Anusandhanvallari
Vol 2023, No.1
November 2023
ISSN 2229-3388

Samvad and Dharma: Rooting Mediation in the Indian Knowledge System

Sagar[1], Dr. Saltanat Sherwani[2]

Research Scholar, Amity Law School, Amity University, Uttar Pradesh ORCid: https://orcid.org/0000-0002-9511-5251[1]

Assistant Professor, Amity Law School, Amity University[2]

Abstract: Contemporary legal discourse often mischaracterises mediation in India as a transplant of Western Alternative Dispute Resolution (ADR) jurisprudence. This article challenges that narrative by situating mediation as an intrinsic resurgence of the indigenous Indian Knowledge System (IKS). It argues that the epistemological foundation of Indian justice is not the adversarial adjudication of rights, but the restorative maintenance of *Rta* (cosmic order) through *Samvad* (dialogue). By analysing Vedic and Smriti literature, specifically the concept of "Congenital Debt" (*Rin*), the article demonstrates how ancient jurisprudence prioritised the discharge of social duty (*Dharma*) over the assertion of individual claims.

The study provides a detailed historical analysis of the decentralised tribunal hierarchy,*Kula* (family councils), *Sreni* (professional guilds), and *Puga* (community assemblies)codified in the *Yajnavalkya* and *Narada Smritis*. It establishes that these bodies functioned effectively in accordance with the principles of subsidiarity and expert adjudication long before the advent of the modern state judiciary. The narrative traces the systemic rupture caused by the colonial imposition of the adversarial Anglo-Saxon model, which displaced these organic mechanisms with formalised, rights-based litigation, introducing a "pathology of delay" that persists in the Indian legal system today.

Finally, the article critically evaluates the *Mediation Act 2023*, specifically Chapter X on Community Mediation, interpreting it not merely as a procedural reform but as a statutory attempt to institutionalise the ancient wisdom of the *Puga*. It concludes that while the Act provides the necessary legislative skeleton for pre-litigation and community-based resolution, its success depends on avoiding bureaucratic over-formalisation and successfully reviving the cultural ethos of *Samjhauta* (conciliation) that defined the pre-colonial legal order.

Keywords: Indian Knowledge System, Restorative Justice, Mediation Act 2023, Dharma

1. Introduction

The Indian Knowledge System (IKS) posits dispute resolution not as an adversarial contest of rights, but as a restorative alignment with *Rta* (cosmic order), achieved through *Samvad*(dialogue) and anchored in the immutable principles of *Dharma*.The indigenous Indian model of mediation originates from the metaphysical imperative to maintain *Rta* through *Samvad*, discharging the congenital debt (*Rin*) of social cohesion and establishing justice as a collective restoration of *Dharma*.The philosophical mandate of *Dharma* was operationalised through a sophisticated, three-tiered hierarchy of decentralised tribunals,*Kula*, *Sreni*, and *Puga,*providing a binding institutional framework for mediation long before the advent of the modern state judiciary.

2. The Dharmic Paradigm: Philosophical Foundations of Consensual Dispute Resolution

A fundamental epistemological schism separates Western Alternative Dispute Resolution (ADR) from indigenous Indian jurisprudence. Western legal theory, heavily indebted to Anglo-Saxon positivism and Roman classifications, treats conflict as a pathology,a collision of competing rights to be adjudicated. Conversely, the IKS interprets conflict as a rupture in *Rta*, the fundamental cosmic order sustaining the universe. The *Rig Veda* conceptualises *Rta* as the moral and physical law governing everything from celestial mechanics to human

rectitude [1]. Dispute resolution, therefore, is not a zero-sum game but a restorative process. The disputants act as collaborators in the rediscovery of *Satya* (truth), seeking equilibrium rather than victory.

Ontologically, the systems diverge sharply. Modern Western systems, following Hohfeldian analysis, view the individual primarily as a bearer of rights. The IKS, however, posits the individual as a bearer of *Rin* (Debt). The *Satapatha Brahmana* articulates the doctrine of "Congenital Debt," wherein every being is born owing debts to the gods (*Deva-rin*), teachers (*Rishi-rin*), and ancestors (*Pitri-rin*) [2]. Conflict within a community is thus a failure to discharge one's *Pitri-rin*the duty to maintain lineage cohesion. Mediation becomes a mechanism of atonement (*Prayaschitta*) rather than mere contract management. The metaphysical pressure to liquidate this "karmic burden" of discord provides a binding force often superior to the contractual obligations underpinning Western mediation.

This metaphysical framework subordinates *Himsa* (adversarial engagement) to *Samjhauta* (conciliation). The *Mahabharata* warns that *Dharma* exists to prevent *Matsyanyaya* (the Law of the Fish, or anarchy), suggesting that adversarial conquest undermines the collective good [3]. Consequently, mediation is the primary jurisprudential response, allowing disputants to fulfil their *Svadharma* (individual duty). As the *Satapatha Brahmana* identifies *Satya* with *Dharma*, a resolution imposed by external authoritylacking the parties' internal assentis devoid of truth and fails to permanently resolve the disruption [4].

The operational engine of this restorative justice is *Samvad* (dialogue). The *Rig Veda* codifies the necessity of consensus in the hymn *Samgachadhvam*: "Assemble, speak together, let your minds be all of one accord... Common be your purpose, and common be your deliberation" [5]. This verse serves as the proto-legal mandate for the *Parishad*, establishing that legitimacy derives from the unanimity of the collective mind (*Samani va Akuti*), not majoritarian fiat. The emphasis on *Samvad* implies a dialectical process where thesis and antithesis merge into a synthesis acceptable to all.

Ancient procedural norms (*Vyavahara*) consistently privileged human consensus over divine or documentary proof. While the *Smritis* categorised evidence into *Manusha* (human) and *Divya* (divine ordeals), *Charitra* (custom/conduct) and mutual agreement superseded evidentiary rigour. The *Manusmriti* explicitly instructs the King to exhaust the possibilities of *Sama* (conciliation) before resorting to *Danda* (punishment), noting that a King who resolves disputes through conciliation gains spiritual merit [6]. The *Dharmasthiyam* (court) thus functioned primarily as a venue for conciliation; settlements were recorded as *Patra* (documents) of mutual satisfaction, shielding parties from the shame of a public verdict.

Narada, in his seminal procedural text, concedes that while Royal Courts enforce state law, community resolution remains superior [7]. He classifies dispute resolution into a hierarchy:*Kula* (family), *Sreni* (guild), and *Puga* (assembly),prioritising the *Kula* over the *Sreni*, and the *Sreni* over the *Puga* [8]. This places the locus of justice closest to the disputants. External adjudication was historically the appellate exception. Even *Kautilya's Arthashastra*, famed for its Realpolitik, advises judges to encourage *Sandhi* (compromise) in civil disputes to preserve social cohesion [9].

Finally, the *Madhyastha* (mediator) bears little resemblance to the neutral third party of modern ADR. In the IKS, the *Madhyastha* wields moral authority and shares the disputants' cultural milieu. Their neutrality arises from an equidistance rooted in *Dharma*, not detachment. By facilitating *Pratyaya* (trust), the *Madhyastha* helps parties transcend *Ahamkara* (ego),the Yogic root of conflictand view the dispute through the lens of community welfare [10]. Unlike the Western mediator who manages negotiation, the Indic *Madhyastha* acts as a normative anchor, preventing the "loser" from harbouring *Vaira* (vengeance).

3. *Kula*, *Sreni*, and *Puga*: Institutional Frameworks of Decentralised Adjudication

While the *Dharmashastras* provided the theoretical basis for justice, practical administration relied on a pluralistic network of tribunals operating on the principle of subsidiarity. The *Yajnavalkya Smriti* articulates this structure with precision, outlining an appellate hierarchy ascending from the *Kula* (family council), to the *Sreni* (guilds), and finally to the *Puga* (community assembly) [11]. This architecture ensured the *Madhyastha* possessed intimate knowledge of the social context, a distinct advantage over the remote justice of the King's court.

The **Kula** formed the foundational unit. Comprising elders of a joint family or clan, the *Kula* addressed domestic disputes and property partitions. The *Mitakshara* commentary notes that the *Kula* acted as a rigorous filter, preventing private matters from becoming public spectacles [12]. Proceedings resembled modern mediation-arbitration (Med-Arb): elders first attempted to facilitate *Samjhauta* (consensus); failing that, they exercised patriarchal authority to issue a binding decision. This decision remained subject to review by the next tier, ensuring accountability.

For the commercial sector, the **Sreni** functioned as the tribunal for guilds of artisans and merchants. Predating the European Hanseatic League, the *Sreni* developed a specialised *Lex Mercatoria* (*Srenidharma*) to adjudicate complex disputes regarding weights, measures, and contracts [13]. Archaeological evidence, such as the Basarh seals from the Gupta period (c. 320-550 CE), reveals that these guilds operated with independent administrative machinery [14]. The *Narada Smriti* empowered *Srenis* to draft their own constitutions (*Samaya*). Their advantage lay in technical competence; a dispute between goldsmiths was resolved by peers who understood the craft. However, *Katyayana* clarified that while *Srenis* held absolute jurisdiction over trade, matters of *Sahasa* (violence) remained the King's prerogative, establishing a sophisticated separation of civil mediation and public order [15].

The **Puga** (or *Gana*) operated as the highest community tribunal, exercising jurisdiction over disputants from different *Kulas* or *Srenis* within a locality. As a territorial assembly cutting across caste lines, the *Puga* was the precursor to the *Gram Nyayalaya*. Inscriptions from Uttiramerur (Chola period) provide evidence of these assemblies using balloting systems (*Kudavolai*) and strict codes of conduct [16]. The *Puga* exemplified the IKS's democratic spirit; decisions required assembly ratification, ensuring the verdict reflected the collective conscience (*Mahajana*).

Enforcement relied on social rather than physical coercion. Lacking a police force, these tribunals enforced settlements through *Samvid-vyatikrama* (breach of compact). The ultimate sanction was *Bahishkara* (social boycott). In a society where social capital dictated economic survival, the threat of being cut off from "fire and water" (*Hukka-Pani Bandh*) ensured compliance. Radhakumud Mookerji notes that the effectiveness of these tribunals lay in leveraging public opinion, forcing the "loser" to accept the verdict as a penance to remain within the community [17].

Crucially, the State recognised these decisions. *Brihaspati* mandates that the King uphold the decisions of the *Kula*, *Sreni*, and *Puga* except in cases of gross corruption [18]. This converted social mediation into a binding mechanism. 19th-century historian Mountstuart Elphinstone observed that these *Panchayats* were the "great sheet-anchor of justice," surviving the rise and fall of empires precisely because they were rooted in the community rather than the state apparatus [19].

4. Continuity and Rupture: Bridging Ancient Wisdom with the Mediation Act 2023

The organic continuity of the Indian Knowledge System was severed by the imposition of the adversarial Anglo-Saxon model, creating a systemic pathology that the *Mediation Act 2023* now attempts to cure by statutorily reviving community-based resolution.

The Warren Hastings Plan of 1772 and the subsequent Cornwallis Code marked a decisive epistemological rupture. By replacing decentralised, restorative *Panchayats* with a centralised court system, the colonial administration introduced the "Adversarial Virus" [20]. Anthropologist Bernard Cohn argues this transition was ontological; the British system sought to "codify" fluid social relations into rigid categories of rights suitable for remote adjudication [21]. This displaced *Dharma,*which prioritised contextual dutywith *Res Judicata*, prioritising finality often at the cost of relationships.

The "Royal Courts" dismantled the *Kula* and *Puga* by stripping them of state recognition. Litigation transformed into a weapon of harassment. Mahatma Gandhi observed that courts became institutions where "men were made to sell their souls," allowing the wealthy to exhaust the poor [22]. Post-independence India inherited this backlog. The *Arbitration and Conciliation Act 1996*, mirroring the UNCITRAL model, viewed mediation through a Western commercial lensas a contract management tool rather than a social duty.

Legislative incoherence peaked with the insertion of Section 89 into the Code of Civil Procedure (CPC) in 2002. Intended to divert cases to ADR, the drafting was so anomalous that the Supreme Court, in *Afcons Infrastructure Ltd*, described it as a "draftsman's nightmare," noting that definitions of mediation and judicial settlement had been accidentally interchanged [23]. This highlighted the systemic inability of the adversarial code to absorb the consensual spirit of mediation without explicit reconstruction.

The *Mediation Act 2023* represents the first comprehensive attempt to realign India's legal framework with its indigenous roots. Section 5 introduces "Pre-Litigation Mediation," urging parties to attempt *Samvad* before approaching the *Adhyaksha*. Although the final text diluted the "mandatory" proposal to "voluntary," it nonetheless re-establishes the *Kula* principle that litigation should be the last resort [24].

Most significantly, Chapter X introduces "Community Mediation" (Sections 43-44), addressing disputes affecting "peace, harmony and tranquillity" in a locality [25]. This provision is a statutory resurrection of the *Puga*. By empowering panels of "three community mediators",respected residents,the Act validates the IKS principle that justice is best administered by peers. Like ancient *Madhyasthas*, these mediators are expected to leverage social capital to induce settlement.

The Act also converges ancient principles with modern technology. Section 30's recognition of Online Mediation allows digital platforms to function as new "digital guilds," mirroring how the *Sreni* evolved to handle cross-border trade [26]. The challenge is imbuing this digital interface with the *Satya* and *Pratyaya* essential for resolution. The Act provides the skeleton; *Dharma* must provide the soul.

However, the Act faces the challenge of "institutional translation." It risks bureaucratising the process by subjecting it to the Mediation Council of India (Section 31). In the IKS, a *Madhyastha's* authority derived from organic social capital; under the Act, it derives from certification. If the Act treats community mediators merely as junior bureaucrats, it will fail to replicate the success of the *Sreni*. Success depends on fostering the spirit of *Lok Adalat,*focusing on *Samjhauta*rather than reducing mediation to a procedural tick-box.

5. Conclusion

The trajectory of dispute resolution in India reveals a profound historical irony: the "modernisation" of the Indian judiciary through the *Mediation Act 2023* is, in essence, a return to its most ancient antecedents. For over two centuries, the Indian legal imagination was captivated by the colonial imposition of the adversarial model,a system that prioritised the clinical adjudication of rights over the preservation of relationships. This experiment, while establishing the Rule of Law in a formal sense, inadvertently severed the metaphysical artery of Indian justice. By treating conflict as a legal pathology rather than a social disruption, the adversarial system created a docket explosion that no amount of judicial infrastructure could contain.

This article has demonstrated that the solution to this gridlock lies not in importing further Western ADR methodologies, but in excavating the indigenous wisdom of the Indian Knowledge System. The transition from the "Right to Fight" to the "Duty to Resolve" is not merely a procedural shift; it is an ontological realignment with *Dharma*. We have seen that the ancient tribunals of the *Kula*, *Sreni*, and *Puga* were not primitive, informal gatherings, but sophisticated, tiered institutions that balanced technical expertise with social accountability. They functioned effectively because they were rooted in the community, leveraging the social capital of the *Madhyastha* to transform conflict into consensus.

The *Mediation Act 2023* stands as a fragile yet promising bridge across this historical chasm. By codifying "Community Mediation" and validating the role of local peacemakers, the State has finally acknowledged that justice does not always wear a robe or sit on a high bench. However, the statute alone is insufficient. The danger remains that the modern bureaucratic state will attempt to colonise these organic processes, reducing the *Madhyastha* to a mere functionary and the *Samvad* to a checklist. If mediation is treated simply as a mechanism to reduce the burden on the High Courts,a "clearing house" for the judiciary,it will fail to take root.

For the Act to succeed, it must be embraced not as a new regulation, but as a cultural renaissance. The legal fraternity must recognise that the adversarial "wolf-justice" of the colonial era is ill-suited to the communal ethos of the Indian subcontinent. The future of Indian dispute resolution lies in the successful translation of *Sreni*'s efficiency into digital Online Dispute Resolution platforms, and *Puga*'s empathy into modern community centres. Ultimately, true justice in the Indian context is not found in the victory of one party over another, but in the restoration of *Rta*,where the disputants, having spoken together, leave the room not as victors and vanquished, but as individuals who have discharged their debt to the social order. The wheel of *Dharma* has turned full circle; it is now the duty of the modern legal system to move in rhythm with it.

References

[1] PV Kane, *History of Dharmasastra* (Vol 4, Bhandarkar Oriental Research Institute 1953) 2-5.
[2] *Satapatha Brahmana* 1.7.2.1; see also Robert Lingat, *The Classical Law of India* (J Duncan M Derrett tr, University of California Press 1973) 186.
[3] *Mahabharata*, Shanti Parva 109.11-12; see also M Rama Jois, *Legal and Constitutional History of India: Ancient Legal, Judicial and Constitutional System* (Vol 1, Universal Law Publishing 2010) 14.
[4] *Satapatha Brahmana* 14.4.2.26.
[5] *Rig Veda* 10.191.2-4.
[6] *Manusmriti* 8.4-5; see also S Varadachariar, *The Hindu Judicial System* (The Lucknow University 1946) 88.
[7] Julius Jolly (tr), *The Minor Law-Books: Narada and Brihaspati* (Sacred Books of the East Vol 33, Oxford University Press 1889) pt 1, 6-7.
[8] *Narada Smriti*, Introduction 1.7; see also Law Commission of India, *Need for Justice-Dispensation through ADR etc.* (Law Com No 222, 2009) 12.
[9] RP Kangle (tr), *The KautiliyaArthashastra* (Part II, University of Bombay 1972) Book III.
[10] Anirban Chakraborty, *Law & Practice of Alternative Dispute Resolution in India* (LexisNexis 2016) 45.
[11] *Yajnavalkya Smriti*, Vyavahara Adhyaya, Verse 30; see also Mandagadde Rama Jois, *Ancient Indian Law: Eternal Values in Manu Smriti* (Universal Law Publishing 2004) 78.
[12] Vijnanesvara, *Mitakshara* on *Yajnavalkya Smriti* 2.30.
[13] RC Majumdar, *Corporate Life in Ancient India* (Calcutta University Press 1918) 42-45.
[14] Romila Thapar, *The Penguin History of Early India: From the Origins to AD 1300* (Penguin Books 2002) 255.
[15] PV Kane (tr), *Katyayana Smriti on Vyavahara* (Oriental Book Agency 1933) verses 678-680.
[16] KA Nilakanta Sastri, *The Colas* (University of Madras 1955) 512.
[17] Radhakumud Mookerji, *Local Government in Ancient India* (Clarendon Press 1920) 134-138.

[18] Julius Jolly (tr), *The Minor Law-Books: Narada and Brihaspati* (Sacred Books of the East Vol 33, Oxford University Press 1889) pt 1, 281.
[19] Mountstuart Elphinstone, *Report on the Territories Conquered from the Paishwa* (Government Press 1821) 75.
[20] NR Madhava Menon, 'The Adversarial System: Victims and Witnesses' in *Criminal Justice India Series* (Vol 1, Allied Publishers 2004) 22.
[21] Bernard S Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton University Press 1996) 57-60.
[22] MK Gandhi, *Hind Swaraj or Indian Home Rule* (Navajivan Publishing House 1938) 55.
[23] *Afcons Infrastructure Ltd v Cherian Varkey Construction Co (P) Ltd* (2010) 8 SCC 24, [2010] INSC 485.
[24] *The Mediation Act 2023*, s 5(1).
[25] *The Mediation Act 2023*, s 43(1).
[26] *The Mediation Act 2023*, s 30.