mostly on normative basis. It does not need to have formal institution necessarily rather a village councils uses local actors (elders, chiefs, clergy men etc), community based judicial and legal decision-making mechanism to resolve

conflict (Rabar and Kamini, 2004: 4). It is guided by customary laws, focused on community rights and the judgments are usually restorative in nature.

An informal conflict resolution is defined as resolution facilitated by organizational members through other means than the formal processes of grievances, investigations and litigation (Kolb and Bartunek, 1992:19). It often takes a non-rational approach and Kolb and Bartunek describe this approach as accenting "the unconscious or spontaneous aspects of disputing, ones that are driven by impulse and the feelings of participants and not simply their cognition" (ibid, 20). Informal resolution adopts therapeutic models of mediation and are thus driven by emphasis on emotional healing rather than settlement. The Transformative model of mediation primarily deals with the emotional and relationship or (kinship) factors of disputants. The focus of the process is shifted from solutions to a transformation of the interaction between the relationships. The mediators' role is to assist parties to move from weakness to strength (empowerment) and from self-absorption to responsiveness (empathy) (Bush & Folger, 2005). Transformative mediation derives its roots from communication theory which holds that 'human beings naturally have strengths and compassion, they desire to be neither victim nor victimizer, they have capacities for choice and decision making, and they constantly harbour a desire for connection with others' (Goodhardt et al., 2005:319).

## **2.2 Conflict Resolution: A Historical Evolution**

Modern conflict resolution developed in the West especially in Europe. This was universalised across the globe through the process of colonialism and modernization. This has failed to resolve all types of conflicts and has often become subject of criticism.

### **2.2.1 Evolution of Modern Conflict Resolution**

Evolution of modern conflict resolution is rooted in western culture, specifically to Europe. This was universalised across the globe through the process of colonialism and modernization. When industrial revolution broke out in Western Europe, they started to discover other new lands and started colonising them. Through the process of colonialism, they transplanted their cultural values in other non-European and native societies, because indigenous processes, culture, systems were so diverse that it became inconvenient for them to understand or to run their administration smoothly. Slowly and steadily, they started imposing western values and traditions upon native people

that included conflict resolution mechanisms which led to the loss of indigenous practices or made them irrelevant. The western values carry liberal ideologies and after the colonialism, people of post-colonial inherit the same administrative, political system of their master. Therefore, the traditional practices get further marginalized. Soon after cold war began and world was divided into two poles i.e. US and Soviet Union, backed by liberal and communist ideologies respectively. After the end of cold war, with the victory of US, liberal values continue to operate and impose upon other non-western societies through the process of globalization. In a due process, conflict resolution is also operational in western legal system which developed in the experience of western societies, cultures and traditions over many centuries. Therefore the western legal system has been universally applied in all societies. But, western liberal legal system could not reach to every corner of the world, because, it is technocratic, it needs institutions, infrastructure, and is expensive. Therefore, western liberal legal system is common among the urban areas only. Even though, urban elites have inherited the western system, many of these traditional institutions continue to exist in remote areas both formally and informally, where formal legal system fails to reach.

### **2.2.2 Universalization of Modern Conflict Resolution Methods**

Before colonialism people had their own ways of settling disputes or conflict. In attempts to set up colonial administrative structures to make their governance easier, many ethnic groups were forced into cohesive structures by the colonists destroying many of the roots of traditional structures including mechanisms of conflict resolution (Bukari, 2013: 87). It was during the colonialism that western civilization was universalised in the processes of modernising world which includes conflict resolution too. Indigenous worldviews are marginalized through Westernization, which includes any processes which used to shape things in a Western mode (Galtung, 1990: 313). “The West has the power and inclination to institutionalize and implement its conceptions” regarding conflict resolution (ibid, 314). Utilizing the power of the dominant culture, Western methods assumed superiority in the fields of conflict resolution and mediation (Walker, 2004: 527).

Colonialism inferiorised the indigenous knowledge systems and cultures. Through the colonialism western values were imposed upon non-west region in the name of modernization that represent west as superior and best model to rest or indigenous. West



is civilized and rest indigenous or natives are “barbarian”, “savage”, “primitive”, “inferior”, “tribal”, “traditional”, “agent of Satan” “static”, and often considered as non-human and beliefs of native people are regarded as pagan (Benjamin and Brandon, 2014: 2). Therefore, it is West’s duty to civilize these barbarian people that was justified by famous poem ‘White Man’s Burden’ by Rudyard Kipling Fylding (Mamdani, 1996: 61). Indigenous peoples were considered as people who needed to be civilized, Christianized, and integrated into the dominant societies (Young, 2001: 405). Westernization putative successor major civilizing mission was Christianizing project (‘White Man’s Burden’), role of 19<sup>th</sup> and 20<sup>th</sup> century explorers, travellers, natural scientists, geographers, and anthropologists (Francis, 2008). Civilizing process was both coercive and influential or persuasive. Colonialism not only transplanted the western civilization but also destroyed traditional and indigenous systems and social structures and left the native populations with lasting self-doubt and rejection of traditional practices (Burgos-Debray, 1984). It has crippled many of indigenous value, culture and tradition. Among these rejected and crippled traditions, informal processes of conflict resolution are one. Colonialism has suppressed and silenced an indigenous way of conceptualizing and experiencing the world (Gang, 2010, 14). For example, colonialists imposed English as an official language including courts that still continues in post-colonial period too. However, ‘native verbal communication is demeaned as vernacular chatter’ (Mamdani, 1996: 61). This language is one of the contributing factor to make native people feel inferior, because, English language simply does not mean formal or official but speaking and writing represents the symbol of civilized, modern, superior etc. Thus, its destructive influence on social mechanism is still observed and experienced in post-colonial period. This has undervalued indigenous justice system.

It was during the colonialism, when the missionaries named Africa as the “Dark Continent”, said that Africa does not have history. Beliefs were spread that Africans were the descendants of Ham, the son of Noah, and since he was cursed by his father, blacks were also cursed. It was based on this thesis that slavery was justified (Tuso, 2011: 248). European scientists have developed another powerful negative thesis regarding African people, which posited that the Africans, as a category, belonged to the last leg of human evolution; therefore they were closer to the ape family and were racially inferior (Francis, 2008: 4). Western historian declared that Africa had no history and many of national geographic channel and tourism due to popularity of wild life

safari, romanticised the land of Africa with full of wild animal, lions, tigers, Zebra, giraffe, elephant roaming freely in the state of nature (ibid). This pattern of thinking led to extremes such as pseudo speciation, the act of in-group members recognizing themselves as the only members of the human species, and other people as less than human (Moore, 1993: 72). Colonialism involves oppression of people as well as their culture in the exchange of material gain of colonizing country (Gang, 2010:14). During the same period, similar type of prejudices, manifested against other societies in Asia, the Americas, the Middle East, and Australia and other parts of the world. After the end of Cold war it is America who is propagating western values in non-westerners through liberal ideologies using coercive and persuasive means. Like inferiorisation of Islam and Muslim cultures, creating Islamophobia by personifying of Muslim as terrorist, religious fundamentalist, Jihadist, orthodox, authoritarian, misogynous etc. Some western influential elites inferiorised the cultural practices of others in the region, done politically, economically, culturally, and also sometimes through literature etc. Like in India, Northeast is always considered as zone of uncivilized tribes, barbaric, Naga the naked, the head hunters, dog and snake meat eaters, and many of explorers segregating it as 'exotic land' etc. Misrepresentation by media, and Bollywood movie like showing Muslims wearing skul-cap and black and white chequered towel around the neck, engaging in making bombs and supporting terrorists.

Legacy of colonialism was biased towards the practices of traditional culture. During civilizing mission, European inferiorised all the non-western people as well as traditional knowledge, which destroyed the archives of non-western epistemology (Tuso, 2011). Colonialism breeds feeling of subordination in the collective psyche of native population and self-hatred and disrespect the potentialities of their own culture (Gabbidon, 2010; Friere, 1974: 150). Indigenous people were over-represented within the criminal justice system (from arrest to incarceration) and under-represented in positions of authority within this system (Wenona, 2007: 33). In contemporary period, when Indigenous worldviews are recognized by Western scientists and practitioners, they are still frequently considered to be primitive or superstitious and in need of development through Western scientific approaches (Walker, 2004: 530-31).

Governments and developers have employed the dominant development paradigms to manufacture stereotypes that are negative and that depict indigenous people as "backward", "uncivilized" and "uncultured". While the Western culture and way of life

is presented as modern and “civilized”, that of the indigenous peoples is depicted as an embarrassment to modern states. As a result, indigenous peoples have been discriminated against and marginalized by the processes of economic modernization and development (Kipuri, 2009: 76). In most practice, research, and training, Western problem-solving models of conflict resolution are promoted as appropriate for all cultures, including the Indigenous people. Indigenous world view is marginalized through westernization which includes any process used to shape western model (Gang, 2010:14).

Colonialism has brought lots of institutional changes in colonies including justice system. Institutionalising western civilization that makes western culture universal and hegemonic both epistemologically and ontologically includes conflict resolution (Walker, 2004: 528). This universalisation of western civilization destroyed a great deal of traditional knowledge, including customary laws, folklore, and has undermined the indigenous worldview (Kipuri, 2009: 66). When European left the colonies, these newly independent states continued to inherit the western legal system as a frame of reference to resolve conflicts in their respective societies (Tuso, 2011: 252).

Decolonisation was followed by cold war. During cold war two dominant economic models of development strategies emerged for the newly decolonized societies. The United States proposed and promoted Modernization School and the Soviet Union promoted a revolutionary political/economic model. Both these models regarded the traditional culture of developing countries as backward and contended that those be developed and modernized. This led to further marginalization of indigenous conflict resolution mechanisms because it is an integral part of traditional cultures (ibid, 250). After cold war liberal-democratic model of capitalist development has emerged unchallenged. Thus the Modern Conflict Resolution (MCR) based on capitalist ideology dominated by US. Francis Fukuyama’s popular “End of history” celebrating the supremacy of US contended that other civilization and history has come to end in international political world order and western liberal (capitalists) democracy represented the best possible political and economic formula for all states and societies—a formula that most non-Western societies were likely to imitate” (Funk and Said, 2009: 47). That undermines the other non-western ideologies, histories, civilizations and cultures. Conflict Resolution (CR) resolution applies in the form of humanitarian aid and human development programme through which west intervene in

the new form of imperialism which undermine the local methods of CR and universalisation of MCR continues.

### **2.2.3 Conflict Resolution: A Critique**

In contemporary world, conflicts are treated as threat to international peace and security even if two states are not fighting. Particularly when internal conflicts involve violations of universal norms such as self-determination, human rights, or democratic governance, concerted international actions are being taken to prevent, conclude, or resolve them in old fashioned war. The commonly practiced techniques of CR are mediation through third party intervention, negotiation, peacekeeping and humanitarian intervention etc. Galtung argues that, “intervention from the outside should not be identified with therapy, such interventionism may actually make the system worse in the end (Galtung, 1996: 1). Modern conflict resolution (MCR) promote negative peace because it is based on direct democracy, decentralization, dialogue between hard power and soft power (ibid, 3). Peace in terms of absence of violence. Conflict cannot be resolved but can be transformed. Modern conflict resolution approach resolves (short-term, look upon causes of conflict) the conflict but does not transform (long-term, look upon). Conflict resolution is associated with peacemaking without the use of violence, but many of the modern conflict resolution involve use of violence, force, veto power, both in terms of hard and soft power i.e., the unprecedented military response of NATO to repression in Kosovo; the establishment and enforcement of no-fly zones in Iraq and the use of economic sanctions against South Africa and Yugoslavia (National Research Council, 2000: 2).

Modern conflict resolution reflects the ideological and practical interests of leading states in global North (Mac Ginty, 2011). MCR applies in the form of humanitarian aid and human development programme and through the process of democracy (Mail, Oliver and Tom, 2002: 13) for e.g. France intervention in Syria and NATO in Libya. Humanitarian aid operate within political objective because it gives space of open interference in the politics of post-conflict state and represents their government like US aid in Iraq and Afghanistan (Abdi, 2010: 43).

All the modern conflict resolution methods are based on liberal values that is democracy and free market economy and the kind of peace it tries to promote is ‘liberal peace’. It is a dominant form of internationally supported peacemaking as promoted by leading

states, international organizations and international financial institutions through their peace-support intervention (Mac Ginty, 2011: 19-46). Conflict resolution methods that are based on treaties and accords cannot resolve conflicts all the times. Sometimes it lacks the legitimate concern at local and become counter-productive. Sometimes modern conflict resolution adopts violent approaches to resolve the conflict which further spreads the threat and terror instead of mitigating it, such as 'global war against the terror' and Interventionist wars such as US and NATO forces in Iraq (the Gulf war, and Kosovo and the recent war being waged against terrorism in Afghanistan (Muni, 2003: 202). Modern conflict resolution leads to coercive settlement of conflicts that does not yield long term peace. It only resolves the physical conflict but, shows that peacekeeping without peacemaking and peacebuilding, especially in protracted social conflict situation, will be ineffective in the long term, and possibly in the short term (Druckman, James and Paul, 1999: 105). It lacks in removal of root causes of conflict.

Democratic theory of peace has become confusing and impractical on the basis of internal conflict in two countries of South Asia, i.e. India and Sri Lanka. These regions are suffering from internal insurgencies such as in Indian, the insurgency in Punjab and the ethnic revolt in Assam, of Nagas in Northeast and Tamils in Sri Lanka. The Indian and Sri Lankan democracies have been described by many analysts as the most violent ones, in view of their persisting and intense internal conflicts. Bangladesh, suffered an insurgency in Chittagong Hill Tracts and now religious polarisation is gradually assuming threatening proportion, more so since restoration of democratic rule in 1990. Pakistan also has had phases of democratic rule but without any relief from internal conflicts of ethnic, sectarian and regional nature (Muni, 2003: 20-9). At the regional and bilateral level, India-Pakistan conflict is most intractable and seemingly irresolvable. Still proxy war is going on over disputed Kashmir.

Modern world uses humanitarian intervention as a common method in contemporary world politics. Sometimes humanitarian intervention lacks the concern, legitimacy and becomes centre of criticism for abusive humanitarian justification to legitimise wars that were anything but humanitarian in nature. for e.g., US and UK abused humanitarian justification during Iraq invasion in 2003 by giving reasons of existence of Iraqi weapons of mass destruction (WMD) which were ill-founded (Bellamy, 2010: 366). Majority of states also continue to oppose seeing it as a dangerous affront to another core principle of right to self-determination (ibid). Thierry Trdy argues that

intervention pushed by states in the North and implemented in the South is problematic (Webel and Johansen, 2012: 328). When peacekeeping force is not legitimate to conflicting parties it becomes more problematic by indulging in war with conflicting groups itself like Indian peacekeeping force in Sri Lanka in late 1987. Sometime as in Somalia in 1993 and Kosovo in 1999, armed intervention seems to make the situation worse. There are also claims that the potential for foreign intervention might encourage rebels to take up arms and provoke their government to attack the civilian population (Bellamy, 2010: 362).

Liberal methods of conflict resolution such as the use of the court system and foreign NGOs do not lead to proper conflict resolution. The court system often leads to blame and punishment of some factions which tend to aggravate hostility among the conflicting factions and lead to the escalation of violence. Involvement of foreign and international NGOs in conflict resolution do not often lead to real conflict resolution at the local level rather it worsens the condition. This is because most of these foreign NGOs do not know the local roots and dynamics in these conflicts and are not therefore in position to prescribe local solutions to the real termination of conflicts (Agyeman, 2008). Foreign NGOs and INGOs undermine local capabilities and make situation worse (Mail, Oliver and Tom, 2002: 13). Because NGOs emphasis on achieving the objective of donor countries that is promoting democracy rather than development and humanitarian activities (Abdi, 2010: 43). Therefore, calls for the use of local entities such as the houses of chiefs and community based organizations in resolving local conflicts.

For the post conflict peacebuilding in long-term development, peacebuilding from below is necessary for that the significance of local actors, knowledge and wisdom has to recognize what John Paul Lederach had advocated (Lederach, 2003). The range of conflict traumas and problems is vast that the model of mediation based on the intervention of outsider-neutrals is simply not powerful or relevant enough to promote peace. In order to resolve conflict to make conflict resolution effective in contemporary ethnic conflicts, it is essential to consider the peacemaking potential within the conflicting communities themselves because conflict also arise from themselves (Mail, Oliver and Tom, 2002: 22). In the 2001 Report of the UN Secretary General on the prevention of Armed Conflict, Kofi Annan proposed that an effective preventive strategy requires ‘a comprehensive approach that encompasses both short-term and

long-term political, diplomatic, humanitarian, human rights, developmental, institutional and other measures taken by the international community, in cooperation with national and regional actors' (Bercovitch, Kevin and Daniel, 2005: 136).

The idea of active mediation by an outsider intervention as an empowering approach that is much more context sensitive, because within a broader context of modern conflict resolution theory and practice, the local cultures are given marginal significance. The western model of outsider neutral mediators was not understood or trusted in many Central American settings, while the idea of insider partial peacemaking was (ibid, 20-22). Therefore John Paul Lederach with the experience of Quaker in Central America stressed on the importance of principle of indigenous empowerment:

The Principle of indigenous empowerment suggests that conflict transformation must actively envision, include, respect, and promote the human and cultural resources form within a given setting. This involves a new set of lenses through which we do not primarily 'see' the setting and the people in it as the 'problem' and the outsider as the 'answer'. Rather, we understand the long-term goal of transformation as validating and building on people and resources within the setting (Lederach, 1995, as it is cited from Mail, et al., 2002: 22).

Conflict is a culturally constructed social phenomenon and its resolution must take into account the cultural context in which it takes place. Culture does play a significant role in the dynamics which influence conflict formation, escalation and resolution (Tuso, 2011). "In the contemporary, culturally pluralistic world, a diverse heritage of peace ideals is actually an asset of humanity. We should not undermine the cultural potential to deal with conflict by over preferring the western liberal values. Every cultural tradition possesses a repertoire of peace related precepts and practices that shape their responses to problems of social and political life" (Funk and Said, 2008: 52).

No culture, secular or religious, is uniform; each contains multiple paradigms within which basic symbolic affirmations and injunctions are given specific practical meaning, intellectual significance and ethical context (Funk and Said, 2008: 53). To understand a culture, analysis of historical as well as contemporary religious influence is indispensable. In a situation of conflict, awareness of cultural and religious dynamics can greatly facilitate efforts to improve relations between communities. "Religious and

cultural understanding are vital to enhance the effectiveness of positive initiatives intended to build mutual confidence” (ibid, 53-54).

The most prominent pattern in contemporary internationally supported peacemaking is the extent to which certain actors (usually aligned with the interests of the global north) combine to produce a particular type of peace intervention: the liberal peace. Sometimes called ‘liberal interventionism’ or ‘liberal internationalism’. Liberal peace is dominated by west or western oriented actors. Within this operation of dominant liberal framework of conflict resolution, others approaches remain underdeveloped or excluded from social practice (Mac Ginty, 2011: 20). This modern conflict resolution is functional and technocratic. But question lies on addressing fundamental and underlying issues because without addressing fundamental and underlying issues problem-solving will risk having the long term benefits on quality of life or peace in conflict-affected areas and notion of imagining peace remained imagined. Therefore it always leaves room for imagination (ibid, 24).

### **2.3 Conflict Resolution and Justice: A Critical Analysis**

Approaches of conflict resolution can become successful when they provide justice to the people. Galtung theory of peace argues that sustainable peace or positive peace can’t be achieved only with absence of physical violence but with justice (Galtung, 1996). However, theoretically these two methods of conflict resolution western/modern and indigenous that are operating in the society, based on two different principles of justice, former on retributive and later on restorative.

#### **2.3.1 Peace and Justice**

Peace is a universally valued condition. Everybody prefers peace and there are different notions of peace in different societies. Johan Galtung the founder of peace studies and peace research has defined peace in two terms i.e. positive peace and negative peace. Negative peace is an absence of physical violence or war and other forms of large scale human conflict. Positive peace is an absence of direct violence with justice, harmony, equity and respect of human rights. In other words, absence of physical v structural and cultural violence. According to Galtung peace without justice is negative peace. Therefore negative peace is abundantly prevalent in contemporary world. Hence, in order to bring peace in world order, peace operation together with military, economic



and political intervention became an emerging trend of ‘international judicial intervention’ to address serious and widespread abuses of international humanitarian law and human right and intervene through international humanitarian institutions such as the International Criminal Tribunal and International Criminal Court of Justice (ICCJ) in post-conflict regions such as in Rwanda and Yugoslavia. Increasing western intervention in non-democratic countries of Latin America, Africa, Middle-east and other is the reason for increasing violations of individual human rights (Kerr and Eirin, 2007: 1-2). These interventions were meant for providing justice to the people of these country and the maintenance of sustainable peace (ibid, 4).

Concept of peace includes the absence of direct violence between states, engaged in by military and others in general; and the absence of massive killing of categories of humans in particular (rephrase this sentence). All these types of violence add up to negative peace; as by mutual isolation, unrelated by any structure and culture (Galtung, 2012: 75). Unfortunately wars between nations in contemporary times and its conflict resolution just focuses on how to avoid war-that is, about how to achieve negative peace (Barash and Webel, 2009: 9). Modern conflict resolution applies organised violence as a means of resolving conflict. Such as US increasing response to 11<sup>th</sup> September, 2001, terrorist attack on New York and Washington, DC. It indicates growing social concern on militaristic approach to national and international affairs that for too long given a privileged in public discourse (Christensen, 2010: 1). This militaristic approach gives coercive resolution that would not run for the long term. Coercive measures could not provide justice to the parties, rather it would become counter-productive such as Taliban and Al-Qaeda, Islamic States of Iraq and Syria (ISIS) network in response to US’s global ‘war on terror’.

Conflicts in human society can be resolved when we will deliver equal, parallel and due share to the marginalized, downtrodden and subaltern groups in society. In different societies there are different types of conflicts and to resolve those, we have to use different types of methods and techniques which must be peaceful and non-violent (Wani, 2011: 107). War is the lost resort in political phenomenon. Conflicts should be sort-out by keeping in view the root causes of conflicts and remedied and checked with peaceful means (Kataria, 2007: 32-63). Methods and Techniques of Conflict Resolution's aim is not the elimination of conflicts, rather the aim and primary objective of conflict resolution is to transform actual or potentially violent situation into peaceful

process (Wani, 2011: 107). Unfortunate mechanisms adopted by the modern conflict resolution mostly focus on elimination of conflict and sometimes it adopts violent means to suppress the conflict such as internationally global 'war on terror', nationally in India, implementation of Armed Forces Special Power Act 1958 (AFSPA) to suppress the insurgency in Kashmir and Northeast India. According to Johan Galtung means of the peace has to be peaceful (Galtung, 1996).

If we see peace from the perspective of justice then Indigenous conflict resolution has much potential than the modern one because it focuses on providing justice to victims. Many philosophical, religious and cultural traditions are referred to peace in its positive sense. Many cultural and spiritual traditions have identified political and social goals that are closer to positive peace than to negative peace (Barash and Webel, 2009: 8). IMCR focus on resolution of root causes of conflict rather than simply on resolution of conflict. Its primary aim is reparation or restoration of broken relationship. Both the conflicting parties get opportunities to put forth their views and try to bring out the truth. It makes the offender accountable through apology, take responsibility to compensate the victims by paying money in the form of fine and make the offender pledge of non-repetition of his/her offence in future. This is very important measure for long-term peace. Both the parties shake hands to symbolize the acceptance of one another's apology and resolution process ends with a feast. This transforms the relation between conflicting parties as well as of conflict.

### **2.3.2 Retributive Justice:**

Retributive justice is based on 'tit for tat' principle, counter-revenge. Retributive justice views crime in terms of state law and its violation (Zehr, 1990: 181). Offender and offence to state's law is harmful activity or behaviour. Definitions of crime are intrinsically political-i.e. both the legislative bodies that produce statutory law and the judicial bodies that adjudicate criminal cases are political institutions. It should be recognized that some conceptions of crime are more directly political e.g. in totalitarian societies, where any actions deemed offensive to those in power are treated as crimes, regardless of legislative actions or court findings. A moralistic conception of crime is exemplified by the pro-life movement's characterization of abortion as a crime and a very serious crime independent of its status under state law. In this conception crime is an offense against the moral order of a particular group (Sullivan, 2008: 441).

Retributive justice is too centered on offenders as opposed to victims, often by those with a conservative outlook (ibid).

A major difference between western adjudication and indigenous dialogue is that western thought tends to be rational and is based on Aristotelian logic, using inductive or deductive reasoning. Indigenous thought tends to be based on affect or feeling, where feelings are often more important than finding 'facts', and both are expressed in languages that are more sophisticated than English (see Wihterspoon, 1977). Western adjudication is largely based on a third person, viewed as an impartial professional, who hears contested assertions of fact by parties in dispute, and decides the fact to which rules will be applied. That creates a separate and often artificial reality. Findings of fact may or may not coincide with what actually happened. Following a determination of fact, the adjudicator decides the appropriate rule to apply to drive a decision (Zion and Robert, 2008: 152).

Retributive justice sees wrongdoing as crime (crime is a violation of law and the state, violation creates guilt) and offender as criminals and criminal justice ask, what laws have been broken? Who did it and what he/she deserves? Whereas restorative justice see wrongdoing as harm and offender as harmer and restorative justice ask who has been hurt. What are their needs? Whose obligations are these? Justice demands the actions from authority or state to determine the blame (guilt) and impose pain (punishment). Central focus; offenders getting what they deserve (Zehr and Ali, 2003: 19).

The legal system is an adversarial process conducted by professionals who stand in for the offender and the state, refereed by a judge. Outcomes are imposed by an authority law, judges, juries who stand outside the essential conflict; all alien to the culture in which the conflict occurred and the society that is expected to rebuild itself (Ginty, 2011: 56). Victims, community members, even offenders rarely participate in this process in any substantial way. The focus of many indigenous peacebuilding or restorative justice and dispute resolution processes lies more in attempting to recalibrate social relations than in apportioning blame and specifying retribution (Lang, 2002: 63). It usually recognizes the need for outside authorities and, in some cases, imposed outcomes. It prefers processes that are collaborative and inclusive and, to the extent possible, outcomes that are mutually agreed upon rather than imposed (Zehr and Ali,

2003: 24). Western pragmatism, after all, gives greater priority to practical results than to moral theory and, adopts a flexible attitude towards means in the pursuit of achievable ends (Funk and Said, 2009). Restorative justice prefers inclusive, collaborative processes and consensual outcome.

Modern and indigenous conflict resolution processes are methodologically different from each other. Traditional is normative, subjective based on norms and values, tradition, symbols, spiritual and cultural values. Whereas, western/modern conflict resolution is objective and based on scientific methods. It requires facts and evidence, until and unless evidence is not sufficient to prove the guilt, he/she cannot be punished, even after knowing that guilt has committed by accused. Modern procedure requires lots of evidence and facts there is always possibility to hide the facts and evidences through bribe. Therefore, it could not fully mitigate the conflict. In, contrast to that traditional method is subjective; do not require sufficient evidence to prove/punish the quilt, if the guilt is known to all. In the modern court system resolution is also not friendly; it is always defensive, judgment is based on winner and loser. There is no chance to repair relationship and forgive. Whereas traditional is cooperative, it always tries to cooperate among the victim and accused and always gives a chance for forgiveness and forgiven. Try to resolve conflict on friendly and satisfied manner. When they organize the resolution process, they share the feast and other drinks that takes at least an hour, during which the parties in question gets time to enter into informal dialogues and become friendly leading to sharing of grievances and all these could change the relationship, remove prejudices and other misperceptions. It makes them forgive and be forgiven even if they were not satisfied earlier. Indigenous people have become more successful in engaging their member in participatory decision making process and solving the community conflict in expedient and transparent manner that is legitimate and respected by community at large (Cordova, 2014:16).

### **2.3.3 Restorative Justice**

Restorative justice (RJ) is defined as “an ethos with practical goals, among which to restore harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest dialogue (Gavrielides, 2007: 139). The concept of the restorative justice is rooted in custom, religions and traditions of the traditional society (Braithwaite, 2002: 64-68). Restorative justice practices

consist of direct and indirect mediation, family group conferences, healing/sentencing circles and community restorative boards. Restorative Justice is a process whereby all the parties with a stake in a particular dispute come together to resolve collectively how to deal with the dispute and its implications for the future (Roche, 2006: 217). RJ differs from mainstream mediation because of its engagement with the community of concerns (friends, family, relatives and those who have concern of him/her). The presence of the community in RJ processes addresses the shortcoming of mediation in matter involving violence that is open to public scrutiny. The community is able to protect the interests of the victim, and can act to prevent future violence. It can be a forum to display the community's disapproval of violence (Kelly, 2007: 14). Restorative justice is known by various names; 'communitarian justice', 'making amends', 'positive justice', 'relational justice', 'reparative justice', 'community justice' (Dandurand, 2006: 6).

Restorative justice sees wrongdoing as a violation of people or relationship (Zehr and Mika, 1998: 17). Violation creates obligation and justice that requires the participation of both offenders and affected parties' family or community (Zehr, 1990: 181). Deterrence sought via accountability by using means of same and community exposure (Bluett-Boyd, 2005: 3). The focus will be on repair of relationship or harm and victim. It normally involves a face to face meeting with an admitted offender and victim and their supporters, although it may also take indirect forms.

These include the importance of participation and consensual decision-making; healing what is broken; the accountability of offenders; and the restoration of relationships through the reintegration of both offender and victim into the community (Sullivan, Dennis and Tifft, Larry, 2008: 1-13). The offender is forgiven with the help of community elders. Governments then usually respect these decisions of the victim and the community. In the western legal system, however, forgiveness processes are more sidelined to justice and offenders are usually required to complete their punishment even if forgiven. Although there is a phrase "forgive and forget" in western culture, many teach that forgiving does not involve forgetting: "remember and forgive," some say. In Eastern culture, forgiveness and reconciliation often do require one to forget (Zehr and Ali, 2003: 6-7).

The emergence of restorative justice as an alternative model to Western, court-based criminal justice may have important implications for the psychology of justice. It is

proposed that two different notions of justice affect responses to rule-breaking: restorative and retributive justice. Retributive justice essentially refers to the repair of justice through unilateral imposition of punishment, whereas restorative justice means the repair of justice through reaffirming a shared value-consensus in a bilateral process (Wenzel et al., 2008). According to Howard Zehr, retributive justice views crime as ‘a violation of the state, defined by law breaking and guilt’ (Zehr, 1990: 181). It ‘determines blame and administers pain in a context between the offender and the state directed by systematic rules’. For restorative justice, crime is essentially ‘a violation of people and relationships. It creates obligations to make things right.’ It ‘involves the victim, the offender and the community in a search for solutions which promote repair, reconciliation and reassurance’ (Dandurand, 2006: 6).

In some parts of the world, modern government structures have taken away from communities the power to resolve disputes and wrongdoing. Yet, in many places, traditional structures are still working effectively (Zehr and Ali, 2003: 9). Unlike retributive justice, restorative justice procedure does not allow understanding of legitimate participants or “stakeholders” only. Restorative justice expands the circle of stakeholders those with a stake or standing in the event or the case beyond just the government and the offender to also include victims and community members. In restorative justice system, family members and sometimes even community elders may take the responsibility for making things right. They may also take responsibility for offender's and victim's rehabilitation and for reconciliation between families (ibid, 11).

A direct, facilitated, face-to-face encounter with adequate screening, preparation and safeguard is often an ideal forum for this involvement, at least in some cultures. As we shall see shortly, this can take a variety of forms: a meeting between victim and offender, a family group conference, a circle process (Bluett-Boyd, 2005: 34). A meeting allows victims and offenders to put a face to each other, to ask questions of each other directly, to together negotiate how to put things right. It provides opportunity for victims to directly tell offenders the impact of the offense or to ask questions. It allows offenders to hear and begin to understand the effects of their behaviour. It offers possibilities for acceptance of responsibility and apology. Many victims as well as offenders have found it to be a powerful and positive experience (Zehr and Ali, 2003: 25).

Restorative justice is ultimately concerned about the restoration and reintegration of both victim and offender as well as the well-being of the entire community. Restorative justice is about balancing concern for all parties. Restorative justice encourages outcomes that promote responsibility, reparation and healing for all. It aims at educating the wrongdoer by speaking to their feelings, while through the victim's forgiveness and community's willingness to help, they were most often rehabilitated (Gavrielides, 2011: 7). RJ focuses on addressing the underlying problems that have produced the offence. It engenders a victim's focus by recognizing the emotional effects of crime to the victim, offender and community and seeks healing rather than attempting to channel emotions through some abstract entity such as the State (Barton, 2000: 50). RJ has dispositional outcomes, whether they are an apology or other sanctions, are the product of a consensus decision, and not the unilateral decision of a paternalistic arbiter. RJ is fundamentally an honesty process, and engenders respect between all participants. This is in direct contrast with Court protocols. The rights oriented approach with a relatively passive judicial role is replaced by a trust orientated process invested with emotions of hope, care, and an active and exposed communal role (Bluett-Boyd, 2005).

### **Conclusion**

There is a saying that "necessity is the mother of invention". Conflict resolution as a process was developed out of the necessity because Conflict exist in all sphere of human life. In order to have peace, mechanism to resolve conflict is necessary in a society. Before the universalisation of modern conflict resolution, all societies, tribes, clans, regions had their own indigenous mechanism of conflict resolution based on their culture, tradition, religion etc. It was context specific which differs from one society to another.

The indigenous cultural practices and worldviews were destroyed by colonialism. Colonialism imposed western values upon non-west region in the name of modernization that represent west as superior and best model to rest or indigenous. Western cultures were universalised which includes modern conflict resolution. Colonialism regarded indigenous methods as backward, traditional and this mind-set continued during post-colonial period. The leaders of newly independent countries educated by Western or Soviet powers similarly rejected traditional methods, but, they could not completely uproot the traditional system. Therefore, in contemporary times

there are two types of conflict resolution mechanisms i.e., traditional or indigenous and modern or western. There are various perspectives on conflict resolution i.e. realist, liberal and social. Realist used the coercive diplomacy as means to suppress the conflict. Liberalist use democracy, free market economy and sometimes military cooperation as a main tool to address conflicts across the globe. Social aspect of conflict resolution uses humanitarian aids as measure of conflict resolution.

Modern conflict resolutions face frequent criticism from various sides. It merely focuses on conflict management rather than conflict resolution and conflict transformation, since it simply focus of removal of manifest conflict without focusing on removal of root causes of conflict or transforming the nature of conflict. Modern conflict resolution has failed to resolve conflict peacefully. It adopts military approaches to mitigate conflict such as use of NATO and peacekeeping force. This gives coercive settlement of conflict that is short term solution and fails to sustains peace for long term rather sometimes it becomes counterproductive in long-term. During post-conflict building modern conflict resolution focus on state building such as transition of democracy, elections, transplant of intranational institutions, etc. rather than focusing on healing and empowering people of conflict areas.

There are two mechanisms of conflict resolution which operate formally and informally. Formal is modern, based on western values and culture guided by codified law and interpreted by professional lawyers. Informal is indigenous methods of conflict resolutions embedded in rituals and cultural values and give importance to elders. However, theoretically these two methods of conflict resolution, formal (modern) and (informal) indigenous are based on two different principle of justice, former on retributive and later on restorative.

The modern legal system of conflict resolution based on western liberal values is universally applied in all types of conflicts as one size fits all. But, modern conflict resolution has failed to resolve all sort of conflicts, rather it becomes counter-productive in mitigating local conflicts. It is facing lot of criticism and challenges from diverse dimensions for being coercive, un-consensual and technocratic. It is more euro-centric, therefore it has failed to understand nature of conflict in local context. Modern conflict resolution operates within political and economic framework, backed by western liberal values. But specific circumstances demand local approaches with understanding of



local context. The conventional western perception of peace is very narrow which equates with an absence of violence. This commonly held western view fails to take into account the actual situation on the ground in many regions of the Global South. But, indigenous understanding of conflict resolution and peace is different from modern. Notion of conflict resolution includes vast extent from simple absence of physical violence, to healing and reparation of broken relation. Understanding of peace is not merely an absence of violence rather it is an absence of violence with justice. Modern conflict resolution focuses on elimination of physical conflict only without giving much attention to equity and justice. Peace without out justice and merely absence of direct violence is negative peace that would not sustain for the long term. Indigenous conflict resolution focuses on removal of root causes of conflict. Indigenous mechanism of conflict resolution is context specific, legitimate and effective in resolving local conflict, which is a necessary condition for establishing a durable and self-sustaining peace. In contemporary times, world is suffering more from local conflict than international conflicts. Indigenous conflict resolutions have more potential to maintain positive peace because it gives more importance to removal of root causes of conflict.

## Chapter III

### Indigenous Methods of Conflict Resolution (IMCR)

#### Introduction

This chapter will give a general overview of indigenous method of conflict resolution across the globe such as western and African, customary law as a foundation of indigenous conflict resolution in the first part. Second part will highlight the constitutional debate on sixth schedule from the perspective of IMCR and how does sixth schedule give constitutional guarantee to IMCR of Northeast (NE) India, critical analysis of sixth schedule through the lens of IMCR. Last part will discuss on status and scope of IMCR in NE India and challenges and limitations of IMCR in general.

#### 3.1 IMCR: An Overview

Indigenous method of conflict resolution is a traditional mechanism of resolving conflicts in the form of local culture, symbolic values, rituals, dialogue, mediation, relationship and community based approach and that operate outside the purview of modern process. This mechanism mostly operates through traditional socio-political institutions of the community. Traditional institutions are founded upon customary practices or laws; hence their attendant norms and values are often transmitted from generation to generation, while being 'lived' through everyday experiences. Traditional institution of conflict resolution is known by various names '*endogenous mechanism*' or '*indigenous approaches*', tribal court, traditional or indigenous justice system<sup>1</sup>. Traditional approaches do not have universal application; rather it is context-specific with specific techniques of dispute resolution or reconciliation that involves rituals symbolic and functional practices. Furthermore, IMCR is practicing both formally and informally across the globe depending upon recognition by the state. The ICMR is practiced by indigenous and tribal groups of Latin America, Africa, Middle-east, and Asia including India especially in its tribal zone of Northeast. Relevance of IMCR in contemporary society is sustained by multiple reasons across the globe but there are commonalities; inaccessibility of modern legal system or state in remote rural areas in terms of cost, language and geographical and cultural distance and due to the discrimination by official judicial indigenous people lost their faith in formal court

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<sup>1</sup> In this writings traditional and indigenous terms are used synonymously.

(Cordova, 2014: 26). In contrast, IMCR is typically quick, inexpensive or free, and supplied in local language. It enjoys high legitimacy in indigenous communities and rarely results in serious conflict. It provides a legitimate and practical solution to common interpersonal and intra-community conflicts such as theft, land disputes, and physical abuse, etc. among others (ibid). For example Jirgas and Shuras in Afghanistan are followed by people due to loss of people's faith in formal court owing to inaccessibility of formal court and also due to the former being less expensive. (Gang, 2011: 1 and United State Institute of Peace, 2010: 1). Many countries have recognised the indigenous justice system through constitutional reforms because of the above reasons.

### **3.1.1 Customary Laws: A Perspective**

Customary laws are fundamental foundational bedrock of IMCR. Customary laws are based on customs, traditions, cultures and values of a community or society. They govern acceptable standards of behaviour and are actively enforced by members of the community. Its perview includes anything from marriage, divorce, property inheritance, land rights, indigenous conflict resolution, and other social issues.

Customary laws are peculiar to the specific cultures from which they have evolved. The global landscape of customary laws and practices are rich and highly diverse. Customary laws are often quite distinctive and as such do not lend themselves easily to a “one-size-fits-all” approach. Indigenous conflict resolutions are embedded in customary laws, values, culture, custom, tradition, knowledge, practices of indigenous or tribal community and society.

Customary laws and protocols are central to the very identity of many indigenous people and local communities. These laws and protocols concern many aspects of their life. They can define rights and responsibilities of members of indigenous peoples and local communities on important aspects of their life, culture and world view. Customary laws can define how traditional cultural heritage is shared and developed, and how indigenous conflict resolution systems are appropriately sustained and managed by indigenous peoples and local communities. Further, for many indigenous peoples and local communities, it may be meaningless or inappropriate to differentiate their laws as “customary”, suggesting it has some lesser status than other law – it simply constitutes their law as such (WIPO, 2013: 4).

Customary laws are source of all laws; international law, human rights, legal laws and others. It can serve as the fundamental legal basis for indigenous peoples and local communities for resolving disputes. Numerous forms of customary, informal and/or non-state law operate in the majority of nations across the globe. In fact, the vast majority of human behaviour is shaped and influenced by informal and customary normative frameworks. Even in societies with the most developed legal systems, only about 5% of legal disputes (that is, 5% of situations that have been understood as ‘legal’) end up in court (Chirayath, Caroline and Michael, 2005: 2). At the same time, nearly every aspect of our life—from buying a bus ticket to entering a national park—is mediated by both formal and informal normative frameworks, with both institutional and non-legal or social sanctions. In contrast, communities where the state systems lack legitimacy and/or political reach, informal and customary systems often act completely independent from the state legal system (ibid).

Indigenous peoples and local communities have called for wider respect and recognition of their customary law and practices as one aspect of the appropriate protection of their traditional knowledge (TK) and Traditional Cultural Expressions (TCEs). Traditional legal system is embedded on traditional knowledge, traditional cultural expression and recognition of customary law are integral to appropriate protection of TCEs, TK and IMCR. Most of IMCR operates through traditional socio-political institutions. In essence, these institutions are rooted in the culture and history of societies, and are ingrained in the socio-political and economic environment of particular communities (Saha, 2009: 22-26). Furthermore, traditional institutions are founded upon customary practices; hence their attendant norms and values are often transmitted from generation to generation, while being ‘lived’ through everyday experiences (Miruthi, 2008). Many customary laws shaped by the ethical norms, religion, social values and moral standards of human society (Dahal et al., 2008). Therefore, maintenance and recognition of customary laws are crucial for the continuing strength of cultural and spiritual life, heritage of indigenous peoples and local communities and indigenous justice system.

### **3.1.2 IMCR at Global**

#### **3.1.2 .1 Western and Australian**

Western countries like America, Canada and Latin America have recognised indigenous conflict resolution due to International indigenous people’s movement.

They have increasingly asserted their place in the political and social spheres, challenging institutional construction that excluded them. They have made tremendous strides in gaining recognitions and respect for their cultural norms and traditions. The recognition has come in the form of constitutional and legislative amendments in countries where indigenous people represent a sizable portion of the population, and by incorporating indigenous rights in the international human rights agenda. Indigenous people have used domestic and international tools to advocate for these rights. The recognition movement is inspired by the interaction with the “western world” and also to preserve the cultural norms. The state has recognised indigenous justice system in the respect of human rights (Cordova, 2014: 15-17).

### **3.1.2 .1 .1 American**

In America indigenous justice system is relevant among the native tribes. American indigenous justice system is much more influenced by western legal system. There are types of indigenous justice system which vary from tribe to tribe, but, generally they can be categorised as family and community forum, traditional court, quasi-modern court and modern tribal court. Tribes have personal jurisdiction over their members and non-member Indians, territorial jurisdiction over their lands, and subject matter jurisdiction over such areas as criminal, juvenile, and civil matters.

In family forums, such as family gatherings and talking circles, disputes are resolve by chosen family elders or community leaders. Matters usually involve family problems, marital conflicts, juvenile misconduct, violent or abusive behaviour, parental misconduct, or property disputes. Customary laws, sanctions, and practices are used in resolving these issues. When the family forum cannot resolve a conflict, the matter may be pursued elsewhere. Offender compliance is obligatory and monitored by the families involved. It is discretionary for decisions and agreements to be recorded by the family (National Institute of Justice, 1998).

Community forums require more formal protocols than family forums, but draw on the families' willingness to discuss the issues, events, or accusations. These are mediated by tribal officials or representatives. Some tribes have citizen boards that serve as peace makers or facilitators. Customary laws, sanctions, and practices are used. In the community forum, the tribal representative acts as facilitator and participates in the resolution process along with the offender and victim and their families. As with the

family forum, prayers are said at the beginning and at closure. An unresolved matter may be taken to the next level; however, tribes may or may not offer an appeal process for the community forum. In the Navajo peacemaker system, formal charges may be filed. In some Pueblo communities, matters may be pursued through the traditional court. Offender compliance is obligatory and monitored by the families involved and tribal officials.

Traditional courts incorporate some modern judicial practices to handle criminal, civil, traffic, and juvenile matters, but the process is similar to community forums. These courts exist in tribal communities that have retained an indigenous government structure, such as the Southwest Pueblos. Matters are initiated through written criminal or civil complaints or petitions. Defendants are often accompanied by relatives to the hearings. Generally, anyone with a legitimate interest in the case is allowed to participate from arraignment through sentencing. Heads of tribal government preside and are guided by customary laws and sanctions. In some cases written criminal codes with prescribed sanctions may be used. Offender compliance is mandated and monitored by the tribal officials with assistance from the families. Noncompliance by offenders may result in more punitive sanctions such as arrest and confinement. Defendants are notified in writing. Although rare, matters may be appealed to the tribal council. In some tribes where a dual system exists, interaction between the modern American court and traditional court are prohibited. That is, one may not pursue a matter in both lower-level courts. However, an appeal from either court may be heard by the tribal council, which serves as the appellate court. Generally, then courts record proceedings and issue written judgment orders (ibid, 2).

Quasi-modern tribal courts are based on the Anglo-American legal model. These courts handle criminal, civil, traffic, domestic relations, and juvenile matters. Written codes, rules, procedures, and guidelines are used, and lay judges preside over. Some tribes limit the types of cases handled by these courts. For instance, land disputes are handled in several Pueblo communities by family and community forums. Like traditional courts, noncompliance by offenders may result in more punitive sanctions such as arrest and confinement. These are courts of record, and appellate systems are in place (ibid).

Modern tribal courts mirror American courts. They handle criminal, civil, traffic, domestic relations, and juvenile matters and are guided by written codes, rules,

procedures, and guidelines. They are presided over by law trained judges and often exist in tribal communities that have a constitutional government. Like traditional courts and quasi-modern tribal courts, non-compliance by offenders may result in more punitive sanctions such as arrest and confinement. Like quasi-modern tribal courts, these are courts of record, and appellate systems are in place. Some of the quasi-modern and modern courts incorporate indigenous justice methods as an alternative resolution process for juvenile delinquency, child custody, victim-offender cases, and civil matters. Unlike other traditional court, quasi-modern and modern courts resolve disputes by court adjudication rather than consensus. America tribal courts operates by Department of Interior, Bureau of Indian Affairs, on certain reservations. There are approximately 150 tribal courts in operation in the United States (Jones, 2000:2). Through the reservation Bureau of Indian Affairs attempt to assimilate Native people into the predominant Anglo legal system is made. As a result of this, many Indian tribal courts mirror the justice systems that exist in states and the federal system and use very similar procedures and rules. Many of these courts and the Codes under which they operated did not reflect Native values and customs, but instead were efforts to change those values into the values which the dominant society found important.

### **3.1.2 Australian IMCR**

In Australia IMCR is recognised by the government. Customary laws in Australia was recognised in 1986 by the Australian, Northern Territory and Western Australian Law Reform Commissions (NADRAC, 2006: 6). It operates under Federal Court of Australia. It has given autonomy to indigenous or native people to solve problem by themselves, because many of the indigenous problem could not be mitigated by modern system, due to inaccessibility, language barrier, unfamiliarity of the staff etc. (ibid, 9).

### **3.1.3 IMCR in Africa**

African societies have well preserved traditional culture and IMCR is largely practiced in Africa covering up to 90% of the population. Almost in all the African countries indigenous conflict resolution is prevalent both formally and informally. In Sierra Leone, for example, approximately 85% of the population falls under the jurisdiction of customary law, defined under the Constitution as “the rules of law which, by custom, are applicable to particular communities in Sierra Leone”<sup>2</sup> (Chirayath, Caroline and

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<sup>2</sup> See *The Constitution of Sierra Leone* (1991) Chapter XII Article 170(3).

Michael, 2005: 3). Customary tenure covers 75% of land in most African countries, affecting 90 of land transactions in countries like Mozambique and Ghana (Augustinus, 2003). Further, customary justice differs depending on the locality and local traditions, as well as the political history of a particular country or region. Ethiopia officially recognizes over 100 distinct “nations, nationalities, or peoples” and more than 75 languages spoken within its territorial borders. In many of these countries, systems of justice seem to operate almost completely independent of the official state system. Some states have tried to integrate traditional systems into wider legal and regulatory frameworks, often with little success. For example, the Constitution of Ethiopia permit the adjudication of personal and family matters by religious or customary laws<sup>3</sup>and South Africa’s 1996 democratic constitution explicitly recognizes customary law (Bush, 1979).

Many African countries, have tried to integrate traditional systems into wider frameworks, and customary courts are recognized within formal legislation and have a dual legal system, given them an autonomy to function independently. For example, in Sierra Leone, where over 300 local customary courts preside in the 149 chiefdoms found in the provinces, regulating matters of marriage, divorce, succession and land tenure, these legal systems are recognized and defined in the constitution as “the rules of law which, by custom, are applicable to particular communities in Sierra Leone”<sup>4</sup> (Chirayath, Caroline and Michael, 2005: 9). Traditional institution in Rwanda is fully recognised by the state under law in 2006, which recognise the role of *abunzi*<sup>5</sup> or local mediator in conflict resolution as a way of decentralising justice, making it affordable and accessible (Mutisi, 2011: 2). Similarly, the Constitution of Ethiopia permits the adjudication of disputes relating to personal and family matters in accordance with religious or customary laws if all parties consent<sup>6</sup> (Chirayath, Caroline and Michael, 2005: 9). South African constitution has recognised traditional institution and laws in 1996. Bostowana have dual legal system, one is based on state law and other on cultural values and norms of the local people referred to customary law. These two systems run parallel (Rankopo and Osei-Hwedie, 2009: 42). It is evident that most individuals,

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<sup>3</sup> See Article 34, *Constitution of the Federal Democratic Republic of Ethiopia*.

<sup>4</sup>See *The Constitution of Sierra Leone* (1991) Chapter XII Article 170(3).

<sup>5</sup>The *abunzi* is a mediation committee located at the cell level in Rwanda. The *abunzi* is one of the institutions that seek to resolve disputes locally. *Abunzi* mediators are mandated by statutory law to resolve disputes via mediation.

<sup>6</sup> See Article 34, *Constitution of the Federal Democratic Republic of Ethiopia*.



families and communities still prefer indigenous conflict resolution processes in the two countries because they are based on cultural concepts, values, and procedures that are understood and accepted parallel (ibid, 47).

African indigenous mechanism of conflict resolution continue to play tremendous roles and applied varied forms of conflict; land disputes, civil disputes, civil war, natural resource conflict, inter-tribal conflict, land dispute, feud conflict in some instances, criminal cases. For example, *dare*<sup>7</sup> in Zimbabwe, *Bashingantahe*<sup>8</sup> in Burundi, *Gacaca* in Rwanda, and *MatoOput*<sup>9</sup> in north-central Uganda (Mutisi, 2011: 2). *Gadaa system* in Oromia, Ethiopia resolve the historical conflict over water resources (Edossa, et al., 2007), *Miss*<sup>10</sup> in Northern Kenya was used to resolve inter-tribal conflict between Pakot and Turkuna, Karamojang, Marakwet tribe over access to pasture land and cattle raiding (Pkalya et al., 2004: 35–40).

When cultures of violence lead to a chaotic (completely fail) void of ‘nothingness’, when systems and institutions – both international and national – simply fail to cope with the immense scale of the crisis, communities look back to indigenous cultural mechanisms to find creative solutions with some modification to meet contemporary needs (Amisi, 2008: 5). These mechanisms have become relatively successful when the modern conflict resolution has failed. For e.g., in Rwanda the *Gacaca system* was revitalized to deal with crimes during post genocide that was used to deal with genocide suspects in 1994. “The impact of Gacaca on Rwandan society has been enormous. Around 1.4 million cases have been completed, where the total population of the

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<sup>7</sup>*Dare* is a local court in Zimbabwe, which comprises the village head and a council of advisors and community members. It is a conflict resolution institution found among the Shona people. Criminal and civil cases are tried in the presence of local community members and the village head, in consultation with the council advisors, gives a ruling. According to the Zimbabwe constitution, a *dare* can refer a case to the modern court if the case contents prove to be beyond its jurisdiction.

<sup>8</sup>*Bashingantahe* is a traditional institution in Burundi, comprising a body of local people vested with social, political and judicial power to resolve conflicts.

<sup>9</sup>"MatoOput" process (MatoOput - an Acholi vernacular meaning drinking the herb of the Oput tree) because it ends in a significant ceremony of "MatoOput", the traditional drinking of a bitter herb of the Oput tree. Guilty acknowledging the responsibility ask for the forgiveness paying compensation (Utne, 2011: 4).

<sup>10</sup>*Miss* is a peace pact brokered by community elders. Once brokered, the pact is cemented by a detailed ritual involving the slaughter of bulls and the burying of weapons. By donating food, livestock and weapons for the peace ritual, a wider range of community members have an input into the peace-making process. The moral power of the *miss* technique is credited with long-lasting periods of peace between the Pokot and a number of their traditional enemies (Pkalya et al., 2004: 37–8).

country is approximately 10 million” (Takeuchi, 2011:12-14). Therefore, the practical relevance of traditional mechanism conflict resolution cannot be understated.

In some cases ‘new’ customary systems have emerged only recently in response to the failure of the state frameworks and the weakening of other local mechanisms of dispute resolution. It is also applied when the modern legal court failed to provide justice to the people owing to rising crime levels coupled with (or perhaps due to) poor access to justice and law enforcement, lack of confidence in the formal justice system (often viewed as an extension of the colonial system), and a desire on the part of communities to gain some level of control over local governance such as emergence of *Sungusungu*<sup>11</sup> traditionally organized village defence groups in Tanzania which was developed in 1980s (Chirayath, Caroline and Michael, 2005:10).

The strong relevance of Indigenous African approaches to conflict resolution has various reasons. The first is the tendency to seek “African solutions to African problems” that developed out of anti-colonial struggle for self-determination. The second is the perceived failure of Western interventions to effectively end African conflicts (Zartman, 2000). IMCR, such as *Bashingantheye* in Burundi, *Gacaca* in Rwanda, and *MatoOput* in north-central Uganda are applied when the state institutions collapse and failed to respond specially during the civil wars (Amisi, 2008: 5).

Many of the international actors, INGOs and NGOs have also shown a keen interest in African indigenous practices of conflict resolution. Examples of interest in indigenous and traditional peace-making practice are abundant and include the 2002 Lutheran World Federation Inter-Faith Summit which provided a forum for a comparative lesson-learning exercise between different African traditional peace-making techniques. These included a ritual reconciliation ceremony *Mato-Oput* among Acholi in northern Uganda, a traditional justice system *Gacaca* in Rwanda, Utbunu in South Africa and a

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<sup>11</sup>*Sungusungu* is traditionally organized village defence groups which were developed in 1980s, largely in response to rising crime rates and a general perception that established institutions were unable to supply law and order. *Sungusungu*, a Swahili word for an aggressive species of ant, emerged as a new model of meting out justice in 1982 among the Sukuma people of northwest Tanzania. The 1979 war in neighbouring Uganda led to increased lawlessness, and government officials were seen as corrupt and unable to control crime. Initially the new system targeted cattle rustling, but it was eventually adapted to deal with all manner of disputes and customary issues, from marriage and divorce to witch trials. It spread rapidly throughout the country, and within a year had transformed into a large-scale system and an ethnic duty among the Sukuma. It has god widespread cooperation and coordination across the substantial village. It was also supported by the state and tried to legitimise by legislation in 1989 (see Woolcock, Michael et al., 2005: 16).

traditional consultative and judicial meeting *Kgotla* in Botswana (Lutheran World Federation, 2002). The United Nations Economic Commission for Africa (UNECA) organised a forum in 2004, which discussed governance in Africa, including the role of traditional systems of governance in the modern system (Mutusi, 2011:1). UN also declared two International decades of Indigenous People, indigenous decades (1995-2004 and 2005-2014), so that further they could protect their rights, culture values and traditions (Fernandes et al., 2008: 1-5). At the international level, on the other hand, the right of indigenous peoples to their own institutions has been enshrined in ILO Convention No. 169 (articles 2.2b and 8.2) and in the Declaration on the Rights of Indigenous Peoples, which, in Article 35, states;

“Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases they exist, juridical systems or customs, in accordance with international human rights standards” (Kipuri, 2009: 63).

Furthermore, ideas of traditional and indigenous peace-making and dispute resolution in civil wars have found increased acceptance among certain states, international organizations, international financial institutions and NGOs. For example, the World Bank, offers a training video on ‘Building Social Capital through Peacemaking Circles’, in which the Circles are ‘an indigenous traditional mechanism for communication and building shared values, consensus and resolving conflict that was the core of earlier participatory forms of government’ (World Bank, 2004). The UN Institute for Training and Research (UNITAR) has developed a training programme ‘to enhance the conflict prevention and peacebuilding capacities of minority and Indigenous Peoples’ (United Nation Institute for Training and Research, 2006). The draft UN Declaration on the Rights of Indigenous Peoples noted that such peoples should have access to ‘mutually acceptable and fair procedures for the resolution of conflicts and disputes’ which would ‘take into consideration the customs, traditions, rules and legal systems of the indigenous peoples concerned’ (United Nation High Commissioner for Human Rights, 1994: Article 39).

### **3.2 IMCR in India**

Indigenous methods of conflict resolution are in practice in various forms; mainly practices through traditional institutions of self-government and customary Panchayats. Customary laws are practiced in few regions especially in tribal societies. These

customary laws in India are protected by 6<sup>th</sup> schedule of Indian constitution. The areas other than protected by 6<sup>th</sup> schedule, IMCR operates through customary Panchayats because all the institutions and practices of traditional mechanisms of conflict resolution are not recognised by the state. Examples of customary Panchayats prevalent in India are; *Kulam Panchayat* in Orrisa, *Koot* in Tamilnadu, *Dzumsa* in Sikkim, *Meetin* in Chattisgarh, *JatiPanch* in Rajasthan, *Halli Panchayati* and *Nadu Panchayati* in Karnataka (Chettri, 2010: 25).

### **3.2.1 Six Schedule in the Constituent Assembly**

India is a vast country having pluralistic culture. The people of different regions have their distinct social and cultural traits. The hill tribes living in NE India have their distinct culture, customary behaviour, faith and racial features. These distinctiveness is sometimes so thick that it leads to apprehensions in the minds of the peripheral tribes that their distinctiveness may be threatened by the more advanced settlers of the core. This in turn leads to a crisis of identity among the hill tribes and ends up making space for contestation on cultural lines. The prolonged turmoil in the North-East is rooted in two causes; (a) the question of ethnic/cultural identity, which is perceived to be threatened by encroachment/infiltration by people of other ethnic/cultural groups from within and outside the region and the country; and (2) the persistence of economic backwardness. Socio-cultural life of tribes of these regions is different from the so called mainland. In order to eliminate these problems creation of smaller and ethnic state was not possible for Indian Union, therefore, in order to integrate these cultural minorities, Sixth Schedule was brought in Indian constitution. This was done to protect rights, land, customs, culture and identity of tribal minorities of erstwhile tribal hills areas of Assam. Sixth Schedule was applied through provision of Autonomous District Councils (ADC) to maintain autonomous societal culture. ADCs are basically intended to give self-management rights in matters pertaining to, inter alia, marriage, social customs, culture, land, religion and tradition. Paragraph 2(2) of the Sixth Schedule, in its attempt to preserve and protect minority rights and identities, provides for the establishment of regional councils for minority tribes within ADCs, if at all they demand the same (Suan, 2007). ADCs are the districts within a state to which central government has given varying degrees of autonomy within the state legislature. The establishment and functions of these ADC's are based on the Sixth Schedule of the Constitution of India. Presently Six Schedule is applied in 9 districts of Northeast India,

i.e North Chachar Hill and Karbi-Anglong district of Assam, Manipur, Garo, Khasi and Jaiatia Hill districts of Meghalaya and Tripura Tribal Area, Chakma, Mara and Mai districts of Tripura. Each ADC protects the rights of individual tribes of particular districts against which name of the districts are entitled. ADCs under sixth Schedule have their own legislative, administrative and judicial powers. ADCs were created in Indian constitution for self-rule by the people with a provision to protect own culture and identity. This provision was made under the recommendation of Bordolai Committee (Prasad, 2004: 2).

This provision was made in Indian Constitution by recognising the distinctness of these tribal groups in term of their culture, social, economic, political and administration. Tribal people of these regions are different from main land and plain people and they have their own independent traditional administrative, social, political, economic and judicial institutions based on tribal culture and customs. Right from the colonialism the distinctness and protection of autonomous societal culture and tussle between protection of rights and identity of tribal was there in the Northeast India. Recognising these differences British administration too decided not to interfere in independent and virile traditional administration of hill tribes and decided to leave them as much free as possible in the domain of administration. In the hill areas, there was minimum administration and minimum interference with the powers and functions of the chiefs, village organizations and local authorities. The accepted official view of the British was that the Hills and Plains of Assam could never co-exist as a single entity. The British realized that the complicated procedure adopted for the administration of the plains were unsuitable for the hills (Sharmah, 2011: 23).

Therefore, in order to recognise and protect antecedent autonomous 'societal culture' different institutional mechanism were passed from time to time in the forms of the Inner Line Regulations (1873), and the 'Partially Excluded and Excluded Areas' (1935) spawned special and asymmetrical demands (ibid). However, considering the difference in socio- cultural life among the hills and the plains people, the British India introduced new devices to administer the two sections separately with a motive to protect hill areas. The ultimate reason is voluminous but main focus was to control the problem of exploitation of the hills people by the businessmen of plains. Subsequently, the preventive rule 'Inner Line Regulation System' is introduced in 1873, Scheduled District (1874), 'Backward Tract' (1919), and further created 'Excluded' and 'Partially

Excluded Areas' under the Govt. of India Act 1935. The Lushai Hills (now Mizoram) the Naga Hills and the North Cachar Hills were under the excluded areas, over which the provincial ministry had no jurisdiction. The Khasi and Jaintia Hills, the Garo Hills, and the Mikir Hills were under partially excluded areas (Prasad, 2004: 1). Briefly, these areas were administered by the state government subject to the special powers of the Governor. In effect the 1935 Constitution gives local self-government or political autonomy to the hill tribes of the excluded and partially excluded areas to manage their local affairs according to their own genius and ability (Northeast India: Status of Governance in Sixth Schedule Areas, 1).

After Independence, there were demands for regional autonomy and better status within the constitutional framework from the tribes of North East, because the imposition of modern administration system threaten their tradition, culture, customs and traditional institution which is their identity and they want to maintain it. The Interim Government of India in 1947 was sensitive to the political aspirations of the tribal people of the hill areas of Assam in the background of assurances given by the outgoing British rulers. In order to ensure their participation in decision making and management of the affairs and safeguarding tribal interests. The Constituent Assembly of India set up an Advisory Committee on the tribal areas under the chairmanship of Sardar Vallabhbhai Patel with a view to considering the problems of Assam as well as of the tribal people of India. The Advisory committee, for the convenience further constituted a sub-committee on 'Northeast Frontier (Assam) Tribal and Excluded Areas' under the Chairmanship of Gopinath Bordoloi. The Bordoloi Sub-Committee (BSC) made spot study of the demands and aspirations of the hill tribes. They found that; the people of the region were sensitive towards their land, forest, lifestyle and traditional systems of justice and, traditional self-governing institutions which functioned democratically and settled issues according to their traditional lifestyle thus, needed safeguards and protections so as to preserve their way of life and living in different hill (Stuligross, 1999: 502). Based on ground realities Bardoloi Committee submitted its recommendations for a simple and inexpensive set-up (District Councils) of the tribal areas in each Autonomous Districts with autonomy for self-government of the tribal people, which were later accepted and incorporated into the Article 244 (2) of the Sixth Schedule of the Indian Constitution. The Bardoloi Committee also made provision for Regional Council for the tribes other than the main tribe. This scheme sought to build up autonomous

administration (District Councils and the Regional Council) in the hill areas of Assam (United Khasi-Jaintia Hills District, Garo Hills District, Lushai Hills District, Naga Hills District, North Cachar Hills District, and Mikir Hills District) so that the tribal people could preserve their traditional way of life, and safeguard their customs, and cultures. The Committee also recommended the abolition of the excluded and the partially excluded areas and representation of the hills districts in the legislative Assembly on the basis of adult franchise. It expected the state and the central governments to help the tribals in securing the benefits of a democratic, progressive and liberal constitution of the country.

### **3.2.1.1 Constituent Assembly Debate**

The Report submitted by this Committee to the Constituent Assembly was thoroughly debated between July 7 and 9, 1947. People against and in favour were putting their arguments.

People against the schedule were demanding that these areas be at par integrated with plains & autonomy should not be granted to them. They expressed the view that in the interest of the national integrity, the Provisions for the formation of the Autonomous District Councils would not be beneficial. These provisions would certainly create separatist feeling and tendency among the tribal people in due course of time. However, B.R. Ambedkar, Gopinath Bordoloi, A.V. Thakkar, Jaipal Singh and Rev. JJM Nichols Roy spoke strongly in favour of the Sixth Schedule provision. Rev. JJM Nichols Roy is regarded as an architect of the District Council autonomy (Prasad, 2004: 2).

Rohini Kumar Chowdhury, member of the Constituent Assembly, vehemently opposed the provision of District Council under the Sixth Schedule. He further expressed “We want to assimilate the Tribal people... If you want to educate the Tribal people in the art of self- government, why not introduce the Municipal Act? If you want to keep them separate, they will combine with Tibet, they will combine with Burma, they will never combine with the rest of India. This Autonomous District is a weapon whereby steps were taken to keep tribal people perpetually away from the non - tribal and the bond of friendship which we expect to come into being after attainment of independence would be torn” (Suan, 2007: 3). Subsequently, many of the members also share the similar apprehension over the creation of Autonomous District Council. For example, Kuladhar Chaliha, one of the members of Constituent Assembly pointed out that the background

of the Sixth Schedule revealed the British mind. There was the old separatist tendency and the Sub-Committee wanted to keep them away from us. This act of the committee would be creating a Tribalstan as we have created Pakistan (Singh, 2014: 136). Similarly, Lakshminarayan Sahu, another member of the Constituent Assembly expresses the view that “the District Council and the Regional Council of the hill areas of Assam would certainly move the tribes towards aloofness with the result that the opportunity for the assimilation of these tribes would be missed” (ibid).

Gopinath Bordoloi, the Chairman of the Advisory Sub-Committee, pointed out that many members in the Constituent Assembly could not appreciate the background of the recommendations of the sub-committee. While highlighting the background for formulating the draft of the Sixth Schedule, Bordoloi said that it was not unknown to the members of the House that the rule of the British Government and activities of the missionaries always went together. Those areas were entirely excluded areas in the sense that none from the plains could go and contact with them. That position was found till 15th August 1947, when India became independent. Further some of those areas were war Zones. During the war, the then rulers and officers developed in the minds of those tribal people a sense of separation and isolation and gave them assurance that at the end of the war they would be allowed to have independent States to manage their affairs in their own way. In support of the Sixth Schedule, Jaipal Singh pointed out that in the new setup the people had the opportunity to forget the past and to have a good beginning, in the beginning of which the tribal had given us their assurance and in response to that the Sub-Committee had very rightly made a sincere effort to accommodate their wishes. To keep the hill tribal areas permanently in water-tight compartments was not good for the tribal people themselves or for Assam or for rest of the country. The hill areas were no longer inaccessible because after World War II the situation had also changed (ibid).

Rev. J.J. M. Nichols Roy, member of the Constituent Assembly, as well as a member of the Advisory Sub-Committee appreciated the attitude of Gopinath Bordoloi towards the tribal people. He made it clear that the Sixth Schedule could give a certain amount of self-government to the hill people, but the laws and regulations to be made by the District Councils would be subject to the control and assent of the Governor of Assam. Nichols Roy raised another important point in which he said that to keep the frontier areas safe, these people might be kept satisfied. We cannot use force on them. If we



want to win them over for the good of India we must create a feeling of friendliness and unity among them, so that they may feel that their culture and ways for living have not been abolished and another kind of culture thrust upon them. That is why, the sub-committee thought that the best way to satisfy these people is to give them a certain measure of self-government so that they may develop themselves according to their own genius and culture. That will satisfy them and they will feel that India is their home and they will not think of joining Tibet or Burma (Constituent Assembly Debate relating to 6<sup>th</sup> Schedule, 7).

He added another point agreeing with the idea of fellow opponent that the desire of advancement of hill tribes but that “advancement cannot come by force. Advancement will be accepted by the people when culture, higher mode of thinking and not by force. Advancement will be accepted by the people when you allow them to see something better than what they have. The hill men realise that their own village councils, or what may be called village Panchayats, are much better and more suitable to them than the regular courts and the higher court of Assam. To some of them, it is too expensive to go to the High court they have no money for that. Therefore among some of the hill tribes, village court are more suitable to them. The Assam Government is trying to introduce village Panchayats even in the plains of Assam. Of course that will take away a very large number of law suits from some of the regular courts, but it will be better for the people themselves. The village councils in the autonomous districts and the District Councils will enable the hills people to rule themselves in their own way and to develop themselves in their own methods. Why should you deprive the people of the thing which they considered to be good and which does not hurt anybody on earth? It does not hurt India. Why do you not want them to develop themselves in their own way? The Gandhian principle is to encourage village Panchayats I the whole of India. Why then should any one object to the establishment of the district councils demanded by the hills people? This measure of self-government will make them feel that the whole of India is sympathetic with them and India is not going to force upon them anything which will destroy their felling and their culture, I therefore, think that unnecessary storm has been raised in this House, and it is not at all palatable, but I hope that a better study will be made of these problems” (ibid).

B.R Ambedkar, the chairman of Drafting Committee of the Constitution, also expressed his view in favour of granting the hill tribes more autonomy by creating the District

Councils. He said that the hill tribes basically differ with other tribes of India in several matters. Hence, they must be given certain cultural, social, religious and customary autonomies.

After a long and heated debate in the Constituent Assembly and after certain amendments were made, the recommendations of the Bordoloi Sub-Committee finally passed and was incorporated in Art. 244(2) read with 275(1) of the Constitution of India. Along with that, preservation of custom, culture, language and ethnic identity of tribals of Excluded and Partially Excluded areas other than Assam was incorporated in the Fifth Schedule in Art. 244(1) of the Constitution of India (Prasad, 2004: 2-3).

The aim of the Sixth Schedule was to protect hill and other tribal communities from the control and power of the groups of the plains and also to give more autonomy of local self-governance. This would more empower the traditional governing system and customary laws including traditional conflict resolution to manage their local affairs according to their own genius and ability. The process of protection began with the formation of the first District Councils in Assam, as far back as 1951. These District Councils were first set up as the United Mikir and Cachar Hills of Assam, comprising parts of the former districts of the United Khasi and Jaintia Hills as well as parts of the erstwhile Nogaon, Sibsagar and Cachar districts of Assam (Sharmah, 2011: 24).

### **3.2.1.2 Judicial Functions of ADC**

Para 4 of the Sixth Schedule entitles the Council to constitute Village and District Council Courts in the autonomous areas to adjudicate or try cases or customary laws in which both the parties are tribals. But, no case involving offences punishable by death, transportation of life or imprisonment for not less than five years are heard or adjudicated by these courts. The District Council Court and the Regional Council Court are courts of appeal in respect of all suits and cases tried by the Village Council Courts and the Subordinate District Council Courts. No other court except the High Court and the Supreme Court of India have jurisdiction over suits and cases decided by the Council Courts.

ADCs were empowered to make laws on subjects ranging from land use and economic development policy to social customs including (but not limited to) succession of traditional leaders, marriage, divorce, and inheritance. The Bardoloi recommendations clearly intended to preserve traditional customs within a modern institutional context.

The Sixth schedule offers no opinion regarding particular customs of particular communities; it insists, however, that the ADCs acknowledge these customs explicitly and enact legislation in a manner that would make the customs comprehensible to a judicial magistrate. Sixth Schedule give more protection to the traditional conflict resolution mechanism because, it gives ADC all the legislative, judicial, administrative, and financial capacity - within a context of central and state interest - needed to establish and enforce its own social and developmental priorities. These priorities are expected to be community-driven, but the institutional processes by which those priorities are to be pursued are as modern as the Indian constitution (Stuligross, 1999: 505).

### **3.2.2 Demands of Sixth Schedule in Post Independent India**

Autonomous District Councils were set up way back in 1952 in certain hill districts of the then composite state of Assam, and later many other District Councils were added. Councils based on the northeast ADC model have been created for Nepalese Indians in West Bengal (1989), "tribals" in southern Bihar (1994), and Tibetan Indians in the Ladakh region of Kashmir. State governments in Madhya Pradesh, Maharashtra, and Uttar Pradesh are actively considering the provision of ADC- type autonomous institutions to portions of their states that vary socially and economically from the rest of the state.

After the Mizo Hills was elevated to the status of the Union Territory of Mizoram in accordance with the Northeastern Areas (Re-organisation) Act, 1971 the Mizo District Council was abolished in 1972. The Pawi-Lakher Regional Council was constituted for the Pawis, the Lakhers and the Chakmas, was also trifurcated into three District Councils) in 1972 under the provisions of the said Act. The Government of Manipur as per the provisions of the Manipur (Hill Areas) District Councils Act, 1971 passed by the Parliament also constituted six Autonomous District Councils for the tribal people for the hill areas of Manipur. These councils were outside the purview of the Sixth Schedule. Presently the Northeast India has, fifteen District Councils – two in Assam, three in Meghalaya, three in Mizoram, one in Tripura and six in Manipur. Here, it is interesting to note that the Nagas, for whom the Sixth Schedule was mainly provided, have no autonomous District Councils of their own till date.

Difference between the ADC of Sixth Schedule and ADC under Manipur District Council ACT, 1972 are as such; ADC under sixth schedule has legislative and judicial

powers but, ADC under Manipur District Council Act, 1972 don't have legislative and judicial powers. It provides limited administrative powers.

### **3.2.3 Sixth Schedule in Northeast India**

The Sixth Schedule areas are governed through autonomous District Councils which have wide ranging legislative and executive powers. As a result, they almost work like a “mini Parliaments”. They have complete freedom to allow village level bodies to run according to customary laws. The verdicts of district and lower level courts can only be challenged in the high court. At present, 6th Schedule Areas exist only in four North-eastern States: 1) Assam, 2) Meghalaya, 3) Mizoram, and 4) Tripura. These Areas are administered through Autonomous Districts/Regional Councils. Except Meghalaya, other three states have only certain selected areas covered under the 6th Schedule. Most Council consists of up to 30 members including few nominated members (the newest Bodoland Territorial Council is an exception; it can have up to 46 members). These constitutionally mandated Councils oversee the traditional bodies of the local tribes such as the Syiemships and Dorbars of the Khasi hills of Meghalaya.

Sixth Schedule in Northeast India was set up with lots of hope for the development, culture and identity protection of hill tribes. Historically, tribes of this region has seen “isolationist” policies of the colonial British who labelled most Northeast hilly tribal tracts as “excluded” or “partially excluded”. The colonial laws did not apply in these areas and were ruled differently. With India's independence the philosophy of maintaining status quo and isolation was replaced by the policies of development and integration through a separate Sixth Schedule of the Constitution. The Sixth Schedule is entirely focused at protection of tribal areas and interests, by allowing self-governance through constitutional institutions at the district or regional level. These institutions are entrusted with the twin task of protecting tribal cultures and customs and undertaking development tasks.

In pursuance of this objective, Autonomous District Councils were set up way back in 1952 in certain hill districts of the then composite state of Assam, and later many other District Councils were added. While many tribes converted to major religions like Buddhism, Christianity, or Hinduism but still retained most of their traditional customs. Traditional customs and community provide identity to tribal people. Most tribal customary laws centre on collectivist or “community” which not only has authority on

land and other local resources essential for daily livelihood but also provides a sense of security and empowerment to its members. In this aspect, Northeast tribes are more fortunate compared with their central Indian counterparts who have seen constantly erosion of their identity as well as community based economy and it has got no constitutional protection. In most hill tribes in NE the village chief regulates the use of land and water and has administrative and judicial powers.

Much hope was generated by the Sixth Schedule in 1952 for the Tribal people of Northeast region giving them constitutional safeguards to its culture and identity. By availing them political and constitutional autonomy. That hope has largely been belied and frustrated. Today, the much talk about question of relevance of ADCs and protection of tribal rights becomes a serious issue for discussion. Sixth Schedule was primarily for the safeguard of tribal culture and identity. In a due course of time with lots of amendments, presidential order and legislation, the very nature of ADCs itself has change. Such as the relevance of local self-governance is decreased with increasing influence of modernity, which is supposedly belongs to plainsman or other people. Traditional institution is losing its value in practical sense. Government is also trying to replace it through amendments and legislation. Customary values and laws are being questioned as gender biased, invalid, outdated and dictatorial. Traditional leadership are under question in the name of uneducated, undemocratic, autocratic, dictatorial, and hereditary. Traditional leader have got symbolic values only without having much practical power. Left out traditional institution in remote village have been trying to replace it by modern institution for being an invalid and based on customary laws. Justice dispense by traditional court are not valid, it has been trying to remove from time and again. Court has power to interpret the Acts of the council when they are call upon to do. It is important to note that judicial power provided by the 6<sup>th</sup> schedule has not been exercise by the council since supreme authority is lies in council itself rather it can be intervene by the high court any time (Bhuyan, 1989: 229). Customary laws are not codified which are bedrock of traditional institution, and foundational bedrock of tribal identity.

Sixth schedule as a protector of tribal culture and identity has to recognise the tribal customary law. But, except in Nagaland (Article 371A) and Mizoram (Article 371G) customary laws are not recognised, instead formal laws have been introduced to deal with local issues like displacement and other land alienation issues. The formal land

laws are individual based and do not recognize community ownership. So non-recognition of their law is destructive to their livelihood. Recognition is thus vital for the peace to prevail because it is a sign of acceptance of the customary identity. Over time, many values have changed but not the customary laws around resource sharing, maintenance of ethnic identity or regulation of marriage. However, new processes of land alienation are emerging in the form of developmental initiatives, such as recently planned series of hydropower dams, of the Indian government; these clearly threaten their livelihood security and social identities. Today many more tribes want their customary laws to be recognized because they run their civil affairs, including land ownership, according to them but are not recognized by the State, putting them in a disadvantageous position.

### **3.3 IMCR in Northeast India**

The Northeast is known as a region of conflict since India's independence in 1947. The region has suffered ever since the withdrawal of the British and subsequently, India's Northeast has been depicted with various images like trouble torn area, insurgency prone area, war zone, boiling pot and so on. There is violence in the region, but that is not its only identity. The state views the conflicts only as a law and order issue. The region experience several conflicts such as nationalist and ethnic conflicts; around land, migration, natural resource conflict, displacement and others for protection of identity or culture. Widespread violence has become a fact of life.

“The North-eastern region of India in general, and Manipur in particular, people live in such an environment where every morning they wake up with mind –boggling news of violence. Such places are ‘*where the mind is not free from violence*’. It can be seen that people in such areas feel that conflict and violence not only begin in the ‘minds’ of people but are an ever present reality. This ‘mindset’ ought to become the starting point for peace building initiatives and must include practical and robust steps in conflict resolution and peace building” (Serto, 2011: 5).

It does not mean that they lack culture of peace and conflict resolution and born to be violent. They do have extensive wisdom on conflict resolution and rich culture of peace at all levels; individual, natural resource conflict and inter-ethnic conflicts. But it remained unexplored and inapplicable due to various reasons, first, due to colonial modernisation, which has destroyed and undermined the indigenous knowledge and

second was, due to contestation of ethnicity manifested in, practice, beliefs and values. Still values of peace and practices are embedded in the visual and oral traditions of north-eastern tribal societies. Such as; *Namghar*<sup>12</sup> in Assam, *Zu Dam*<sup>13</sup>, *Inremnaruo*<sup>14</sup>, *Se-sun*<sup>15</sup>, among the Hmar tribe, the institution of *Toltleh*, *Hemkham*, *Salam Sat* among Kuki tribe and *Limpuru*<sup>16</sup> and *Mahtsahru*<sup>17</sup>, the two unique institutions of peace and reconciliation practiced by the Yimchungrus Naga Tribe. Therefore, it is equally important to understand the spirit that guides any dispute resolution systems whether it is modern or traditional indigenous mechanisms because, both values peace.

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<sup>12</sup>*Namghar* is a traditional institution in Assamese society available in every village which can be described as community prayer halls. All the villagers of the particular village are members of the *Namghar* and most of their socio-cultural rituals or functions are observed under the patronage of that *Namghar*. The *Namghars* are empowered to resolve any disputes, grievances or misunderstandings between two parties within the village. The *Mel* (*mel is a designated person or system*) in *Namghars* deals with conflicting issues like land disputes, marriage problems, ownership rights, domestic violence within the village, local disputes over public property, family clashes, harassments etc. *Mel* is an open forum of villagers where they discuss a conflicting issue in the presence of the offender and the victim.

<sup>13</sup>*Zu* means *wine* and *dam* mean *peace* or *pacification*. As such *Zu-dam* mean *Peace wine* or *Pacification wine* and “*Zu-dam dawn*” means “*drinking the peace wine*” or “*Drinking the wine of pacification*”.

<sup>14</sup>*Feast of reconciliation*. Usually, a *Zu-dam* agreement is followed by a feast of reconciliation. This feast is organized mostly at inter-village or inter-tribal level although it is also occasionally done even at the family level.

<sup>15</sup>A feast of reconciliation also often involves, in the past, a very solemn ceremony where an animal, normally a Mithun (Indian Bison), is slaughtered to signify permanency in the peace accord, gratitude and to symbolize blood-brotherhood.

<sup>16</sup>*Limpuru*’ meant an office with special responsibility of being the peacemaker. He had the great role to play as the peace-bearer in the context of head-hunting. He was selected by a village or a cluster of villages to contact the inimical villages. During his tours across the villages, he would carry a green branch during the day and a pine-branch-torch in the night to indicate his presence. There was the common understanding among the villages and the tribes to respect and accommodate such people and not to harm him for any reason. He was allowed to walk into any village and was to be protected. It was considered an act of cowardice, shame and curse to harm or kill *Limpuru*. Both the feuding villages nominated *Limpuru* if peace and reconciliation was so desired. They were the main actors in resolving inter-tribe or inter-village tensions and fights.

<sup>17</sup>*Mahtsahru* is a similar office of reconciliation peculiar to the Yimchunger Nagas with a difference of the area of duty. While the role ‘*Limpuru*’ is between the villages or tribes, the role of *Mahtsahru* is within the village. He is expected to bring into unity and understanding between persons/groups within the village, who are feuding with each other. It was his duty to seek ways and means to bring justice between these individuals. The elders of the village chose persons of quality and wisdom to do this noble job. This was not often a permanent appointment but as and when need arises the feuding parties in consultation with their clan members would seek a particular person to mediate peace between them. Once the goal is achieved on one occasion, the whole community automatically recognizes his/her role to deal with such matters on a regular basis. *Mahtsahru* on his/her part takes personal responsibility and labor relentlessly in bringing peace and justice between the individuals.

### 3.3.1 IMCR: Status and Scope

Traditional institutions and practices of conflict resolution of North-eastern tribes are well protected by the Indian constitution. The sixth Schedule of the Indian Constitution guarantees preservation of tradition customs, laws, and institutions of the tribal societies of the north-eastern region of India. It has also provided autonomous district councils in the states. The district council is established to protect the customs, customary laws, traditional institutions and the interests of the tribal societies. Indigenous mechanism of conflict resolution is embedded in tribal culture, values, practices and customary laws. It also gives a right to the tribal populations to administer themselves as per the customary laws and traditional practices (Nongynrih, 2002:79).

Therefore, functioning of traditional institution of conflict resolution in Northeast is legally recognized and valid. Dobar Shnong (village council) and Dolai, *Durbars* and *Akhings* in Meghalaya are its best examples. But there are some states where sixth scheduled is not implemented yet traditional mechanisms of conflict resolution continue to be in practice such as in Nagaland, Wanchos in Arunachal. Hence, the indigenous mechanism of conflict resolution in Northeast operates both formally and informally. This is due to the people's trust and loyalties towards their tradition have been intact.

Northeast is diverse land of tribes. Each tribe has their own mechanism of conflict resolution. Northeast is rich in traditional culture and wisdom on indigenous conflict resolution. But, conflict resolution in Northeast has always been a top-down process and unlike in Africa IMCR remains unexplored during conflict time. Conflict resolution in northeast revolves around political and economic term rather than social and cultural.

“The modes of conflict resolution in the Northeast have been through; (i) security forces/ ‘police action’; (ii) more local autonomy through mechanisms such as conferment of Statehood, the Sixth Schedule, Article 371 C of the Constitution in case of Manipur and through ‘tribe specific accords’ in Assam etc; (iii) negotiations with insurgent outfits; and (iv) development activities including special economic packages. Many of these methods have proved successful in the short-term. However, some of these interventions have had unintended, deleterious consequences as well. The manner of ‘resolution’ of conflicts in certain areas has led to fresh conflicts in others and demand cycle remained as continuous process. There is, however, no doubt that conflict



prevention and resolution in the Northeast would require a judicious mix of various approaches strengthened by the experience of successes and failures of the past” (Government of India, 2008: 149-50).

The state’s approach to conflict can be best described as attempts of conflict management and settlement that is short-term processes, but for the long term trend requires conflict transformation and that required bottom-up approach as described by John Paul Lederach (Lederach, 2003). It does not simply eliminates or controls conflict, rather, one recognize and works with its “dialectic nature”. Social conflict is naturally created by humans who are involved in relationships and it changes those events, people, and relationships, patterns of communication, structure of society, images of the self and of the other. Therefore, these changes require transformation to improve mutual understanding and gaining a relatively accurate understanding of the other. Such transformation, Lederach suggests, must take place at both the personal and the systemic level. At the personal level, conflict transformation involves the pursuit of awareness, growth and commitment to change. That may occur through the recognition of fear, anger, grief and bitterness. These emotions must be acknowledged outwardly and dealt with in order for effective conflict transformation to occur (Fernandes, 2008: 111).

Traditional conflict resolution of Northeast includes, all these features, like forgive, forgiveness, reconciliation and togetherness, it covers all from conflict resolution, conflict transformation to peacebuilding. For e.g., practices of Zu-Dam a unique customary law of conflict resolution among Hmar tribe, it obliged the treaty of conflict resolution as well as not to continue fight again (Varte, 2014: 3). Whenever there is conflict or in the likelihood of conflict to ensue, kinsmen or carefully selected tribesmen from the alleged erring side or perpetrators will be sent to the victim or the wronged tribe/community with a pot of *Zu*<sup>18</sup> where they are bound by custom to apologize and to convince the party they are to pacify to accept and drink the *Zu* offered to them. The opposite party also composed of carefully selected kinsmen or community leaders are also duty bound by custom not to be violent and act like gentlemen. In many instances, the peace wine is refused and the erring party has to go back home and wait for another

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<sup>18</sup>Now, after the arrival of Christianity and the prohibition of alcohol and other intoxicants, *Zu* or wine has been substituted by tea specially prepared for the purpose.

opportune time. However, despite of the possibilities of the apology being turned down, it is also considered bad conduct to attack or commit violent acts upon the peace party during or after such parleys. However, the wronged victim or community has the right to verbally shout abuses but no further than that.

In most cases, it is considered improper to not accept the *Zu-dam*. So during negotiations, the peace delegate from the erring party is given full opportunity to speak and beg for forgiveness. Once that is done, the head kinsman or leader of the community (in case of community level negotiations, it is usually the Chief who heads the delegation) that has been wronged will lament, shout, advise or do anything but not physical. After that, the leader will pass the order to either serve the *Zu* or reject it. If it is the former, one of the delegates from the erring party will serve the peace wine to the other party. Only after all the members of the wronged party has accepted and drank the *Zu*, then the leader of the other party is allowed to stand, address the gathering and thank the wronged party for accepting their sincere apology. During negotiations, the peace delegate from the erring party is given full opportunity to speak and beg for forgiveness. *Zu-Dam* is followed by feast of reconciliation called *Inremnaruo*i and *Se-sun*. This feast is organized mostly at inter-village or inter-tribal level although it is also occasionally done even at the family level. In this ceremony either the head representatives or main contenders of the conflict will pierce the animal with a spear and kill it together. They eat best part of the meat of slaughtered animal on the same plate. Slaughtering of animal signify permanency in peace accord, gratitude and to symbolise blood-brotherhood. By becoming blood-brothers, both the party has an obligation to help each other in times of needs and to live, regard and address each other as one family. All social norms, taboos and prohibitions kinsmen are also fully applicable to this new relationship (ibid, 4).

The decision is always based on consensus among the leaders who are involved in resolution process. Peace-treaty is end with sharing meal together by conflicting parties. Slaughtering takes place after *Tsuhyungarih* in Yimchungrus Naga tribe. '*Tsuhyungarih*' is a symbolic act of reconciliation. The word '*tsuyung*' means 'to eat' and '*arih*' means 'unity'. This refers to the meal arranged when an agreement has reached upon after a case or conflict situation. The conflicting parties reach an all-accepted pact or agreement. As a sign of reconciliation over the hurting event and peaceful co-existence in the future the meal is arranged. In the usual circumstances it is

arranged by the guilty party. There are also instances when it is arranged by the well-wishers who took the initiatives to settle the conflict. In the cases of personal offences in the family context, the father/husband of the family sends 'pieces of meat' to the parents/elders of the family of the other. This is a traditional sign and it is ought to be done to end the procedure of settlement. The acceptance of the meat by the other is the absolute sign that the agreement reached upon has been accepted for ever (Yimso, 2014: 158).

Reconciliation and peace building are important components of the festival days among the Yimchungrus Naga tribe. Those who have been into quarrels and unpleasant moments make the festive days into days of reconciliation by making peace with each other. It is done through singing songs together and being part of the celebrations together. The desired party calls others into the house for a meal and make it a chance to meet each other and forgive one another. The traditional way is to express the thoughts and plans through the songs sung during the time. The songs contain words of pardon, mercy and the promise not to remember the past hurts any more. The role of the mediator is also great in the process. The mediator may make effort on his own or on the pursuance of one of the grieved party. The mediator plays the vital role of bringing together the two in war with his interventions to and fro, making a way to make them grow into a happy relationship. The recipient in the first meeting also invites the other in turn to a meal completing the reconciliation process. The final phase of mediation comes when he makes the circle of relatives, friends and those in the immediate circle of relation to assist the good relationship to go on smoothly (ibid, 159).

Every conflict affects normal life. This creates polarization, distrust, hatred, frustration, arise feeling of revenge. For the resolution of above reason, that emotional bonding and renewal of trust are among tools of conflict resolution. The indigenous conflict resolution has a best way to erase all these negative feelings and strong principal of togetherness. Traditional mechanisms are rooted in symbolism and ritual which not only ensures that the whole community participates in them, but also ultimately emphasises the notion of local ownership. Rituals, such as eating, drinking, singing and dancing together, as well as exchanging solemn vows and promises, signify the coming together of conflict parties, their constituencies and the community at large (Mutisi, 2011: 2). Selected or elected representative's decision-making inside traditional indigenous communities is often open and participatory, involving collective discussion

and consensus-building. Deliberations follow a bottom-up approach engaging every member of the community. Indigenous authorities are held close accountable to their communities, and are expected to serve the public good (Cordova, 2014: 20). There is often a strong emphasis on relationships rather than a definitive agreement. These all are the features of sustainable conflict resolution. Therefore, traditional conflict resolution mechanisms seem to have high potential of conflict resolution in the trouble torn region of India's Northeast. These methods deserve a serious absorption, as the contemporary mechanisms of conflict resolution imposed by the state apparatus have often ended up escalating more violence than peace.

Human rights activist and Supreme Court advocate Nandita Haksar stressed that tribal jurisprudence was still relevant in resolving conflicts between communities and individuals in the region. She pointed out that while conflicts over natural resources were at the heart of tensions between communities, contestations among those claiming indigenous status and so-called migrant communities were major issues that needed immediate attention. She added that tribal jurisprudence could provide "creative ways" to address conflicts. However, she suggested conflict resolution systems within communities had to evolve suitable mechanisms to deal with emergent tensions<sup>19</sup>. Scholars of conflict resolution, including Zartman<sup>20</sup> and Lederach<sup>21</sup>, emphasise the necessity of indigenous conflict resolution mechanisms because of their approachability to local realities. Zartman labels these approaches 'African conflict medicine',<sup>22</sup> stressing that such mechanisms help to heal societies afflicted by conflict.

### 3.3.2 ICMR: Strength

The emphasis of traditional conflict resolution is on restorative justice, which is presented as the genuine traditional form of justice. Their way of dispensing justice in

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<sup>19</sup>At a two-day meet on "Conflict Resolution Systems in Tribal Societies of Northeast India: Legal Pluralism and Indian Democracy" on 5<sup>th</sup> -6<sup>th</sup> June 2014, organized by the Northeastern Social Research Centre (NESRC).

<sup>20</sup>Zartman, I. W. (1999). Introduction: African traditional conflict "medicine". In Zartman, W.I (ed.) *Traditional cures for modern conflicts. African Conflict "medicine"* (pp. 1–11). Boulder, CO, Lynne Rienner.

<sup>21</sup>Lederach, J. P. (1997). *Building Peace: sustainable reconciliation in divided societies*. Washington D.C: United States Institute of Peace Press

Lederach, J. P. (2005). *The imagination: the art and soul of building peace*. Oxford: Oxford University Press.

<sup>22</sup>Zartman, I. W. (1999). Introduction: African traditional conflict "medicine". In Zartman, W.I (ed.) *Traditional cures for modern conflicts. African Conflict "medicine"* (pp. 1–11). Boulder, CO, Lynne Rienner.

not based on the punishment of offenders, but on restoration of social harmony within and between communities of offender and victims through the processes like apology and forgiveness, offer of 'Zu' etc. Mechanisms adopted by the IMCR always follow this concept of restorative justice. They try to restore any degraded social relationship by involving all the stakeholders in the process with an aim to identifying and repairing the harm. Strong point is that there is conversion of hostile relation into blood brotherhood by sprinkling the blood of slaughter animals or by killing the animal together to make their relation sacred, and eating the best part of meat of sacrificed animal in the same plate specifically *Inremnaruo*i and *Se-sun* among Hmar and *Tsuhyungarih* among Yimchungrus Naga. In this procedure, traditional conflict resolution follows all the three basic characteristics of restorative justice: Amend, Reintegration and Inclusion. Even the ex-offenders (who previously committed the same mistake) are also included to build a just peace (Tamuly, 2014: 7).

Traditional approaches to justice and reconciliation often focus on the psycho-social and spiritual dimensions of violent conflicts. Traditional approaches are also often inclusive, with the aim of reintegrating parties on both sides of the conflict into the community. An important component is public cleansing ceremonies, undertaken is an integral step in healing community relationships. Indigenous community justice is context specific, typically quick, inexpensive or free, easily accessible, non-hierarchical, culturally acceptable, morally binding and supplied in the local language such systems enjoy high legitimacy in indigenous communities.

For the true resolution of conflict Lederach (1996) called for transformation of relationships rather than a mere resolution or settlement of conflict. Insistence should be on speaking the truth, interdependence, increase of mutual understanding, creating awareness and finally social change and increased justice. For all these above conditions the loyalties to family, elders and tradition and culture is must and these have not lost yet in northeast India and indigenous mechanisms of conflict resolution fulfils all requirements (D'Souza, 2011: 97).

There is much more support of restorative justice in even in liberal legal system, in dealing with criminal and juvenile cases even in western countries such as in America, Australia, New Zealand, Canada (Tait, 2007). The condition of restorative justice is fulfilled by traditional /indigenous justice system, because, the liberal peace 'system'

rarely acts in complete harmony, and does not have complete coverage. It has blind spots that allow resistance and alternatives to take root, and perpetrates outright injustices that invite more robust forms of resistance (Mag Ginty, 2011: 211). Many of the traditional institution or mechanisms too are resisting the force of westernization; prefer indigenous or traditional justice system over modern legal system dealing with criminal cases such as Mato Oput in Acholi community of Northern Uganda. In African countries indigenous conflict resolution are reviving as an alternative to liberal or formal institution like Gacaca in Rwanda, Utbunu South Africa and Nahe Biti in East Timor and also got support from international organisations. They can occur beyond the purview of formal state mechanisms and are bottom-up and participative and have an affective dimension lacking in formal mechanisms (ibid, 66). The indigenous conflict resolution is very effective at grass root and is basic condition for sustenance of long term peacebuilding and conflict resolution.

### **3.3.3 IMCR: Challenges and Limitations**

The preservation of solidarity of the village is the prime objective of traditional conflict resolution. They always seek to reconcile conflicting parties to maintain social harmony. But, they are facing challenges to exist continuously. Because of influx of new culture, cultural values among the people are changing. In the field of indigenous conflict management, one finds in many institutions and methods, who seek to find within the community (Benjamin, Jesse J. and Brandon D. Lundy, 2014).

Indigenous systems of conflict resolution are regarded as private affairs, traditional and informal, except in few cases. It does have upper hand, hierarchically, it has to work under modern legal system. There is no investment by new state systems in the study of indigenous systems of conflict resolution. Therefore such knowledge and practice legal system should be taught in modern universities, where the newly educated elite acquire their skills and legitimacy to embark on their professional lives. The knowledge of indigenous systems of conflict resolution was excluded due to the fact that it was perceived unworthy to be included in the modern university curriculum (Tuso, 2011: 252). Such orientation to law and jurisprudence needs to be re-evaluated to make justice more widespread and categorical.

Role and efficiency of indigenous conflict resolution has been eroded, marginalised, and dismissed by modern civilization and development thinking. Traditional systems

are often regarded as archaic, 'backward', outdated mode of arbitration or rigid practices that are not amenable to modernisation, efficient market relations, or broader development goals. In terms of reform, they are often seen as overly localized and complex, with the diversity of systems making more generalized initiatives too difficult. They are often seen as undemocratic—lacking democratic accountability mechanisms to induce reform—and lacking in legitimacy, authority and enforceability. The emergence and institutionalisation of modern court system has greatly marginalised traditional management of conflict.

Despite evidence that demonstrates their practical relevance, traditional institutions of conflict resolution have still not been adequately addressed by scholarly and policy research. There has been a slow pace in the uptake of lessons from these institutions. Nonetheless, the relevance of traditional methods and institutions of conflict resolution is now slowly gaining an audience among policy makers and practitioners of conflict resolution. For instance, in 2004, the United Nations Economic Commission for Africa (UNECA) organised a forum which discussed governance in Africa, including the role of traditional systems of governance in the modern (Miruthi, 2008).

Many indigenous and traditional approaches to peacemaking dispute resolution and reconciliation are conservative and reinforce the position of power holders. Women, minorities, and the young are often excluded for which Jirga, Sulha and Surha always been a reason of criticism (Mag Ginty, 2011: 52).

Traditional and customary law, these systems have been almost completely neglected by the international development community, even at a time when justice sector reform has become a rapidly expanding area of assistance. In the past decade, for example, the World Bank has dramatically increased its efforts in promoting justice sector reform in client countries, yet none of these projects deal explicitly with traditional legal systems, despite their predominance in many of the countries involved (Chirayath, Caroline and Michael, 2005: 3). Of the 78 assessments of legal and justice systems undertaken by the Bank since 1994, many mention the prevalence of traditional justice in the countries looked at, but none explore the systems in detail or examine links between local level systems and state regimes (ibid, 4). Despite of constitutional guarantee indigenous mechanism of conflict resolution have been marginalised and never implemented in peace process. It lacks codification.

## Conclusion

Customary law is foundational bedrock of indigenous conflict resolution and IMCR is an important component to it. IMCR operates through traditional institution, which is deeply embedded in customary values, practices, laws, and customs, often transmitted from generation to generation. Customary laws can define how traditional cultural heritage, is shared and developed, and how indigenous conflict resolution systems are appropriately sustained and managed by indigenous peoples and local communities. Many customary laws shaped by the ethical norms, religion, social values and moral standards of human society. Therefore, maintenance and recognition of customary laws is crucial for the continuing strength of the indigenous justice, cultural and spiritual life and heritage of indigenous peoples and local communities.

Around the globe voice have been raised for the recognition of the customary laws by indigenous community, because, this is a viable protector of indigenous rights, knowledge, cultural values and practices. Many countries have become successful in recognising customary law but in some countries it practices extra-judicially. Despite of recognition of customary laws, various IMCR lacks legal recognition. Mostly recognition of customary law includes indigenous rights over, natural resources and marriages, excluding conflict resolution mechanism. In some countries recognition of customary includes recognition of IMCR too and the justice dispense by IMCR is equally valid to modern conflict resolution. In most of developing countries IMCR lacks state's recognition. Thus it operates both formally and informally.

Indigenous methods have been helping to resolve conflict at international stage. Many of indigenous approaches have been applied to resolve the conflict when modern conflict resolution failed to get resolved in satisfactory manner or formal justice system failed to reach because, effective redress is simply not available through the courts. The justice system does not have the capacity to deal with the massive violations committed during the civil conflict. Large parts of the country do not have functioning courts and access to formal justice is difficult to obtain. Moreover, the judiciary suffers from a perceived lack of credibility and lacks public confidence when it is over burdened with cases and ends up delaying justice. Therefore, the possibility for victims to seek redress through the indigenous courts becomes more relevant. *Gacaca* in Rwanda, *Jirgas and Shuras* in Afghanistan practiced when the modern institutions have failed to resolved



local conflict. This was done to provide justice to local people who had lost faith in formal court. *Gadda* system of conflict resolution was practiced in Ethiopia facilitated to resolve historical conflict over scarce water resources in Borona region of Ethiopia among Oromo people. In many countries, traditional institutions, such as the *dare* in Zimbabwe, *Abunzi* and the *Gacaca* courts of Rwanda, and the *Bashingantahe* in Burundi, continue to play tremendous roles in conflict resolution. These institutions have presided over cases such as land disputes, civil disputes and, in some instances, criminal cases. In countries like Rwanda, these traditional institutions of dispute resolution are fully recognised under the law, while in other countries such methods exist extra-judicially. Therefore, the practical relevance of traditional mechanism conflict resolution cannot be understated.

Mostly in African countries, indigenous mechanisms of justice, peace, and reconciliation are reviving as an alternative to western/modern institution perceiving that modern institutions have failed to resolved local conflict or provide justice to local people and to restore peace among the indigenous people. For example, Mato Oput among Acholi in northern Uganda, Jirga in Afsar village of Afghanistan, a traditional justice system Gacaca in Rwanda have been applied and become relatively successful when the modern conflict resolution has failed. Like Gacaca system in Rwanda during post genocide was used to deal with genocide suspects in 1994. The impact of Gacaca on Rwandan society has been enormous: around 1.4 million cases have been completed, where the total population of the country is approximately 10 million.

ICMR in India operates in various ways, both formally and informally. ICMR in tribal region and northeast India is protected by 6<sup>th</sup> Schedule of Indian constitution and some are continued through other measures like the customary Panchayats, such as; *Khap Panchayat* in Rajasthan and Haryana, *Kulam Panchayat* in Orrisa, *Kootin* Tamilnadu, *Dzumsa* in Sikkim, *Meetin* in Chattisgarh, *JatiPanch* in Rajasthan, *Halli Panchayati* and *Nadu Panchayati* in Karnataka are some of the examples of customary institutions prevalent in our country.

Sixth schedule in Northeast India is primarily implemented for the protection of culture, rights, practices, values and customs of hill tribes, because, they seems to be a different from the plains. The culture, tradition, customs traditional socio-political and administrative institution were well protected through introduction of 'Inner Line

Regulation System' in 1873, Scheduled District (1874), 'Backward Tract' (1919), and further created 'Excluded' and 'Partially Excluded Areas' under the Govt. of India Act 1935. The Lushai Hills (now Mizoram) the Naga Hills and the North Cachar Hills were under the excluded areas, over which the provincial ministry had no jurisdiction. The Khasi and Jaintia Hills, the Garo Hills, and the Mikir Hills were under partially excluded areas.

The Sixth Schedule gives an independent political autonomy to excluded and partially excluded region to manage their local affairs according to their own genius and ability. After independence of India it was continued through 6<sup>th</sup> Schedule which was amended in Indian constitution under the recommendation of Bordolai Committee in 1947. The 6<sup>th</sup> schedule is applied through the provision of Autonomous District Council which have wide ranging legislative, executive and judicial powers. As a result, they almost work like a "mini Parliaments". The verdicts of district and lower level courts can only be challenged in the High Court. At present, 6th Schedule Areas exist only in four North-eastern States: 1) Assam, 2) Meghalaya, 3) Mizoram, and 4) Tripura. These Areas are administered through Autonomous Districts / Regional Councils. Except Meghalaya, other three states have only certain selected areas covered under the Sixth Schedule.

Sixth Schedule recognise the customary laws, values and practices of north-eastern tribe that include indigenous mechanisms of conflict resolution such as (Article 371A) in Nagaland and (Article 371G) in Mizoram. Despite the recognition of customary laws, 6<sup>th</sup> schedule does not give full protection and autonomy to indigenous conflict resolution. IMCR do not have upper hand in resolution of conflicts and has subordinate position. Hierarchically, it has to work under modern legal system. State had imposed formal legal system in all possible spheres to replace traditional legal justice rather than giving them a support. Indigenous legal mechanisms and procedures are regarded as traditional, backward, and informal. It is mainly practiced in remote areas where state has failed to reach or where the formal legal system is inaccessible. Customary laws are not codified.

Despite evidence that demonstrates their practical relevance, traditional institutions of conflict resolution have still not been adequately addressed by scholarly and policy research. There has been a slow pace in the uptake of lessons from these institutions.

Nonetheless, the relevance of traditional methods and institutions of conflict resolution is now slowly gaining an audience among policy makers and practitioners of conflict resolution. There has been a renaissance of interest in indigenous and customary approaches to development, peacemaking and reconciliation in recent years. International organisations, states, and international and national civil societies are paying more attention to indigenous issues. The 'rediscovery' of the local, traditional, and indigenous has a number of implications, not least for the type of peace and reconciliation that is being promoted in many post-peace accord societies. Due to civil society activism its importance is gaining in international institution. The international Labour Organisation (ILO) showed early and sustained interest in the issue of Indigenous Populations. UN has declared two decades of International Year of World's Indigenous Peoples. Canada, Australia, Latin America and Government have also recognised the indigenous rights and indigenous mechanisms of conflict resolution and given them independent autonomy to resolve conflicts in their own ways.

## Chapter IV

### Dzumsa as an Indigenous Method of Conflict Resolution

#### Introduction

There were various methods of conflict resolution in Sikkim, which used to exist in various forms such as *Sir Uthauni*<sup>23</sup>, *Mit*<sup>24</sup> etc. in Nepali community and *Mondal system*<sup>25</sup> in other parts of the state. Earlier these traditional and symbolic values were used to be very effective in resolving the individual conflict, but now it has become less relevant due to the influence of modernity and imposition of modern legal system. Dzumsa is the only institution that remains in practice and recognised by both local people and government. After Sikkim's integration into India in 1975, Mondal system in Dzongu and others parts of the state were abolished by introducing Panchayati Raj institution. At present this institution mainly exists in two villages of North Sikkim, i. e., Lachen and Lachung.

Dzumsa is a traditional local self-governing institution of two villages of North Sikkim, Lachung and Lachen, popularly known as *Pipon system*. This is an alternative to *Gram Panchayat*. Dzumsa has various and multiple functions, such as; administrative, social, economic, political and judicial which are concerned to the village. Dzumsa has got extra judicial power than other Panchayati Raj institution. This is the only institution which uses customary laws to resolve local conflicts in Sikkim. The study explores the historical evolution of Dzumsa, how does it operates, its relevance and effectiveness in Sikkim.

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<sup>23</sup>Apology ceremony, where offender ask for an taking his responsibility of his/her mistake in the presence of some other person, with one bottle of alcohol and khadda (white scarf use as a garland), sometimes money also to compensate the victim in case of physical hurt. If victim accept the offenders apology that alcohol will serve among all and drink together and shake hands which symbolises reparation of relationship as before.

<sup>24</sup> Friendship ceremony, when two persons frequently fight, elder peoples or their parents decides to convert their hostile relation into blood-relation friendship by calling a *mit*. Once they convert their relation into *mit* or friendship, they have to respect each other, polite in manner, they should not hurt each other, neither physically nor emotionally or speaking hard word. This relation binds the two families or clans into blood relation and it will be followed till next three generations.

<sup>25</sup>A system where village headman called Mondal collects revenue from public and submits to government and also settles minor disputes.

## 4.1 History of Dzumsa

### 4.1.1 The Genesis

Dzumsa is commonly practiced in two villages of North Sikkim, Lachung and Lachen. These areas are exclusively inhabited by Bhutia tribe of Sikkim, who call themselves Lachungpa and Lachenpa respectively. Largely, the people follow the Buddhism and highly God-fearing leading a very simple life. In the older days as an independent nation, they had strong trade and other links with Tibet. After the 1962 war with China these trade and religious links slowly got disappeared (Dutta, 2009: 335). Dzumsa administration covers the population other than particular village of Lachen and Lachung too, that are Tibetans of Chaten, Dokpas (Tibetan yak herders who live at high altitudes) and others who have been living in these regions but not included in the membership of Lachen and Lachung, but come under Dzumsa administration since they fall under Dzumsa's jurisdiction. This region shares its border with Chungthang in the south to Tibet in the north.

Dzumsa means 'gathering of people', or 'institution in charge of administration and organizing activities within a given territory'. General councils of villagers are composed of household heads. It is believed to be evolved in 19<sup>th</sup> century, and J. D Hooker has mentioned the presence of Pipon in Lachen and Lachung in 1854 (Hooker, 1854). Dzumsa as a customary administrative system is believed to be initiated by following similar institution in Tibet. The councils of representatives or core administrative member of Dzumsa is called *Ihyena*. Dzumsa consists of two Pipons, originally called '*Chipons*' (*spidpon*) meaning 'village chief', or 'the king of the public', two Tsipos (accountants), two Gyapons (assistant of the pipons), and six Gempos, ('elderly people' or 'responsible people' of the village are to help the Pipons in functioning of Dzumsa such as; taking decisions, in making the system works and dispensing justice) (Bourdet-Sabatier, 2004: 95) and one 'Chutimpa' representative from religious sect (monks). The normal tenure is one year for all. This organization is responsible for the application and maintenance of law and order of the village. Pipon is the chief of the village who has the supreme authority of all the village affairs and maintenance of rules and laws of the community. Pipon and Gempos are the most powerful members; they issue the rules and are assisted by Tsipon and Gyapons.

Earlier Pipon was not elected but nominated by a group of people called *thenmi* (*thos-mi*) meaning ‘elderly people’, who were considered to be the most respected, honest and experienced members of the community. Now he is being elected by the people. This election system was started after merging of Sikkim to Indian union, with the first election held in 1978-79 (Bourdet-Sabatier, 2004). The Pipons have extensive power in accordance with the customary laws and practices, although the local law of the state and country are also applied to the area as well.

**Table: 4.1 Composition of Dzumsa**

Designations	Numbers of member	Tenure
Pipon	2	1
Tsipon	2	1
Gyapons	2	1
Gempos	6	1
Chutimpa	1	1
Total	13	1 year

Source: Field Work, June, 2014.

This system was protected by the 1982 Panchayat Act and got official recognition in 1985, and hence in 1990 when the state government made reformation of the local administration with the implementation of Sikkim Panchayat Act, 1993, it remained intact. Sikkim Panchayat (Amendment) Act 1995 made Dzumsa equivalent to gram Panchayat and hence the junior Pipon represents as Gram panchayat and the senior Pipon as Zilla member, since there are two tiers in the Panchayati raj institution. The posts of Pipon and Gyapon are equivalent to the Sabhapati and Up-sabhapati of the Gram Panchayat. Unlike gram panchayats, it has tenure of one year and exercises more powers and functions. No protests have been faced in favour of removing this traditional institution from both the government and people. Instead, in order to protect more the customary tribal self-governing institution, the state government enacted the law in 2001. The Act of 2001 states that;

“the existing system of the traditional institutions of Dzumsa practiced in the two villages of the Lachen and Lachung in north district of the state shall continue to exist in accordance with the traditional and customary laws of the Dzumsa’s. Notwithstanding other provisions of the Sikkim Panchayat Act, the traditional institutions of the Dzumsa’s existing in the villages of Lachen and Lachung shall

exercise the power and functions as provided under the Act in addition to the powers and functions exercised by them under the existing traditional and customary law” (GoS, 2001).

#### **4.1.2 Procedures**

Dzumsa conducts election annually. Dzumsa members are elected every year by *Mapo* (general public body consisting of representatives from each household of the village). Every year the election takes place at the time of Tibetan Lochar, or immediately after monastic dances or Sonam Lochar (festival of harvest season), that falls in 2<sup>nd</sup> week of January (Acharya and Sharma, 2012). An ad-hoc committee designated by the villagers consisting of seven members conducts election. Before election all the former Iheyina have to resign by closing all the accounts and wrapping up unfinished business, order a last common meal and submit the key of the Dzumsa house to the public. The Dzumsa house (*mangkhim*) was built in 1984-85 (Chhetri, 2013).

Before this election, ad-hoc committee conducts a meeting at Dzumsa house and shortlist 13 names. But before the election no one knows whose name will be on the shortlist. This is totally unknown; anyone’s name can be there. The committee will decide the name of whichever candidate they think the best to serve the village. If a former Pipon has performed well, his name could be listed again. The shortlisted candidates are not allowed to do any campaigning or influence the people to cast the vote in their favour. The general public will get freedom to cast their votes in favour of their desired candidates. People cast their votes through a ballot, writing the name of a candidate in the ballot paper. Earlier they used to elect the person by counting the raised hands, with the one who got the maximum number of hands raised in his favour becoming a first Pipon followed by others as per their hands raise. These days whoever gets the highest votes he becomes the first Pipon, second highest becomes second Pipon, third to eighth become Gempos, ninth and tenth would be considered as Tsipos followed by Gyapons. Heads of the household as a member of Dzumsa has power to vote for Dzumsa. Once the election is over the new Dzumsa members will be put in their place and a meal will be offered to the public and the new council members by outgoing Dzumsa members (Bourdet-Sabatier, 2004). Women are not allowed to contest the election for office, but they can cast their vote and take part in decision making, if there is no elder male member in the family.

Originally, Pipons were engaged in local administration, and used to collect forest, grazing and land taxes and take it to the king. After Sikkim merged with India in 1975, Pipons have become the intermediaries between the government and representative of people at village as well as at the district level. After the establishment of two tier Panchayati raj system in the state, the Dzumsas were recognized as territorial constituencies of the North District Zilla Panchayat and hence the senior Pipon of the village has been made the member of Zilla Panchayat. Tsipon as an accountant used to collect taxes during king but now he maintains the account of the Dzumsa and calculate the fines and maintain the books, being in charge of finance. Gypon is an assistant of the Pipon and works as a messenger, mainly for the developing the relationship of Dzumsa with the villagers and to give information to the public and from public to Dzumsa. Earlier, a monk used to come occasionally, when they had to organize religious festivals, set dates of showing, to move animals seasonally and other affairs affecting the villages. But these days they have to come frequently whenever the meeting is held.

#### **4.1.3 Power and Functions**

Dzumsa has multiple power and functions such as socio-economic development, political, and judicial matters which are concerned to the village. Dzumsa is responsible for all decision and welfare of the community. Dzumsa supervises all the developmental activities of village such as plantation, construction of drainage and other village developmental work, and utilization of funds that come from the government. They are also authorized to collect taxes and fix the prices of village products such as cheese, dry cheese, butter, incense and other handloom products, and vegetable products like potato, cabbage etc. which is produced in the village for commercial purposes. Judicial functions are related to the maintenance of law and order in the village and dispensing justice to the people. These include conflict resolution and administration of justice in the village.

The Dzumsa performs all the developmental functions that are assigned to the Panchayats. Unlike the Panchayati raj institution, it has its own power to collect revenue. The revenue is generated through fines, and tenders: when there is an execution of developmental projects, Pipon asked tenders from local people and the best bidder gets the contract. This revenue earned by Dzumsa is used for development of the monastery or other social works and the rest is equally distributed among the



household members either through installments or onetime payment at the end of the year (Chakrabarty, 2011). During the monarchy, Pipon used to collect forest, grazing and land taxes annually and then submit it to the king, but now Pipon collects land tax for the government (Bourdet-Sabatier, 2004).

Religious functions like organizing religious festivals, monastic rituals, fixing dates for sowing and harvesting, movement of herds including collection of funds and construction of monastery are the responsibility of the Pিপন. Pipon fixes amount of donation either in cash or kind to be given by each household to the monastery. Dzumsa also provides social service and financial support to the needy people including marriage and death.

The meeting of Dzumsas is held in a public hall called as *Mong-khyim* (Dzumsa Ghar/Dzumsa house). It is a place where people meet to discuss and deliberate on their problems and transact important business of the welfare of the community. The house is a square roofless structure with a religious flag (*tharcho*) mounted on a long pole. Every meeting is presided over by the Pipon. Dzumsa normally meets once in a year, but the Pipon may call a meeting of Dzumsa at any time whenever the need for such meeting arises, since there is no specific rule for the frequency of meeting of Dzumsa. The meetings are generally called to conduct the public business, settle disputes between villagers, and these days to distribute materials under governmental schemes to the poor. Most of the major decisions are taken in the Dzumsa meeting such as sowing, harvesting; cutting of hay from community pastures and so on. Grazing and seasonal migration and disbursement of government assistance are also discussed in such meetings.

The meeting of Dzumsa is fixed by Pipon in consultation with Gyapon and village elders. They have their own peculiar method of informing the members about such meeting. The Gyapon, an office-bearer of Dzumsa under the direction of the Pipon, informs the people about the Dzumsa meeting by shouting at the top of his voice from the top of hillock. Being a cluster settlement in both the villages, people live in close proximity and hence all the inhabitants could easily hear what the Gyapon shouts from atop the hillock. The people therefore attend the meeting accordingly. Attendance in the Dzumsa meeting was compulsory in the beginning and the absentees were fined by the Pipon, but in course of time the attendance in the meeting was made voluntary and

imposition of fine to the absentee has been removed and hence no absentee at present has been fined. Traditional dress is compulsory in Dzumsa, and the one who fails to follow this rule will be fine.

## **4.2 Dzumsa as an IMCR**

### **4.2.1 Conflict Resolution Process**

Dzumsa do not have codified customary laws of conflict resolution. They have their own oral customary law that continues from generation to generation. They do not have any separate judicial body: everything is dealt by Dzumsa itself. Dzumsa resolves the local social conflicts such as family disputes, theft, land disputes, divorce, and adultery with the help of elders of the village from which 18 senior members are invited (Chakraborty, 2011). In case of a resolution of conflict, the victim has to inform Pipon with one Khadda, one or two bottles of alcohols and money (that is not fixed but usually it is more than Rs. 500). After that Pipon informs other members of Dzumsa in Dzumsa house; the accused also needs to submit the same thing. Both parties offer *khadda* (white scarf used as garland), alcohol, money, and other things to proceed with their case, and unless both persons do not submit the required thing to Pipon, the case will not proceed. After submitting the proposal objects Gyapon will make the announcement from the top of the hill, so both the victim and accused have to be alert for the hearing of an announcement. If any one of them gets late, he will be fined. For the resolution procedure, all the Dzumsa members will have to be present.

The Pipon sits opposite to entrance of Dzumsa house on the concrete platform, while the members of Dzumsa sit at the middle. Dzumsa hears both the complainant and the accused individually or separately, with both the parties given equal opportunity to express their views and grievances, though they are not allowed to present at the same time. Instead they are called individually, and Dzumsa listens to them. If there is a witness, then the witness also will be called and Dzumsa makes queries to him/her separately. Every witness will be thoroughly examined and cross-examined, and on the basis of queries from both sides, final judgment will be pronounced. Dzumsa's judgment is final, and no one can question it. On the basis of judgment the victims will be compensate and sanctions and other penalties will imposed upon the offenders. If the accused is not found guilty or Dzumsa does not find any evidence to accuse the person of a crime, then again the complainant will be rewarded with fines and returning

back all cost what he/she had made during court procedure and has to beg for forgiveness with alcohol and Khadda called *sir-uthawni*. There is no system of physical punishment; rather they have to make promise to maintain communal harmony in the society. If fine is a high amount relatives will help to pay, like in case of serious crime like taking away others wife, the fine would be more than one lakh.

After the judgment, whoever is found guilty has to apologize and offer *khada* and *chyang* (local beer) to each member of *Ihenya* and to the other party. The winner will be offered *khada* and *chyang* by *Ihenya*. In case there is a conflict between a local people versus outsider (migrant laborer), first complaint is made to police in-charge, but again the case will be forwarded to Dzumsa.

If there is a relative of offenders among the Dzumsa members and other party has doubt that he might be biased over a decision or may not provide the fair decision, then that Dzumsa member has to take a promise in the Monastery by keeping his hand over a religious book and swear not to become biased over decision making.

Dzumsa does not have separate customary rules to deal with inter-village or inter-ethnic conflict. The village is homogenous and isolated, there is no scope of inter-village and inter-ethnic conflict, and neither do they have any record of this in the past. If that happens, the same rules will be applied.

If there is no satisfactory evidence, the Dzumsa could resort to the tradition of oath taking. The oath is taken not by the accused but by the victim or the complainant in the Monastery by keeping the hand over Buddhist religious book. The wording of the oath was roughly as follows: “If the accusations that I have made are false, let misfortunes or illness befall on me within 2 months, 3 months or 1 year”. If nothing happens to the victim or the complainant during the specified period of the stipulated period, the accusations were considered to be true, and a punishment was imposed on the accused. Taking an oath was a serious matter because a false oath could lead to the displeasure of the spirits and bring disaster on the individual and the clan.

#### **4.2.2 Procedure of Forwarding cases**

If a dispute could not be settled by Dzumsa at village level, then it will be directly referred to the District magistrate without referring to the sub-divisional court at Chungthang. The District Magistrate will once again refer back to Dzumsa for re-

examination; if Dzumsa fails to settle for a second time also, then the District Magistrate will take it over. However serious cases like murder come directly under the judicial system established by Indian panel court. Therefore, first it is referred to police, then to Sub-Divisional Magistrate (SDM) after reporting to the Pison without any investigation by Dzumsa. Pison also will be examined by the court, if he is related to the case as an evident provider or cases settled by him re-emerged in the court. Earlier, murder cases were also be handled by Pison without intervention of any higher authority. People too do not want to take the cases to the formal court because they feel that they will not get fair justice in a modern court. As the Nydor Lama Lachenpa (an old monk), 75 years old said in an interview, *“The court does not provide true verdicts to the people, instead in court that person can win who could lie and prove wrong evidences as right, but in Dzumsa people cannot lie, because everyone knows each other very well, even if he/she lies that person cannot get away from cross check queries”*.

#### **4.2.3 Role of Police in Dzumsa**

Every village has one police check-post. Head of the police in-charge is Assistant Superintendent of Inspector (ASI). The police check-post has got separate responsibility such as maintenance of law and order, maintain the documents of permit of migrant labourers, and other visitors who is from outside, to check other illegal activities such as; supply and consumption of drugs etc. They have to work cooperatively with Dzumsa. Regarding settling or reporting of disputes or any criminal offence, without reporting to Dzumsa they cannot deal with the case. If some cases refer to police by Dzumsa, it will be further forwarded to higher court through SDM.

### **4.3 Data Interpretation and Analysis**

#### **4.3.1 Profile of the Sample**

This study attempts to include all the major variables such as gender, age, local and outsider respondents, awareness of modern legal system and existence of traditional institutions in other parts of the country, preference between modern and traditional legal system in case of choice is given etc. This study tries to make sincere attempt to bring out the truth on relevance of traditional institution or Dzumsa on conflict resolution, hope of continuation by the younger generation, reasons of support for

Dzumsa than the modern legal court. For analysing these issues, the sample population was taken from two villages namely; Lachen and Lachung in North Sikkim with a total population of 2,800 and 2,923 respectively (census of India, 2011).

**Table 4.2 Composition of the Sample**

General Public		Police	Executive member of Dzumsa	Total
Male	Female			
120	60	10	10	200

Source: Field Work, December, 2014.

For the sample population among the general public of the two villages, random sampling was used. Total sample size is 200 having 100 from each village, which contains 180 general public 10 police personal from police check-post, 10 Dzumsa's executive members from both the villages. Out of the 180 general public, 60 were women and 120 were male and all police personal and Dzumsa executive members were male.

**Table 4.3: Age of the Respondents**

Young (20-30)	Adult (30-40)	Old (40 and Above)	Total
60 (30%)	50 (25%)	90 (45%)	200

Source: Field Work, December, 2014.

Age is one of the important variables to understand the relevance of traditional conflict resolution or Dzumsa's legal system. Because for the future continuation, support of the young group is very important, therefore to know which age group consist of what percentage of sample population has become important. Out of total sample population, 30% was young people ranging the age groups between 20 to 30 years, 25% was Adult that includes 30 to 40yrs and the third group consists of age group between 40 and above is 45%.

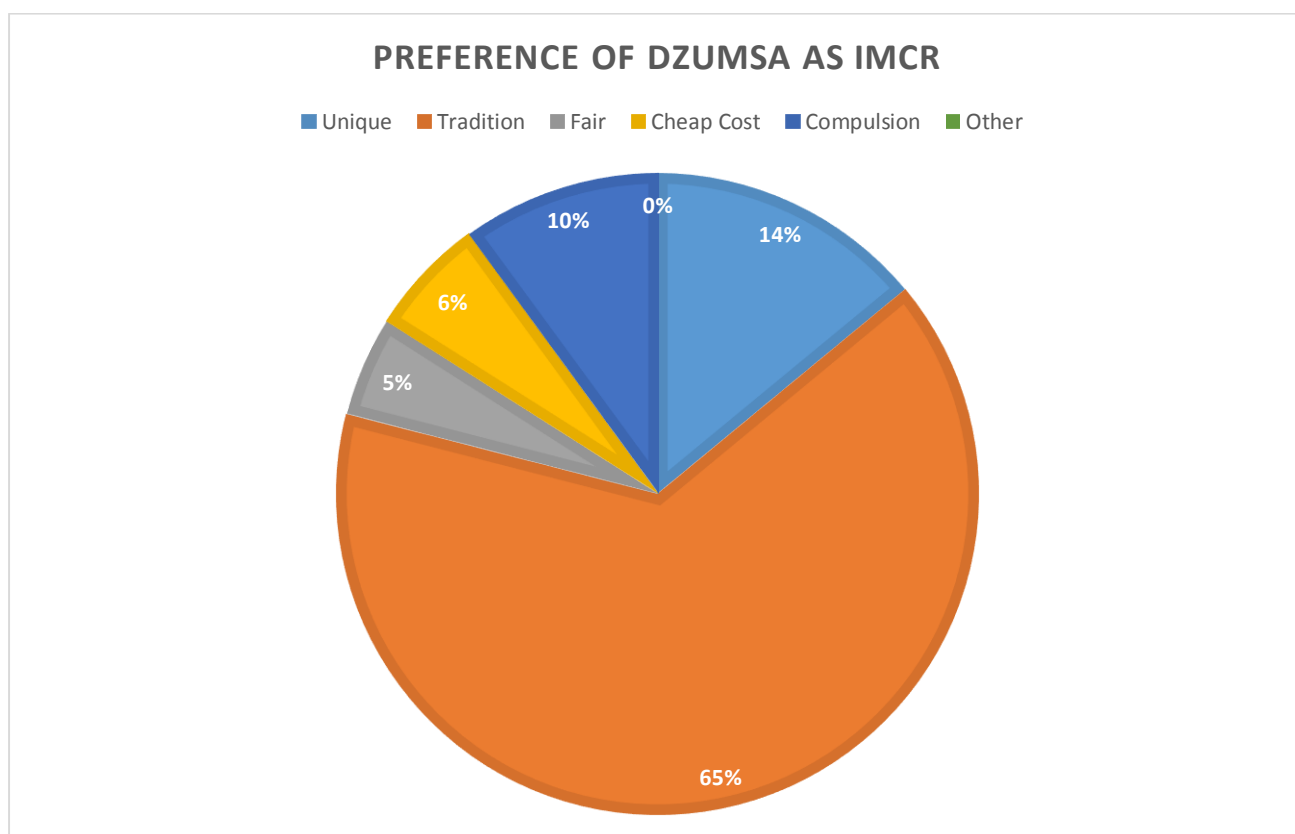
**Table 4.4: Local and Non-Local Respondents**

Local	Non-Local	Total
180	20	200

Source: Field Work, December, 2014.

Among the 200 respondents, 180 heads are locals and 20 heads are non-locals. Locals are those who have immovable property like land, home etc. Non-locals are people who have come from outside to work as labourers and for the purposes, but have been residing there for more than three years. Non-locals were also interviewed because they do have disputes among themselves and sometimes with the locals too. In order to resolve these issues they have to approach Dzumsa and hence it is important to get the viewpoints from both the locals and outsiders.

**Fig 4.1: Preference for Dzumsa as IMCR**



Source: Field Work, December, 2014.

Dzumsa is there not solely for the purpose of IMCR but it has multiple functions. Within the jurisdiction of Dzumsa, people have no other options than Dzumsa for the resolution of conflict or disputes. Therefore, to know reasons behind preference of Dzumsa as

conflict resolution process has become important. As per the above figure 65 percent respondents were of the opinion that it is due to tradition that they prefer Dzumsa, as it has been in practice for centuries ago. Out of 200 respondents 14% gave the reason that it is unique, 5% said it is fair, 10 % said it is compulsory to follow Dzumsa since there is no other option, and 6% of them said that people follow Dzumsa due to the cheap cost as compared to modern judicial system. The modern legal system is expensive and time consuming, and may not solve at once, they have to visit court frequently which located away from the village. In fact formal courts are located at Mangan and Gangtok. If they go to Dzumsa court they don't need to hire a lawyer, except few formalities to follow their case. All mediators and arbitrators are familiar to both parties since they belong to the same village and take less time.

**Table 4.5: Preference between Dzumsa and Modern Court**

Dzumsa	Modern Court	Total
180	20	200

Source: Field Work, December, 2014.

The willingness of the public to follow the rule of Dzumsa is very important since there is a possibility of traditional institutions for being an autocratic. Therefore, to understand the preference of public in case of choice would have given between Dzumsa and Modern court is very important to know whether the traditional institution is really sustained by the consensus of the public or by autocracy. As per the above table, 90% would like to go to Dzumsa court in case of no compulsion because Dzumsa is convenient for them and this is a part of their tradition. They have a good knowledge of all procedures of Dzumsa and this court uses their mother language which is more suitable for them. This is less costly and best for the poor people. 10% respondents have shown their interest to go to modern court if there would be given a choice but they did not give reasons.

**Table 4.6: Importance of Dzumsa by Young Generation**

<b>Yes</b>	150	<b>75%</b>
<b>No</b>	10	<b>5%</b>
<b>Don't Know</b>	40	<b>20%</b>
<b>Total</b>	200	<b>100%</b>

Source: Field Work, December, 2014.

In the contemporary period, relevance of IMCR among the young generation is one of the important factors for future feasibility of sustenance of traditional institutions of conflict resolution or Dzumsa. Because, the younger generation is vulnerable to modernisation and westernisation. As per the above mentioned data 75 % of respondents have expressed their faith on Dzumsa to be continued by the younger generation. Apart from court procedure, Dzumsa carries multiple values, such as it signifies the identity of village; it unites all villagers as one. Younger generations are more concerned of their village identity, unity of village, as well as other values which Dzumsa carries, that they want to preserve well as it is. 5 % said that it would not continue in future, since the influence of modernisation and globalisation are increasing day by day as an irresistible force. In case of losing support of the government it would be very difficult to maintain Dzumsa system. 20 percent of respondents said that they have no idea on this, because they cannot predict the future.

**Table 4.7: Fairness of Dzumsa**

<b>Yes</b>	180	<b>90%</b>
<b>No</b>	10	<b>5%</b>
<b>Don't Know</b>	10	<b>5%</b>
<b>Total</b>	200	<b>100%</b>

Source: Field Work, December, 2014.

Regarding Dzumsa is fair in all affairs or not, 180 (90%) said that yes, Dzumsa is fair in all affairs, because everyone in the village knows the Pipon and other executive members. Therefore there cannot be any biasness in the judgment. If they cheat them, tenure of Dzumsa members is only one year, if they do any mistakes as such during their administrative tenure; they won't be re-elected next time. Dzumsa distributes all the developmental facilities equality to village public that have come from the



government, Nathen Lachenpa (54) said that, “*in panchayat system everyone does not get government developmental facilities equality. They are more biased because they give first priority to his/her relatives forgetting the people who elected them to power*”. Among the 200 respondents 6 respondents said that Dzumsa is not fair in all affairs, for e.g, sometimes in case of conflict between locals and non-locals, Dzumsa is biased on judgment and decision is taken in favour of the locals. Dzumsa is biased in distribution of developmental facilities also, it gives more advantageous position to those who have village membership. Those who are not included in public, do not get anything. Such as Tibetan population of Chaten and other region other than proper Lachen and Lachung who had been residing there during monarch with immovable properties, but Dzumsa system deny to give public membership. 5% respondent said they have no idea whether Dzumsa is fair or not because it is a tradition to report first to Dzumsa if there is any conflict and they have nothing to say on that.

**Table 4.8: Knowledge of Courts and Traditional System**

Modern legal system	Traditional legal system	Both	Don't Know	Total
10	8	00	182	200

Source: Field Work, December, 2014.

Regarding the awareness of modern legal system and existence of other traditional legal institutions as such in other parts of the country, out of 200 respondents 182 said that they do not have any idea on this, since they are not familiar with other legal systems other than Dzumsa. 10 of them know about the procedures of modern legal system and those who know the traditional legal system in other states were 8. Respondents who know the both were nil.

**Table 4.9: Police Intervention**

Yes	No	Total
160 (80%)	40 (20%)	200

Source: Field Work, December, 2014.

Dzumsa system has an autonomous jurisdiction to settle all local conflicts in Dzumsa court. In major cases such as murder and other severe conflicts, police intervene, after

reporting to the Dzumsa court. During monarchy, murder cases were also used to be settled by Dzumsa itself. This raises question of local people’s satisfaction over the intervention of police. If people are not satisfied with this procedure of the government, then this would be against the will of public. Therefore, to inquire on the satisfaction level of people have become a vital issue. As per the filled questionnaires of respondents, it was found that 80% of total respondents were satisfied with the intervention of police, because traditional court could be unable to settle this problem. 20 % have showed their disagreement over intervention of police and expressed their opinion that it would be better if state has given this power to Dzumsa itself. There is no requirement of any special law and Dzumsa should take decision of its own.

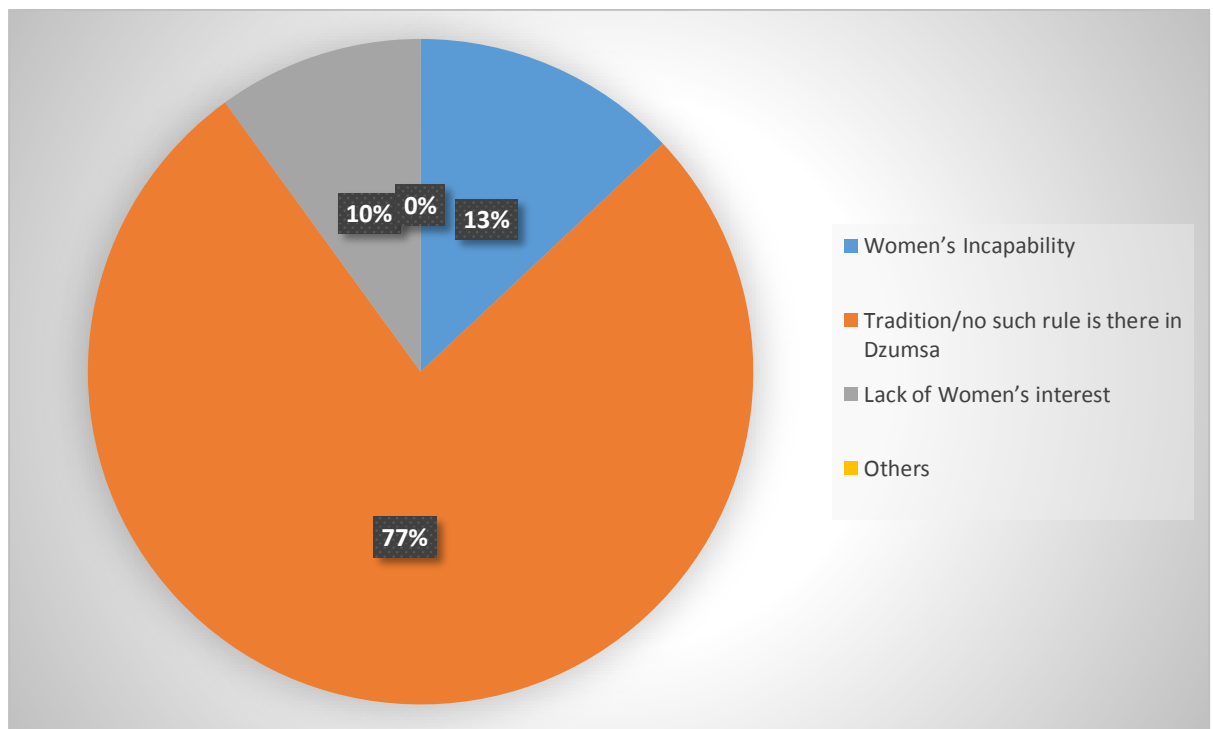
**Table 4.10: Satisfaction on the Judgement of Courts**

<b>Yes</b>	<b>No</b>	<b>Total</b>
166	34	200

Source: Field Work, December, 2014.

The state has taken power to settle murder case from Dzumsa. Local people should be satisfied with justice dispensed by modern court, because it is out of their local jurisdiction and in most of the cases indigenous people are largely marginalised in modern legal system. Thus, this study has tried to analyse the view point of local people regarding the judgment of modern court. It was found that 166 of the respondents were satisfied with the judgement of modern court. The 34 were not satisfied or partially satisfied but do not give any reasons.

**Fig 4.2: Non-representation of Women in Dzumsa**



Source: Field Work, December, 2014.

The representation of women in Dzumsa as an executive member is nil. Women can represent the household when there is no male member above the age of 18. Therefore, to know the reasons behind non-representation of women has become one of the important factors of curiosity. As per the above given reasons 77 % said that it is due to the tradition and traditionally no such provision was made. Earlier women were uneducated that made them incapable of becoming a member of Dzumsa as compared to men. Therefore, gradually it has become a tradition of representation by men only. 13 % of them said that it is due to the women's incapability because to run the administration of Dzumsa is a tough job. It has to perform multiple functions such as; political, economic, social and judicial. Comparatively women are incapable to handle all situations. 10 % said that it is due to lack of women's interest because there is so such strong taboo which restricts the women from becoming an executive member of the Dzumsa. In fact women have never shown an interest to become a member of Dzumsa.

**Table 4.11: Preference for Woman Pipon and Executive Members**

<b>Yes</b>	170	85 %
<b>No</b>	30	15 %
<b>Total</b>	200	100 %

Source: Field Work, December, 2014.

In all the governing institutions participation of women are always been a matter of concern. Therefore in India through the 73<sup>rd</sup> amendment, 33% (in Sikkim 50%) reservation is given to women in Panchayati raj institutions. Traditional institutions lack the participation of women in general because, traditional institutions are embedded on tradition, religion, cultural values and customary practices and laws that denies the participation of women in public affairs. Thus, it has become a reason of criticism for being a gender biased or patriarchal such as Jirga and Sulha in Afghanistan and other traditional institutions in Africa. Similarly in Dzumsa women's representation is nil. Traditional institutions are always not rigid rather it adopts flexible policies in response to public demand. The above table depicts the willingness of people to make women Pipon, if such provision is make in future. Out of 200 respondents, 85% have shown positive views in the favour of women executive member. They said that *“unlike earlier, these days women are empowered with education, they are equally well qualified and capable to become a Pipon as well as other executive members to run the administration and if such provision will make in future they are in favour”*. Only 15% respondents showed unwillingness to make women as executive members in case of such provision is made in future. As for them this is a tradition of the Dzumsa that it has to be run by men and this has to be maintained. Therefore, it is impossible for women to become a Pipon or a member of Dzumsa.

**Table 4.12: Demands for Changes in Dzumsa System**

Women's Participation	20	10%
Rule of elders	26	13%
Both	154	77%
Total	200	100%

Source: Field Work, December, 2014.

The traditional institutions are rigid on amendments of customary laws in general. Same rules have been followed from centuries and sometimes. But some laws or rules become out-dated or invalid which demand changes over a changing period of time. This table depicts composition of people who want to have some changes in the Dzumsa system, such as participation of women and rule of elders. Out of 200 respondents, 77% want to have change in the existing system. They want participation of women and youth in the administrative system. 13% of them want changes in rule of elders and 10% want participation of women.

### **Conclusion**

Dzumsa is the only living example of indigenous method of conflict resolution in Sikkim, which has been practicing effectively and successfully without any changes for two centuries. It is believed to be brought from the Tibet. This is a socio-political institutions and it is an elected representative body. Election of Dzumsa is held annually and executive members of Dzumsa have one year of tenure. Dzumsa has multiple functions; social, political, economic and judicial.

This system has got autonomous power to resolve all the local conflict by using its own oral customary laws. The conflict resolution procedure of Dzumsa is strongly respected and supported by both the villagers and the government. Support of the Dzumsa by local people is backed by various reasons such as; it gives more advantageous position to local people than modern legal court and Panchayati raj institution as it is able to distribute all the facilities equally. When the Sikkim government made reformation in local administration by the 73<sup>rd</sup> Amendment with the implementation of the Panchayati Raj institution at the village level to make local institutions more democratic, this system remained unchanged. Instead, state government makes great effort to make Dzumsa system more effective and democratic.

Dzumas' s judgement is based on the principle of restorative justice, since it gives more importance to the harmony of the community and philosophy of forgive and forgiven is generally applies in resolution process. It has been enjoying legitimacy among the local people because people have more confidence in their indigenous conflict resolution process than a modern system. Dzumsa has great possibility of its continuation in future because, it has got relevance among the young generations and the sustained by various factors other than conflict resolution like; it is a part of tradition, identity of the village and it unites all the villages as one. The non-participation of women in Dzumsa is mostly happen due to tradition and earlier usually women were uneducated. They think that women are incapable of holding that position and women have also internalized that judgement. Due to tradition, women have also never dared to question the existing system. There are people who want some changes in Dzumsa such as participation of women and youth if such a provision is made in the future to be part of Dzumsa. The Dzumsa is sustained by tradition, fairness and more feasible to be continued by the younger generation. This study has found that younger generation has great respect for tradition of Dzumsa and they want to preserve it.

The conflict resolution process of Dzumsa remains more effective and fair in providing justice to the people and it is recognised by the formal institutions. Therefore, with Dzumsa as an example, other traditional institutions and governments could also learn how to make traditional institutions effective in conflict resolution as well as for other developmental plans at the grassroots level.

## **Chapter V**

### **Conclusion**

There is a saying that 'necessity is the mother of invention'. Conflict resolution was invented out of necessity. Conflict is an inevitable part of society and conflict resolution processes are fundamental to its aspirations for peace. Therefore, all the societies had developed their own methods of conflict resolution. These methods were developed from various perspective; Realist, Liberal and Holistic. Liberalist perspective is based on liberal values, which use democracy, free economy and humanitarian aids as a best tools to resolve both the national and international conflicts. Realist perspective of conflict resolution use military and coercive diplomacy to resolve conflicts. Whereas, the Holistic perspective of conflict resolution is based on traditions, rituals, wisdom of elder and social and cultural values and so on. All these major perspective of conflict resolution operate both formally and informally. Liberal and realist perspective of conflict resolution are considered as modern, therefore, all the modern states commonly use these methods in formal way. Holistic or indigenous methods of conflict resolution are rarely recognised by the modern states. Therefore in most of the cases, holistic approaches are practiced informally.

The modern conflict resolution was developed in the west, especially in the Europe. This was deeply embedded on western tradition and cultural values. The modern conflict resolution was universalised across the world during the process of colonialism. Colonialism transplanted the modern processes into indigenous society in the name of modernisation. The universal application of modern conflict resolution has failed to address all conflicts in contemporary societies. Rather, these have often become counter-productive in peripheral societies. Modern conflicts resolutions promote negative peace as it adopts violence and coercive measure to resolve conflicts. Modern conflict resolutions give more importance to economic and political solutions such as changing non-democratic states to democratic, closed economy to open through liberalisation etc. They are based mostly on western liberal values that focus on individual rights and the peace promoted by values of "liberal peace". Thus, in African countries the indigenous methods of conflict resolutions are reviving innovatively as an alternative to modern conflict resolution.

These two processes of conflict resolution; modern and indigenous are based on two principles of justice that are retributive and restorative justice respectively. Conflict can be resolved when the resolution process provides justice to the conflicting parties. But, the modern conflict resolution have failed to provide justice to all spheres of the society. Retributive justice is oriented towards deeds of offenders ignoring the emotional effects of crime to victims with the due processes of win-lose situation. In contrast, restorative justice is flexible, collaborative, inclusive and oriented towards both victim and offender. Justice is dispense on win-win situation, because principle of forgive and forgiveness is strongly prevalent through the process of apology and paying compensation to the victims. Restorative justice gives more importance to address root causes and the underlying problems that have produced the offence.

Indigenous conflict resolution is rooted in customary laws that have been transferred from generation to generation both codified and oral folklore. Sometimes, states do recognise customary laws but exclude indigenous conflict resolution mechanism. Customary laws include rights of indigenous people over access to land, natural resources, customs, traditions etc. These indigenous systems even attract the interest of international institutions and organisations and slowly gaining attention among policy makers and practitioners of conflict resolutions. For example, UN has declared a two decades of world indigenous people in 1995-2004 and 2005-2014. In 2004, the United Nations Economic Commission for Africa organised a forum which discussed governance in Africa, including the role of traditional systems of governance in the modern world. In Canada, Australia and many of the African countries, government have recognised the indigenous rights and indigenous mechanisms of conflict resolutions and give them independent autonomy to resolve conflicts in their own ways. In contemporary period, especially among African countries, indigenous conflict resolutions are gaining importance as an alternative to modern conflict resolution. Modern conflict resolution fails to mitigate conflicts at grass-root levels. Indigenous systems such as Gacaca in Rwanda, Mato-Oput among the Acholi community of Northern Uganda, Bashingantahe in Burundi, etc. do it with efficiency. Besides, they are more acceptable to the conflicting parties at the grass root levels.

In India, indigenous conflict resolutions are practiced through social and political institutions at local levels both formally and informally. The Sixth Schedule of Indian constitution guarantees autonomous functioning of IMCR in Northeast. Sixth Schedule



in Indian constitution was created after thorough debate in the Constituent Assembly. It was the recommendations of the Bordolai Committee which recognised the social, cultural and economic differences of tribal people from plainsman in Northeast India. But it is yet to ascertain, whether sixth schedule enable the proper function and implementation of IMCR as envisaged by Constituent Assembly.

Indigenous conflict resolutions have great potential to achieve positive peace in Northeast India. Northeast is rich in traditional culture and wisdom on indigenous conflict resolution. IMCR adopts peaceful approach, legitimate process and is inclusive in nature at local levels. IMCR is people friendly, easy to access cost effective and, provides a local solution to local problem. It is a bottom-up approach and respects local ethos and culture. Indigenous conflict resolution focuses more on the root causes of conflicts to transform them rather than managing them. The primary objective of IMCR is to repair the broken relation, reconcile and mitigate through holistic practices cutting across mental, physical and spirituals aspects of both parties involved in conflict. It helps both victim-offender, members of family, relatives and other communities. Both the parties get opportunity to express their views and emotions. It has more scope of conflict transformation, because indigenous conflict resolution is cooperative. It always tries to enforce cooperation between the victim and the accused and always gives a chance for forgiving and be forgiven. This can heal traumatic emotions of victims. Indigenous conflict resolution try to resolve conflict on friendly and satisfied manner. During the resolution process, they share the feast and other drinks, enters into informal talks, share grievances, remove the prejudices and other misperceptions which could change the relationships. The acceptance of forgiving and be forgiven have great scope of conflict transformation and sustenance of peace in long-term. Indigenous conflict resolution is transparent, participatory in decision making and respected by community at large. An engagement of community, family and elders are very significant in the resolution process. Loyalty towards family and elders are strongly maintained among the indigenous communities by applying ICMR in resolution of conflicts.

Apart from these, indigenous people are largely marginalised in modern conflict resolution and hence they have limited faith on them. However, Indigenous conflict resolutions have its own limitation as it is considered as backward, traditional, autocratic, patriarchal and rigid. In most of the cases, it is prevalent in remote areas. In many cases, customary laws lack codification as its context specific nature is

problematic. It cannot apply universally to all societies as each tribe has its own tradition of conflict resolution that does not match with others. This has made it challenging to be implemented in inter-ethnic or inter-community conflicts. So, formation of a discourse on IMCR is very much essential to make it fitting to various conflict situations.

If we take the analogy of IMCR in Sikkim, it appears that Dzumsa is the only existing traditional self-governing institution in this hill state of India's Northeast. It is practised in two villages of north Sikkim namely; Lachen and Lachung. This system is popularly known as Pipon system which was traditionally been brought from Tibet. It is a locally elected body. Executive members of Dzumsa has tenure of one year headed by Pipon. This system is equivalent to gram panchayat but, enjoys extra power than panchayats. Dzumsa has have multiple power and functions covering areas such as; social, political, economic and judicial.

Dzumsa has an autonomous authority to settle all the minor local conflict which fall under its jurisdiction by using its own oral customary laws. Conflicts settled by Dzumsa are; family disputes, theft, land disputes, divorce, adultery and other local issues. Penalties, sanctions, compensations, forgive and forgiven are commonly used tools for resolving local conflicts. In cases of major conflicts, Dzumsa forward the cases to higher courts through sub-divisional officer and District Magistrate after reporting to Pipon. Murder cases are directly intervene by the police. Village police outpost has many roles other than to intervene murders cases such as; maintenance of law and order, maintain the documents of permit of migrant labourers, and other visitors who has come from outside, to check other illegal activities such as; supply and consumption of drugs etc.

This traditional institution is strongly supported by both public and government. It has a strong feasibility of continuation in future by young generations who have great respect and concern for the Dzumsa system as a tradition and identity of the village and they want to protect this cultural heritage as it is. The modern legal system also gives due respect to justice dispensed by the Dzumsa, because, modern legal system had never scrutinised the resolution process of Dzumsa and instead cases referred to modern court are sent back to Dzumsa so that it could be resolved at local level itself.

Due to expensive and complex nature of modern conflict resolution Dzumsa is more preferred by people. The conflict resolution process of Dzumsa remains more effective and fair in providing justice to the people. People also have confidence on their own indigenous conflict resolution process than they have on a modern system of court.

Modern conflict resolution often lacks legitimacy and trust of the indigenous people at grass root level. Whereas, IMCR is largely supported by both the elders and youths to mitigate conflicts at local level in contemporary societies. These days many of states are encouraging to innovate IMCR to provide local solution to local problem and its relevance is increasing among the international institutions and organisations. Even with the experience of Dzumsa, relevance of indigenous methods of conflict resolution seems to have increased.

### **Major Findings of the study**

- IMCR are very effective at grass root levels only.
- Scope of universal implication of IMCR are limited.
- Due to International Indigenous People Movement IMCR are gaining the global attention.
- Other than the African countries IMCR lacks state's recognition. Therefore, it operates informally on most cases.
- Restorative philosophy of IMCR has remained very impressive in contemporary justice system.

### **Recommendations**

- Till now there is no representation of women in Dzumsa system, therefore they should try to adopt a flexible policy regarding participation of women rather than being rigid, because now women are educated, well qualified and at par with men in all aspects to run the Dzumsa administration. Women participation as office-bearers can create a sense of real democracy and bring changes in Dzumsa system like in Panchayati Raj.
- Youth should also be involved in executive body of Dzumsa.
- Dzumsa should codify the customary laws that are orally memorised and maintained. Unless these traditional and laws are codified, it is liable to be misinterpreted or misuse due to lack of proper knowledge. Without proper

documentation or codification, laws that are not in regular use, cannot be transferred to the next generation and in such case the modern law like the Indian penal code may implement. Lack of codification of customary law makes it more vulnerable of losing its values and more feasible to be replaced by modern legal system.

- IMCR is neglected in the field of policy research and conflict resolution. And in most of the cases it lacks the support of state too. But, among the indigenous community it has remain relevant and more accessible than modern conflict resolution. Therefore, with some reformation and innovation of outdated practices such as gender bias, rules of elders, and others, IMCR can make it more relevant and practical because IMCR is cheap, legitimate, easy to access and based on local culture.

### **Scope of Further Studies**

IMCR is yet to be explored as a field of research to address the ongoing problems at grass root levels in India as there is scope and opportunity to do so. ICMR is highly relevant in Northeast because this region still practice it at local level and no critically grounded study has been done so far to understand what contributions they have done to the past, present and future society. Gender dimension in IMCR need to be studied as there is lack of literature on it. A comparative study of Dzumsa as local governing institution with Panchayati Raj would enable us to understand how ICMR can be more appropriate to address contemporary social issues at grass root level.

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## Appendix I

### Questionnaire A

Date: \_\_\_\_\_

Village Name: \_\_\_\_\_

Respondant's No. \_\_\_\_\_

Name: \_\_\_\_\_

Gender: M / F      Age: \_\_\_\_\_

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1. What is Dzumsa System?
2. For how long it has been in practice? How it evolved?
3. What are the methods used in Dzumsa to deal with conflicts?
4. What rewards are provide to the victims and accused?
5. Are there any changes in Dzumsa system? If yes, what are they?
6. Is the system supported by government or state? (Yes/No) If yes, give reason.
7. How do you conserve Dzumsa system from being influenced by modernization/globalization?
8. What are the conflicts, Dzumsa deals with?

9. Is Dzumsa customary law applicable to individual or village level only or can it be applied to other major conflicts too?
10. Do you have separate mechanism to deal with in case conflicts between; local vs. non local takes place?
11. Do Dzumsa have separate customary law in case major conflicts such as; inter-ethnic conflicts, inter-village conflicts, inter-group conflicts, takes place? If yes, how does it operate, please mention.
12. If your answer to the above question is no what option(s) would you adopt in case a severe conflict arises?
13. Is there any women Pison? Yes/No/
14. If no, what is reason behind that?
- Women's incapability.
  - Tradition/no such rule is there in Dzumsa
  - Lack of interest of women
  - Other (Specify)
15. Do you think Dzumsa is fair in all affairs? (Yes/ No) If no, please specify the reason (s)?
- Specify:
16. Why do you prefer Dzumsa over Modern court?
- Unique
  - Traditional
  - Fair
  - Cheap cost
  - Compulsion



f. Others (specify)

17. Do you know about the mechanism of modern legal system on conflict resolution? If, yes, what advantageous and disadvantageous factors do you find in Dzumsa as compared to modern legal court?

18. In case following the rules of Dzumsa is not made compulsory, would you like to go to other formal courts? (Yes/No).

19. Why do you want Dzumsa? Is it because of

- a. Identity of the village
- b. Conflict resolution mechanism
- c. Unity of the village
- d. Other (specify)

20. Do you want Dzumsa's customary Law to be continued? (Yes/No)

If no, please specify: "I don't want the customary law of Dzumsa as it

- a. is gender biased
- b. is out dated
- c. has limited scope
- d. takes into account the rule of elders
- e. other

21. Do you want some changes in Dzumsa? (Yes/No)

Please specify:

- a. Women's participation
- b. Codified law

Please mention if you want any other changes than those mentioned above-

\_\_\_\_\_

22. If no then why do think Dzumsa is incapable of dealing with severe conflicts?

- a. Lack of codified law
- b. Uneducated leaders
- c. Other (Specify)

23. Would you like to make woman Pipon or other executive member if such provision are considered in future? (Yes/No)

Details:

24. If you are given a choice between Dzumsa and modern court or police in matters pertaining to registering complaints or dispute settlement, you would prefer

a. Dzumsa

b. Modern Court

25. Why would you make such choices?

26. Would you like Dzumsa to be continued? (Yes/No). If yes, why?

27. Do you think the younger generation would continue with this system as the way it is? If no, specify the reason;

28. Do you like intervention of police or any modern legal court in Dzumsa especially in murder case and any other severe conflicts? Yes/ no, Specify the reason;

29. In case of intervention, would you be satisfied with judgments of modern legal court?

**Thank You for your cooperation**

**Questionnaires B**  
**(Questionnaires for Police)**

**Name of the police outpost:**

**Name of the Police-In-charge:**

**Date:**

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1. What is Dzumsa system?
2. What kind of work do you have under Dzumsa's jurisdiction?
3. What is the importance of police outpost in Dzumsa?
4. Do you have special mechanism to address the issues with Dzumsa?
5. What sort of cases the Dzumsa refers to police station?
6. Is the referral procedure from police to Dzumsa or Dzumsa to Police?
7. How often is Dzumsa cases referred to you?
8. If there are cases referred by Dzumsa to police outpost, how do you refer those to higher official courts?
9. Do you often work cooperatively with Dzumsa? (Yes/No)

10. What are the challenges you face when you deal with issues of Dzumsa on conflict resolution?
11. What is the legal standi of Dzumsa in state legal system?
12. What are the good things you find in Dzumsa system?
13. Do you think Dzumsa is fair on all judgement? If no, specify:
14. What is the legitimate factor of Dzumsa system on conflict resolution?
15. What are the differences between Dzumsa system and modern legal system in dealing with conflict?
16. What factors of drawbacks and advantages do you find in Dzumsa system as compared to the modern legal system?

**Thank You for your cooperation**