

## ALTERNATIVE DISPUTE RESOLUTION (ADR) IN RESOLVING COMMUNITY DISPUTES IN PAKISTAN: LEARNING FROM MALAYSIA'S EXPERIENCE

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### ABSTRACT

Disputes are ubiquitous in human societies, spanning across individuals, families, tribes, and nations. In Pakistan, various provinces have developed traditional dispute resolution mechanisms: the *Jirga* system for the Pushtoon community, *Panchayat* for Punjabis, *Faislo* among Sindhis, and *Balochi Jirga* for Balochis. These systems, rooted in cultural practices, have historically facilitated justice and harmony. However, they have faced criticism for their reliance on unwritten rules, informal structures, and violations of human and women's rights. This article explores the nature of these traditional systems in Pakistan, analysing their methods of dispute resolution and their effectiveness in administering justice. The study adopts a qualitative methodology, using doctrinal and library-based legal research, along with a comparative analysis of community dispute resolution in Pakistan and Malaysia. It also proposes recommendations for enhancing these systems, drawing insights from Malaysia's successful community mediation programmes. Unlike Pakistan, Malaysia has formalised community mediation under

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the Department of National Unity and National Integration since 1969, achieving positive outcomes in dispute resolution. The article suggests that Pakistan should establish a legal framework to regulate community mediation, ensuring adherence to human rights and justice standards. By integrating lessons from Malaysia's approach and emphasising the role of government bodies in justice administration, the traditional dispute resolution systems in Pakistan can be strengthened for greater effectiveness and fairness in resolving disputes.

**Keywords:** Traditional Dispute Resolution, Community Mediation, Human Rights Standards, Legal Framework.

## **PENYELESAIAN PERTIKAIAN ALTERNATIF (ADR) DALAM MENYELESAIKAN PERTIKAIAN KOMUNITI DI PAKISTAN: PENGAJARAN DARIPADA PENGALAMAN MALAYSIA**

### **ABSTRAK**

Pertikaian adalah perkara yang lazim berlaku dalam masyarakat, merangkumi individu, keluarga, suku, dan juga bangsa. Di Pakistan, pelbagai wilayah telah membangunkan mekanisme penyelesaian pertikaian tradisional: sistem *Jirga* bagi masyarakat Pushtoon, *Panchayat* bagi masyarakat Punjabi, *Faislo* dalam masyarakat Sindhi, dan *Jirga Balochi* untuk masyarakat Balochi. Sistem-sistem ini, yang berakar umbi dari amalan budaya, dari segi sejarahnya memberi kemudahan kepada pelaksanaan keadilan dan keharmonian. Walaubagaimanapun sistem ini sering menerima kritikan kerana ianya berdasarkan kepada peraturan yang tidak bertulis, struktur yang tidak formal, dan pelanggaran hak-hak asasi manusia serta hak-hak wanita. Artikel ini mengkaji amalan sistem tradisional ini di Pakistan, menganalisis kaedah-kaedah penyelesaian pertikaian yang dilaksanakan dan keberkesanannya dalam melaksanakan keadilan. Kajian ini menggunakan metodologi kualitatif dengan pendekatan penyelidikan perundangan doktrinal dan berbentuk perpustakaan, serta analisis perbandingan antara Pakistan dan Malaysia. Artikel ini juga mengemukakan cadangan untuk meningkatkan pelaksanaan sistem ini dengan merujuk kepada kejayaan program mediasi komuniti di Malaysia. Berbeza dengan Pakistan, Malaysia telah memformalisasikan mediasi komuniti di bawah Jabatan Perpaduan Negara dan Integrasi Nasional sejak tahun 1969, yang menghasilkan hasil positif kepada penyelesaian pertikaian. Artikel ini juga mencadangkan agar Pakistan membentuk rangka kerja undang-undang untuk mengawal selia

pelaksanaan mediasi komuniti, memastikan pematuhan terhadap hak-hak asasi manusia dan juga piawaian keadilan. Dengan mengambil pengajaran daripada pendekatan Malaysia dan mengintegrasikannya dengan pemerkasaan peranan badan-badan kerajaan dalam pentadbiran keadilan, sistem penyelesaian pertikaian tradisional di Pakistan akan dapat diperkukuhkan untuk memberi kesan yang lebih efektif dan adil kepada penyelesaian pertikaian.

**Kata Kunci:** Penyelesaian Pertikaian Tradisional, Mediasi Komuniti, Piawaian Hak Asasi Manusia, Rangka Kerja Undang-Undang.

## INTRODUCTION

Pakistan consists of four provinces, i.e., Khyber Pakhtunkhwa, Punjab, Sindh and Balochistan. Accordingly, it has a multi-racial population. Punjabis mainly live in Punjab; Pushtoons live in Khyber Pakhtunkhwa and some parts of Balochistan; Sindhis and Muhajirs live in Sindh; and Balochi tribes live in Balochistan. Interestingly, each of these ethnic groups has its own way of settling disputes among the members of the community. Punjabis resolve their disputes in the community through *Panchayat*<sup>1</sup>,<sup>2</sup> Pushtoons resolve conflicts by *Jirga*<sup>3</sup> system<sup>4</sup>, Sindhis resolve disputes through *Faislo*<sup>5</sup> and Balochis resolve conflicts

<sup>1</sup>Abid Ghafoor Chaudhry, Aftab Ahmed, Shaheer Ellahi Khan, and Sajjad Hussain, "Perception of Local Community and Biradari on Panchayat: An Exploratory Anthropological Study of Biradari in Village Saroki, District Gujranwala, Pakistan," *Advances in Anthropology* 4, no. 2 (2014): 54.

<sup>2</sup>Panchayat a village council, "Panchayat" literally means assembly (yat) of five (panch) wise and respected elders chosen and accepted by the village (local) community.

<sup>3</sup>The literal meaning of Jirga is "assembly" or "gathering" of the party for the solution of a dispute and it is a type of autonomous body. According to Pashto descriptive dictionary, the term Jirga is an original Pashto word, and it is a common traditional word used for a gathering of few or many people.

<sup>4</sup>Sherzaman Taizi, *Jirga System in Tribal Life* (Peshawar: Area Study Centre University of Peshawar, 2007), 3.

<sup>5</sup>Hussain, Ghulam, Anwaar Mohyuddin, and Firdous Mahesar, "Conflict Resolution Mechanism in Rural Sindh: Rationalizing Life-world of Peasants", *Voice of Intellectual Man-An International Journal*, 3, no. 2 (2013): 35-36.

<sup>6</sup>A local term used to describe the meaning of Jirga in Sindh. The word faislo has various meanings, encompassing the resolution of a dispute, a

through *Baluchi Jirga*. In West Malaysia, there are three main ethnic groups; Malay, Chinese, and Indian, and the culture is well diverse. Traditionally, these groups resolved their community conflicts through mediation.<sup>7</sup> In ensuring national unity and stability, the government of Malaysia has introduced many programmes to strengthen relationships amongst these ethnic groups and to avoid disputes amongst them. The aim was also for these ethnic groups to resolve their conflict peacefully. The most crucial step which was taken by the government was the establishment of the Department of National Unity and National Integration (DNUI) in 1969.<sup>8</sup>

The most significant step taken by the Malaysian government through the DNUI was the founding of "Peaceful Neighbourhood" (*Rukun Tetangga*) programme. This programme was initiated to create social unity among society members. The main purpose of this programme, in the beginning, was the safety of residents. The government then endorsed a legal framework for this programme and gazetted it under the Peaceful Neighbour Regulating 1975 (PU (A) 279/75)<sup>9</sup>. In 1984, the organisation focused on how to enhance relationships amongst various ethnic groups in Malaysia. Later, the community mediation programme was introduced in the year 2008 and has become more devolved.<sup>10</sup> Further, in the year 2011, the focus of the Peaceful Neighbourhood Programme was further enhanced. The main significance of the Peaceful Neighbourhood Programme is to help the community resolve disputes peacefully and to avoid ethnic clashes with the objective of maintaining harmony in the community.<sup>11</sup>

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settlement, a decision and a judgment. Faislo system can be used in an extended family system, in the village community, and in the larger birathari or qaum (tribe).

<sup>7</sup>Barbara Watson Andaya and Leonard Y. Andaya, *A History of Malaysia* (Macmillan: International Higher Education, 2016), 42-43, 187.

<sup>8</sup>Nora Abdul Hak Hanna Aambaras Khan, *Community Mediation in Malaysia* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2018), 82.

<sup>9</sup>Peaceful Neighbour Regulation 1975, Malaysia.

<sup>10</sup>Hanna Aambaras Khan and Nora Abdul Hak, "Community Mediation in Malaysia: A Step Forward," *Malayan Law Journal* 1 (2014): 3.

<sup>11</sup>Nora Abdul Hak and Hanna Khan, "Empowering Communities Through Mediation in Malaysia: Issues and Challenges," paper presented at the International Conference on Law and Society 1 (ICLAS 1), jointly organized by Fakultas Hukum, Universitas Muhammadiyah Yogyakarta

This article endeavours to examine in detail the practice of community mediation in Malaysia alongside the traditional methods of dispute resolution in Pakistan's provinces. It aims to analyse and compare the legal frameworks, operational mechanisms, and outcomes of mediation practices in both countries. By juxtaposing the structured approach of Malaysia's community mediation with the traditional systems in Pakistan, this study seeks to elucidate similarities, differences, and potential areas for constructive development. Moreover, it aims to draw lessons from Malaysia's experiences to propose recommendations for enhancing the effectiveness and fairness of dispute resolution practices in Pakistan. Through this comparative exploration, the article aims to contribute to scholarly understanding and policy recommendations for advancing peaceful dispute resolution and societal harmony in Pakistan.

## METHODOLOGY

To achieve the objectives of this research, a qualitative research methodology has been adopted. The study primarily employs a doctrinal, or library-based, legal research approach. This method is rooted in the examination of primary legal sources, particularly relevant national legislations of Malaysia.

In addition to doctrinal analysis, the research incorporates a comparative analysis approach, which enables a systematic comparison between different legal frameworks, practices, or systems relevant to the subject matter. This approach enhances the depth and breadth of the study by identifying similarities, differences, and best practices across jurisdictions or contexts.

Secondary sources also play a vital role in this research and include legal textbooks, scholarly journals, published law reports, and academic articles. To ensure comprehensive literature coverage, various reputable databases and research tools have been utilised, such as Just Peace International, ProQuest, HeinOnline, the IIUM online database, LexisNexis, Google Scholar, and similar platforms offering access to both primary and secondary legal resources.

## THE CONCEPT OF COMMUNITY MEDIATION

As community mediation falls under the broader category of Alternative Dispute Resolution (ADR), it is important to outline the concept. ADR refers to processes where disputes are resolved privately with the help of a neutral third party, outside the formal court system.<sup>12</sup> It includes methods such as mediation, arbitration, fact-finding panels, and settlement conferences.<sup>13</sup> ADR offers disputants a faster, cost-effective alternative to litigation by facilitating direct dialogue and resolution in a less formal setting.<sup>14</sup>

Community mediation is a method of resolving disputes by adopting a mediation process to solve neighbourhood disputes. In community mediation, both disputant parties sit together in the presence of a community mediator whose duty is to act as a neutral third party and he will assist them in clarification of issues as well as problems and to know about their opinions as well as to find solutions to the problems. In other words, community mediation is a mediation procedure adopted by parties to the disputes to resolve their disputes within their community.<sup>15</sup> In the view of Liebman, community mediation is related to disputes between neighbours in the community such as noisy neighbours, boundary disputes, trees and gardens maintenance near boundaries, installing CCTV cameras pointed at neighbours' houses, children's problems between two neighbour families,<sup>16</sup> parking in an uncooperative way, doing renovation work which damaged neighbouring property<sup>17</sup> and so on.

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<sup>12</sup>Henry J. Brown and Arthur L. Marriot Q.C, *ADR Principles and Practice*, 2nd ed. (London: Sweet & Maxwell, 1999), 12.

<sup>13</sup>Katherine Stone, *Private Justice: The Law of Alternative Dispute Resolution*, University Casebook Series (New York: Foundation Press, 2000), 5.

<sup>14</sup>Mohammad Naqib Ishan Jan and Ashgar Ali Ali Mohamed, *Mediation in Malaysia: The Law and Practice* (Selangor, Malaysia: LexisNexis Malaysia Sdn Bhd, 2010), 2-3.

<sup>15</sup>Naqib and Ashgar, *Mediation in Malaysia*, 157–58.

<sup>16</sup>Sarah Clark, "The Most Common Neighbourhood Disputes" <https://www.problemneighbours.co.uk/common-neighbourhood-disputes.html> (accessed 15 March 2025).

<sup>17</sup>Heizel T, "5 Annoying Things Your Malaysian Neighbours Do That You Can Sue Them For," *Ask Legal*, <https://asklegal.my/p/5-things-your->

It also covers disputes between groups and organisations in the community.<sup>18</sup> According to the National Association for Community Mediation (NACM), community mediation provides a positive process for resolving disputes between people, groups, and organisations. Moreover, the NACM provides a comprehensive concept that community mediation is created to strengthen the relationship between people and groups as well as facilitate communication among them to solve disputes in a proper way. Community mediation is an alternative to avoid any lengthy litigation, violence, and confrontation between the parties. Likewise, the purpose of community mediation is to strengthen the relationship between individuals and groups and make strong connections between them as well as create a peaceful environment for members of the community. Moreover, the NACM further explained that mediation is used for resolving disputes between people within the same community by local council bodies.<sup>19</sup>

Community mediation can be divided into two distinct phases based on its scope and application. The first phase addresses fundamental neighbourhood issues that specifically involve disputes between neighbours. In contrast, the second phase expands the definition to include broader disputes that may arise between groups and organisations as a result of neighbourhood disputes. From these definitions, community mediation is defined as a method of dispute resolution utilising mediation processes to address conflicts within a neighbourhood. This approach can also be extended to encompass disputes between larger groups and organisations, providing an alternative to potentially destructive confrontations and violence. The primary goals are to preserve individual interests, strengthen relationships, and foster connections among individuals and groups. However, effective implementation of community mediation relies heavily on government support through a comprehensive departmental structure. This support should encompass financial resources, dedicated offices and centres, training programs for mediators, and a

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Malaysian-neighbours-do-that-you-can-sue-them-for (accessed March 30, 2025).

<sup>18</sup>John Gray, Moira Halliday, and Andrew Woodgate, *Responding to Community Conflict* (New York: York Publishing Services Ltd, 2002), 10.

<sup>19</sup>“National Association for Community Mediation,” Official Website, Louisville, KY 40255, U.S.A., <http://www.nafcm.org/about/purpose> (accessed March 30, 2025).

solid legal framework. Such infrastructure is essential to meet the diverse needs of community mediation and ensure its efficacy in resolving disputes and promoting social harmony.

## **THE LAW AND PRACTICE OF COMMUNITY MEDIATION IN MALAYSIA**

Understanding the historical background and practice of community mediation among Malaysia's diverse ethnic groups is crucial. In West Malaysia, three main ethnic groups, Malay, Chinese, and Indian, contribute to a richly diverse cultural landscape. Mediation practices vary significantly across these groups, necessitating an exploration of how each resolves community conflicts through mediation. This article delves into the historical evolution and contemporary practice of community mediation in West Malaysia, spanning periods before and after colonisation. By examining these historical contexts, the study aims to illuminate the cultural nuances and adaptive strategies employed by each ethnic group in their mediation practices. Such insights are essential for comprehending the effectiveness and relevance of community mediation in Malaysia's multicultural society.<sup>20</sup>

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<sup>20</sup>Barbara Watson Andaya and Leonard Y. Andaya, *A History of Malaysia* (Macmillan: International Higher Education, 2016), 42-43, 187.



## The History of Community Mediation Among the Malays, Chinese and Indian

The term “Malay” in West Malaysia basically includes the ethnicities of the Javanese, Banjarese, Bugis who migrated to Malaysia in 1850.<sup>21</sup> Today, these ethnicities are considered as Malay in Malaysia which has been described in Article 160 of the Federal Constitution 1957 of Malaysia.<sup>22</sup> In the Malay community, cooperation among members is considered a fundamental duty. Within the *kampung* (village) setting, it is customary for villagers, whether neighbours or not, to collaborate and collectively manage their agricultural lands. Malays are inherently sentimental and empathetic by nature, striving to avoid conflicts, speak diplomatically, and refrain from hurting others' feelings. They often prefer to resolve disputes by appointing a third-party mediator. This quality of good manners is considered a divine gift within the Malay society, deeply embedded in their cultural values and societal norms.<sup>23</sup>

In the Malay community, when conflicts arise between members, there is a strong communal pressure to promptly resolve the dispute. The preferred method of resolution involves engaging a neutral third party, such as a religious leader (*Imam*), village head (*Ketua Kampung*), or appointed community leader (*Penghulu*).<sup>24</sup> This approach is favoured because Malays typically prefer to keep conflicts confidential, limiting their disclosure to family members or a select few individuals within the community. Thus, involving respected figures like *Imams* or village leaders helps maintain privacy while ensuring effective and amicable resolution of disputes within the community.<sup>25</sup> The examination of the roots and rules of community mediation and

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<sup>21</sup>Nora Abdul Hak and Hanna Ambaras Khan, "Mediation as a Means in Resolving Community Disputes in Peninsula Malaysia: A Historical Perspective" (2013), 3.

<sup>22</sup>*Federal Constitution 1957* (Reprint 2017), no. November (1957): 450, <https://doi.org/JW516221-18-09-2010> (accessed July 2, 2024).

<sup>23</sup>Jim Baker, *Crossroads: A Popular History of Malaysia and Singapore*, 2nd ed. (Singapore: Marshall Cavendish International Asia Pte Ltd, 2008), 26.

<sup>24</sup>Sa'odah Ahmad, Rojanah Kahar, and Muslihah Hasbullah, "Knowledge, Attitude and Practice of Community Mediators in Malaysia," *Kajian Malaysia* (early view, 2021), 6.

<sup>25</sup>Nora Abdul Hak and Hanna Ambaras Khan, "Mediation as a Means in Resolving Community Disputes in Peninsula Malaysia: A Historical Perspective" (2013), 4-5.

mediators in the Malay community delves into their historical practices of peaceful conflict resolution, which endured even during the colonisation of Melaka by the Portuguese and later the Dutch. The traditional dispute resolution mechanisms of the Malays were preserved during the colonisation by the Portuguese and the Dutch.<sup>26 27</sup>

The British colonisation period started gradually. Firstly, they took over the control of Penang in 1786, and then in 1909 they acquired full control over all states in Malaysia. In the British era, they started to get involved in state administration through their representatives. They limited the power of the King and started to establish the court system, and they made a general framework for religious courts. The implementation of British law was initiated in 1807. The first charter was in Penang. The second implementation was to extend the jurisdiction of courts to Penang, Melaka, and Singapore. The method of the court system of British was adopted by Malaysia after independence until the time when the Malaysian judiciary system introduced the concept of court annexed mediation.<sup>28</sup>

The Chinese mainly settled in Malaysia during the British colonisation period and later grew to be the second-largest population of West Malaysia. The discussion here is limited to how the Chinese resolved their conflict before and after colonisation in the Malay land. In Chinese communities, the *Kapitan*<sup>29</sup> has particularly important duty

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<sup>26</sup>R. H. Hickling, *Malaysian Law* (Selangor: Pelanduk Publication (M) Sdn Bhd, 2001), 147-148.

<sup>27</sup>Mohamed Nurah Sabahiah, "Mediation in the New Dispute Resolution Landscape: A Case for the Enhancement of Its Application in Malaysia" (Ph.D. thesis, University of Malaya, 2013), 46-50.

<sup>28</sup>Abdul Hak, Khan, "Mediation as a Means in Resolving Community Disputes," 7-8.

<sup>29</sup>Kapitan Cina also spelt Kapitan China or Capitan China (English: Captain of the Chinese; Chinese: 華人甲必丹; Dutch: Kapitein der Chinezen) was a high-ranking government position in the civil administration of colonial Indonesia, Malaysia, Singapore, Borneo and in the Philippines. Office holders exercised varying degrees of power and influence: from near-sovereign political and legal jurisdiction over local Chinese communities, to ceremonial precedence for community leaders. Corresponding posts existed for other ethnic groups, such as Kapitan Arab and Kapitan Keling for the local Arab and Indian communities respectively. Heng Pek K., *Chinese Politics in Malaysia: A History of the Malaysian Chinese Association* (Oxford: Oxford University Press, 1988), 14.

to resolve conflicts. The public refers the problems to the *Kapitan* for resolving disputes as he is the leader of the community. The *Kapitan* was authorised to deal with police in a criminal matter and has judicial power in civil matters before the honourable courts. The *Kapitan* was the employee of the government to represent their people. Nevertheless, the post became permanently administrative under the British colonial era just like the head man (*Penghulu*) of the Malay community.<sup>30</sup>

In Chinese communities, the practice of mediation derives from a longstanding tradition of conflict resolution that originated in China. Chinese mediation shares similarities with Western mediation procedures, where a neutral third party intervenes to facilitate the voluntary settlement of disputes and restore peace among conflicting parties. This method has served as a primary means of resolving disputes for thousands of years in China. Initially, mediation was employed to address minor conflicts such as family disputes, marital issues, and land disputes. At the community level, mediation processes were typically overseen by neighbours and respected elders. This grassroots approach to mediation underscored the importance of local wisdom and communal harmony in resolving interpersonal conflicts within Chinese society.<sup>31</sup> In Malaysia, the traditional Chinese community lived in clans (*Kongsi*). *Kongsi* may be explained as groups because when the Chinese migrated to Malaya they gathered around their different clans and created groups. Consequently, they made the clans' houses by sharing the expenses and the donations from rich immigrants. The clan house served as an office to help their people with whatever problems they were facing. This keeps harmony among the Chinese communities through the mediation of inter-clan conflicts.<sup>32</sup> Hence, the *Kapitan* and *Kongsi* play especially important role in mediation and resolving conflicts in society.

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<sup>30</sup>Ching-Hwang Yen, *The Chinese in Southeast Asia and Beyond: Socioeconomic and Political Dimensions* (Singapore: World Scientific Publishing Co. Pte Ltd, 2008), 137, (accessed march 2, 2025).

<sup>31</sup>Yang Zhang, "Mediation Model Differences between China and Australia and Their Possible Collaboration," *Journal of Interdisciplinary Conflict Science* 1, no. 1 (2015): 46-58.

<sup>32</sup>Yongkyun Chung, "Combining Arbitration with Mediation: Two Cultures of China and Malaysia," *Journal of Arbitration Studies* 26 (2016): 149.

The Indians in West Malaysia were the people brought from the Indian subcontinent by the British administration during the British colonial period.<sup>33</sup> This discussion focuses exclusively on how Indians in Malaysia historically resolved conflicts through mediation. During the British colonial era, many Indians migrated to Malaya<sup>34</sup> to work as government officials or on plantations. Most of these migrants were Hindus, who established temples and shrines for religious practices. The management of Hindu places of worship in Malaysia followed the traditional *Panchayat* system, which originates from India and translates to "an assembly of five elected by villagers." This system mirrors the governance structure used in numerous Indian village republics, emphasising local governance and community decision-making in matters related to religious and social affairs.<sup>35</sup>

For Indians in Malaya, the method of *Panchayat* was adopted because they liked to resolve the conflicts peacefully. The *Panchayat* members' duties were to discuss the issues of the community members in front of both disputants and to make a verdict related to the issues. The foundation of *Panchayat* was unknown. Some scholars understood that *Panchayat* started in temples for social organisation and later became a dispute resolution body.<sup>36</sup> Hence, in resolving disputes at the Indian community level, they adopted mediation tools or the settlement of a dispute by referring the dispute to the mediator of their choice or the *Panchayat*.

Malaysia, with its diverse multi-religious and multi-racial population, provides an ideal environment for the practice of mediation. Various religions such as Islam, Hinduism, Buddhism, and others promote conciliation and settlement, laying the foundation for mediation practices. Historical studies indicate that mediation has long been the preferred method for resolving disputes among Malaysians. Across the different ethnic groups Malays, Chinese, and Indians mediation or conciliation involving a neutral third party, such as a

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<sup>33</sup>Khan, "Mediation as a Means in Resolving Community Disputes," 18.

<sup>34</sup>Now known as Malaysia

<sup>35</sup>Mahatma Gandhi and Ramachandra Krishna Prabhu, *Panchayat Raj* (Ahmedabad: Navajivan Publishing House, 1959), 3, (accessed April 2, 2025).

<sup>36</sup>Hanna Binti Ambaras Khan, "Legal Framework and Structure of Community Mediation in Malaysia: A Proposal" (Ph.D. thesis, International Islamic University Malaysia, 2017), 77.

village headman, clan leader, or respected elder, has been customary. The primary objective during these times was to maintain harmonious relationships within the community. These historical insights underscore the cultural significance of mediation in Malaysia, encouraging modern communities to consider mediation as a preferred approach to resolving disputes rather than resorting to formal court proceedings.

## **THE ROLE OF DNUI IN PROMOTING COMMUNITY MEDIATION IN MALAYSIA**

The Malaysian government has implemented numerous initiatives and programs aimed at fostering national unity and preventing disputes through peaceful means. Government departments, high authorities, and ministries have taken proactive measures to mitigate and prevent future conflicts. A pivotal step in this direction was the establishment of the Department of National Unity and Integration (DNUI) in 1969.<sup>37</sup> This department plays a crucial role in promoting harmony and cohesion among Malaysia's diverse population, implementing policies and initiatives that aim to strengthen social bonds and prevent inter-communal tensions. When the tragedy of 13 May 1969 happened, the King declared an emergency on 15 May 1969 under Article 150 of the Federal Constitution of Malaysia.<sup>38</sup> That declaration of emergency allowed the National Operational Council to find possible solutions to resolving the issues of conflict among ethnicities in Malaysia. Under the work of the National Operational Council on 01 July 1969, the (DNUI was established to discourse matters regarding rebuilding social harmony and unity in the country.

The mission of the DNUI was to foster unity and integration among Malaysia's diverse ethnic groups, facilitating interaction and understanding between them. Despite incidents like the ethnic tensions of 13 May, which marked a significant upheaval in the country, earlier disputes had also posed challenges. Recognising the profound impact on the economy, politics, and national harmony, the government

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<sup>37</sup>Nora Abdul Hak and Hanna Aambaras Khan, *Community Mediation in Malaysia* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2018), 82.

<sup>38</sup>Federal Constitution, "Federal Constitution 1957 (Reprint 2010)." Article 150: Proclamation of emergency

addressed these issues with utmost seriousness. Consequently, the DNUI was established under the auspices of the Prime Minister's Office, underscoring its pivotal role in promoting stability and unity across Malaysia.<sup>39</sup>

The most major step taken by the Malaysian government through the DNUI was the founding of the programme "Peaceful Neighbourhood" (*Rukun Tetangga*). This programme was initiated to create social unity among society members. The main purpose of this programme, in the beginning, was the safety of residents. The government gave a legal framework to this programme and gazetted under the Peaceful Neighbour Regulating 1975 (PU (A) 279/75)<sup>40</sup> to give certain powers to Peaceful Neighbourhood Programme. In 1984, the organisation focused on how to enhance the relationships between various ethnic groups in Malaysia. Later, the community mediation programme was more devolved and applied in 2008.<sup>41</sup> However, in 2011, the focus of Peaceful Neighbourhood Programme was further improved to develop the community. The main significance of Peaceful Neighbourhood Programme is to help in resolving disputes in the community and avoid ethnic clashes to maintain harmony in the community.<sup>42</sup>

The government's commitment to the DNUI underscores its significance, as the program was placed under the direct control of the Prime Minister's Office. This highlights the importance attached to the DNUI's mission. Under its auspices, the DNUI launched an experimental initiative known as community mediation, as part of the Peaceful Neighbourhood Programme, implemented in selected

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<sup>39</sup>Aizat Khairi, "Peace-Building in Malaysia: Study on the National Unity and Integration Department (DNUI) Programmes Perdamaian Di Malaysia: Kajian Program-Program Di Jabatan Perpaduan Negara Dan Integrasi Nasional (DNUI)," *Jurnal Sultan Alauddin Sulaiman Shah* 3 (2016): 94.

<sup>40</sup>Peaceful Neighbour Regulation 1975 Malaysia.

<sup>41</sup>Hanna Ambaras Khan and Nora Abdul Hak, "Community Mediation in Malaysia: A Step Forward," *Malayan Law Journal* 1 (2014): 3.

<sup>42</sup>Nora Abdul Hak and Hanna Khan, "Empowering Communities Through Mediation in Malaysia: Issues and Challenges" (paper presented at the International Conference on Law and Society 1 (ICLAS 1), jointly organized by Fakultas Hukum, Universitas Muhammadiyah Yogyakarta, and Harun M Hashim Law Centre, Ahmad Ibrahim Kuliyyah of Laws, International Islamic University Malaysia, 2013), 7.

jurisdictions. The aim was to foster harmony and integration within society, particularly in residential areas.

Furthermore, analysis has revealed that the primary aim of this programme was to train selected community members as mediators within their residential areas. These mediators would function as neutral third parties, facilitating the resolution of conflicts. The concept of community mediation and the training of local mediators emerged as an experimental project originating from DNUI, driven by the recognition that a significant portion of community tensions stemmed from intra-ethnic conflicts. This initiative sought to address such issues by empowering community members to actively engage in dispute resolution processes.

### **Legal Frameworks in Malaysia - The Peaceful Neighbour Act 2012**

The Community Mediation programme in Malaysia was initiated by the DNUI in 2007 as a pilot project. The programme was first implemented in the states of Selangor, Penang, Johor, and the Federal Territory of Kuala Lumpur, targeting areas with high crime rates and significant cultural diversity. By 2008, the programme was extended to other states across Malaysia.<sup>43</sup> In 2012, the Peaceful Neighbour Act was presented in the Malaysian Parliament, and it was later passed and gazetted on 22 June 2012. Section 8 of the Peaceful Neighbour Act 2012<sup>44</sup> spells out the duties and roles of the mediation committee provides mediation services to the community and resolves conflicts or any other issues among society members. Section 8(d)<sup>45</sup> stipulates that community mediation services are provided to settle disputes among community members. Thus, the committee shall try its best to settle the issues of community members. Some commentators view<sup>46</sup> that the Malaysian government took a good approach by introducing community mediation with a comprehensive legal framework. This programme helps the public to resolve their issues amicably.

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<sup>43</sup>Kahar, rojanah. "Knowledge, Attitude and Practice of Community Mediators in Malaysia." *Kajian Malaysia*, 2022, 54.

<sup>44</sup>See Section 8 Rukun Tetangga Act, 2012 (Act No. 751 of 212).

<sup>45</sup>See Section 8(d) Rukun Tetangga Act, 2012 (Act No. 751 of 212).

<sup>46</sup>Observation of the researcher

Section 7<sup>47</sup> provides for the appointment of mediators. Section 7 (1) states that it is the right of parties to appoint a mediator for mediation: Section 7(1) states as follows:

“A director shall within thirty days from the date of the designation of an area under section 5 or within such longer period as prescribed by the Director General appointed in respect of the Area Rukun Tetangga Area committee which shall consist such number of persons comprising residents, persons who have interest in the area and other persons, as may be approved by the director”.

The Rukun Tetangga Area Committee shall consist of the following members as provided in section 7(2) as follows:

The director shall after consultation with the member of the Committee, appoints from amongst the said members;

- (a) A chairman;
- (b) A deputy chairman;
- (c) A secretary;
- (d) An assistant secretary; and
- (e) A treasurer.

From the above analysis, it is evident that a highly responsible team has been established for the Rukun Tetangga Area Committee. The various positions within the committee are crucial for achieving productive results. However, the specific structure of the centre and office is not delineated in the current Act. Therefore, it is strongly recommended that the Act include provisions detailing professional training requirements, office setup, and funding specifics. These additions would ensure clarity and effectiveness in the operations of the Rukun Tetangga Area Committee, enhancing its capacity to successfully fulfil its objectives of promoting harmony and resolving conflicts within communities.

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<sup>47</sup>See Section 7 Rukun Tetangga Act, 2012 (Act No. 751 of 212).



Section 7(3) provides the disqualification of a member from Rukun Tetangga Area Committee as follows:

- (a) a person shall be disqualified from being appointed as a member of Rukun Tetangga Area Committee if;
- (b) he has not attained the age of eighteen years;
- (c) he has undischarged bankrupt;
- (d) he has been convicted for an offence and sentenced to imprisonment for a term of not less than one year or fine of not less than two thousand ringgit or to both;
- (e) he is not a citizen or a permanent resident or
- (f) he is unsound mind or is otherwise incapable for performing his duty;”.

Several observations for improvement have been identified in this section of the Act. Merely setting the minimum age at 18 may not suffice; consideration should also be given to maturity and practical work experience. The strictness of the imprisonment clause is noteworthy; even if an individual receives a one-year sentence and demonstrates the potential to serve effectively as a mediator, they are currently ineligible. Therefore, this aspect requires careful reconsideration. Additionally, the citizenship requirement needs revision, particularly since Malaysia serves as an international business hub attracting many foreign nationals. Extending access to community mediation services to these individuals is crucial for promoting inclusivity and effective conflict resolution within Malaysia's diverse community.

### ***Training of Community Mediators***

In Malaysia, the training of community mediators is the responsibility of the National Integration Research and Training Institute. IKLIN operates under the DNUI, which is part of the Ministry of National Unity. This institute is responsible for developing and implementing training programs aimed at equipping community mediators with the necessary skills to effectively resolve disputes. The training programs provided by IKLIN have evolved over time to incorporate contemporary mediation practices and to align with international standards. In conducting the training, IKLIN collaborates with certified

trainers. The training modules cover mediation techniques, ethical considerations, and cultural competencies, ensuring mediators are well-prepared to handle a variety of community disputes.<sup>48</sup>

The training begins with an introduction to the fundamental principles of community mediation, emphasising the role of the community mediator within the mediation process. It also aims to familiarise participants with the objectives of the Peaceful Neighbourhood Programme, thereby aligning the training with broader goals of community harmony and conflict resolution.<sup>49</sup>

The negotiation process of the mediation under the community mediation programme is controlled by the mediator and it is free of charge. However, there is no fee imposed on any party at any mediation meeting and the mediator receives no payment. Currently, the community mediator works under the community mediation operating procedure, which is governed by the DNUI. According to the followed procedure, the mediator studies and understands the case, negotiates the problem and has meetings with both parties to resolve disputes amicably.<sup>50</sup>

## **Mediation Act 2012**

The enactment of mediation legislation was aimed not only at promoting and raising public awareness of the mediation process, but also at aligning Malaysia with global developments in alternative dispute resolution. Additionally, the legislation sought to establish a clear and consistent legal framework, thereby addressing concerns around the legitimacy and formal recognition of mediation as a viable method for resolving disputes. The Malaysian Mediation Act 2012

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<sup>48</sup>Policy Brief Launch and Webinar on 'Mainstreaming Mediation as an Alternative Form of Conflict Resolution in Malaysia.'" INITIATE.MY. Accessed April 15, 2025. <https://initiate.my/event/policy-brief-launch-and-webinar-on-mainstreaming-mediation-as-an-alternative-form-of-conflict-resolution-in-malaysia/>, pp. 5, 7.

<sup>49</sup>Hanna Ambaras Khan and Nora Abdul Hak. "Community Mediation in Malaysia: A Step Forward." *International Journal of Business, Economics and Law* 4, no. 4 (2014): 57–64.

<sup>50</sup>Khan, "Legal Framework and Structure of Community Mediation," 95

(MMA 2012) was enacted to institutionalise and acknowledge mediation as a recognised form of ADR.<sup>51</sup>

The Act was passed by the House of Representatives on 2 April 2012 and by the Senate on 7 May 2012. It received royal assent on 18 June 2012, was gazetted on 22 June 2012, and officially came into force on 1 August 2012.<sup>52</sup> The long title of the Act states that it aims to promote and encourage mediation by providing a structured process, thereby facilitating the fair, speedy, and cost-effective resolution of disputes. This legislation represents a significant step in formalising mediation practice in Malaysia, aligning with international ADR standards and reinforcing public trust in mediation as a legitimate dispute resolution mechanism.

The MMA 2012 defines mediation as a voluntary process whereby a mediator facilitates communication and negotiation between disputing parties to assist them in reaching a mutually acceptable agreement. The objectives of the Act include:

- (a) promoting, encouraging, and facilitating the fair, prompt, and cost-effective resolution of disputes through mediation;
- (b) safeguarding the confidentiality of mediation proceedings and protecting the privileged nature of communications exchanged during the process;
- (c) providing flexibility for the implementation and testing of various mediation approaches; and
- (d) preserving the adaptable and non-restrictive nature of mediation.<sup>53</sup>

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<sup>51</sup>Rahmat, Nur Ezan, Daleleer Kaur Randawar, Aishah Mohd Nor, and Faridah Hussain. "Certification and Mediation Training for the Mediators in Malaysia." *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 7, no. 11 (2022): 1–8, p 4.

<sup>52</sup>Mediation Act 2012 (Act 749), Laws of Malaysia, Kuala Lumpur: The Commissioner of Law Revision, Malaysia.

<sup>53</sup>Rahmat et al., "Certification and Mediation Training for the Mediators in Malaysia," 4.

The MMA outlines the duties of mediators and laws related to the mediation process.<sup>54</sup> The code of ethics and principles regarding the conduct of community mediators were also furnished. The seven-basic codes of ethics are stated below:

1. The mediator should be neutral and not in favour of any disputant party.
2. The mediator keeps his trust and focuses on his duty honestly and does not use the power and position which is given by the DNUI for personal advantage.
3. Conducting the duty responsibly.
4. The mediators should commit to their work.
5. The mediators should devote and willing to admit the responsibility and to work for the betterment of a peaceful society.
6. The mediators should be competent in their work and always obey the rules, and be on time for the mediation sessions.
7. The mediators should be professional, continuously progressing their abilities and knowledge and provide effective services to the community".<sup>55</sup>

It can be seen that the Act provides clear guidelines on the duties and ethics of a mediator in conducting a mediation session.

It is observed that community mediators have to undergo trainings that assist them in conducting mediation sessions effectively. The training course is structured into two parts: the first part aims to educate and refine participants' skills, while the second part focuses on mediator training and the intricacies of the mediation process. The topics covered include mediation steps, mediator protocols, and techniques which are essential for a successful mediation. Additionally, the course includes understanding a comprehensive code

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<sup>54</sup>Laws of Malaysia Act 751, Rukun Tetangga Act 2012. Section 5-6-9-10-11.

<sup>55</sup>Jabatan Perpaduan Negara dan Integrasi Nasional (Perpaduan), "Community Mediators Rules Department of National Unity and Integration," Pusat Pentadbiran Kerajaan Persekutuan, 62250 Putrajaya, <https://www.perpaduan.gov.my/en/community/community-mediator/code-ethics> (accessed March 20, 2025).

of ethics which are designed to guide mediators in maintaining professionalism and ethical conduct throughout their mediation practice. This training framework aligns with the objectives of the MMA, which seeks to promote fair, efficient, and confidential dispute resolution through a structured legal framework, thereby reinforcing the legitimacy and credibility of community mediation in Malaysia.

The DNUI's endeavours to promote community mediation are highly commendable. The department successfully accomplished its objectives of fostering tranquillity in the community and establishing a streamlined mechanism for citizens to address and settle disputes. Malaysia has achieved a commendable position on the Global Peace Index's list of peaceful countries in 2024. Malaysia was also ranked as the most peaceful country in Southeast Asia, the third safest in Asia Pacific and 10<sup>th</sup> safest in the world ranking. This ranking was issued by the Global Peace Index 2024.<sup>56</sup>

### **TRADITIONAL DISPUTE RESOLUTION PRACTICE OF *JIRGA*, *PANCHAYAT* AND *FAISLO* IN PAKISTAN**

The term *Jirga* literally means an 'assembly' or 'gathering' which is convened to resolve disputes and functions as an autonomous decision-making body. According to the Pashto descriptive dictionary, *Jirga* is an original Pashto word traditionally used to refer to a gathering of several or many individuals. The word *Jirga* is also used in other languages like Mongolian, Turkish, and Persian that is interrelated with the word circle. Nevertheless, the word *Jirga* is “a rich traditional code of Pushtoon nation where the tribal peoples gather for traditional *Jirga* and sit in a large circle to resolve conflicts and take collective verdicts related to social issues”.<sup>57</sup> Normally, the *Jirga* gathers in Hujra (Hujra

<sup>56</sup>"The 2024 Global Peace Index (GPI)," *New Straits Times*, June 2024, <https://www.nst.com.my/news/nation/2024/06/1064151/malaysia-ranks-10th-most-peaceful-nation-2024-global-peace-index> (accessed March 2, 2025).

<sup>57</sup>Barakatullah Advocate and Imran Ahmad Sajid, "Jirga System in Pakhtun Society: An Informal Mechanism for Dispute Resolution," *Pakistan Journal of Criminology* 5, no. 2 (July-Dec 2013): 45

is a public place and it is as old as the history of Pushoon)<sup>58</sup> or in villages, at a mosque, or any open ground in the community. All honourable elders or greybeards (*Speen Geeri*) are considered suitable for the membership of *Jirga*. Nevertheless, for the effective implementation of the verdict by *Jirga*, the members should have good community status, reputation, and financial standing.<sup>59</sup>

In Pushtoon society, *Jirga* is a unique institution as it works as a council, an assembly, or both. Fundamentally, *Jirga* is a gathering of elders of the tribes, powerful chiefs, and religious leaders who are engaging in the resolution of conflicts among the disputants of the community.<sup>60</sup> The institution of *Jirga* is informal, but due to strong tribal tradition, it has formal effects on the Pushtoon community. *Jirga* acts as a judicial institution in which disputes and problems are presented, and in the end, a penalty is imposed, or a reward is given.<sup>61</sup>

The above examination reveals that the *Jirga* is deeply ingrained in Pashtun society, functioning as a principal institution shaping the lives of individuals and their tribes. It stands as an exclusive mechanism for resolving disputes and fostering consensus across all facets of Pashtun life. The *Jirga* operates multifariously, serving as a social body, judicial court, watchdog, democratic legislative body, and diplomatic mission simultaneously.

The current *panchayat* system in Punjab Pakistan is a type of justice system usually practised in the subcontinent, Pakistan, India, and Bangladesh. The term *panchayat* means “assembly of five” (*punch*). The *panchayats* comprised respected, honourable, and wise elders accepted by the local village. There are different forms of *panchayat* assemblies, and these forms work to settle disputes among

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<sup>58</sup>Mughal B. Khan, Abdul R. Ghumman, and Hashim N. Hashmi, “Social and Environmental Impact of Hujra,” *Environmental Justice* 1, no. 4 (2008): 195-196

<sup>59</sup>Barakatullah Advocate and Imran Ahmad Sajid, “Jirga System in Pakhtun Society: An Informal Mechanism for Dispute Resolution,” *Pakistan Journal of Criminology* 5, no. 2 (2013): 45-46.

<sup>60</sup>Muhammad Hassan Ahmad, Ihtesham Ullah Khan, and Mohammad Naqib Ishan Jan, “Jirga and Dispute Resolution in Khyber Pakhtunkhwa: A Critical Analysis,” *Journal of Islamic Law Review* 15, no. 1 (June 2019): 63-79,

<sup>61</sup>Ali Wardak, “Jirga—A Traditional Mechanism of Conflict Resolution in Afghanistan,” *Institute of Afghan Study Centre*, 2003, 3-4.

individuals of the society as well as settle disputes between different villages. The panchayat system is part of the Indian legal system in many states, including Karnataka, Kerala, Tamil Nadu, Rajasthan, Maharashtra, and West Bengal.<sup>62</sup> While in Pakistan, the *panchayat* system is an informal justice system. In Pakistan, the *panchayat* system is a self-rural government system, and the idea was taken from the Mughal government even before.<sup>63</sup> This system has been a source of justice for a very long time in the Mughal era where there were different kinds of courts which were dealing with different cases. These *panchayat* types of institutions were known as blessings for the poor people in rural areas rather than a threat. The system was bound to solve problems relating to local administration and domestic disputes.<sup>64</sup>

Historically, in Punjab Pakistan, *panchayat* gained popularity for the settlement of community disputes at the village level to sidestep violence. The traditional panchayat always tried to prove its worth by providing timely and speedy justice to people. Furthermore, currently, there are different types of *panchayat* in different areas of Punjab that are functional in diverse positions, which are, Intra-village or village *Panchayat*; Inter-village *Panchayat*; *Biradari Panchayat*; Local *Panchayat*; *Gram Panchayat*; *Kath* of villagers; *Hawaili/Daara Panchayat*; *Baithak Panchayat*; Family *Panchayat*; Political *Panchayat*; *Tharra Panchayat*; *Bathha Panchayat*;<sup>65</sup>

The dispute resolution mechanism, especially the traditional *Faislo* system which is called *Jirga* and *Panchayat* in other provinces of Pakistan is an important part of the traditional inter-village and intra-village conflict resolution mechanism in Sindh Pakistan. The traditional institution of *faislo* functions for decision-making and

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<sup>62</sup>Pandey, Mukesh Kumar, and Ashutosh Sinha. "Panchayati Raj System and Rural Development in India: A Critical Study." *International Journal of Development Research* 11, no. 03 (2021): 45165–45168.

<sup>63</sup>Muhammad Rahmatullah Farooqi, Haq Nawaz Anwar, and Falak Sher, "A Comparative Study of Panchayat System and State's Judicial System in Punjab, Pakistan," *Journal of Organizational Behaviour Research* 4, no. 2 (2019): 142-149

<sup>64</sup>S. R. Sharma, *Mughal Government and Administration* (Bombay: Hind Publisher, 1965).

<sup>65</sup>Riaz Ahmad Muazzmi and Aneela Sultana, "Ethnography of Panchayat: Cases of Khula from Mandi Baha-Ud-Din," *Global Regional Review* 5, no. 1 (2020): 76-83.

dispute resolution which occurs at different village levels and places which are, family 'inside the house through mutual negotiation by family members', kinship at Otaq,<sup>66</sup> by noble and aged elders of kinship. Kinship is also conducted at a mosque or shrine of Pir 'on oath by spiritual leader, at Maikhana 'hashish smoking place by mystic peasants through lengthy elaborated dialogue, or at Dero in sharecropping during Batai 'by a landlord, landowners, farmers, and sharecroppers'. It is also conducted at the local inter-village, which is tribal level 'at big landlord's or feudal's bungalow' and in the court of law by a judicial magistrate.<sup>67</sup>

The institution of the traditional *Faislo* system which is an informal judicial body at the village level constitutes a decision-making body to resolve conflicts depending upon the context of the conflict. If the matter of conflict is in an internal family within the village, then members from the same families and kinship will be the parties to the dispute resolution. In internal family matters, the participation of *Wadera* (landlord) of the village is not necessary. If the conflict is more serious like honour killing, murder, etc, then two different *bradaris* (tribes) together with a mediator (a feudal or tribal elder, sardar) constitute a large conflict resolution body (Bradari) to solve the matter.<sup>68</sup>

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<sup>66</sup>"Otaq," at times also referred to as "Autaq," serves as a multifaceted haven—a guest room, a place for communal gatherings, and a sacred space exclusively designated for men. Here, individuals, including guests and foreigners, congregate on special occasions or specific days. *Historical Research on Otaq Culture in Sindh*, available from [https://www.researchgate.net/publication/376489643\\_Historical\\_Research\\_on\\_Otaq\\_Culture\\_in\\_Sindh](https://www.researchgate.net/publication/376489643_Historical_Research_on_Otaq_Culture_in_Sindh) [accessed March 14, 2025].

<sup>67</sup>Ghulam Hussain, Anwaar Mohyuddin, and Firdous Mahesar, "Conflict Resolution Mechanism in Rural Sindh: Rationalizing Lifeworld of Peasants," *Voice of Intellectual Man—An International Journal* 3, no. 2 (2013): 38.

<sup>68</sup>Ghulam Hussain, Anwaar Mohyuddin, and Firdous Mahesar, "Conflict Resolution Mechanism in Rural Sindh: Rationalizing Lifeworld of Peasants," *Voice of Intellectual Man—An International Journal* 3, no. 2 (2013): 35-54.



## HUMAN RIGHTS INCIDENTS IN TRADITIONAL DISPUTE RESOLUTION IN PAKISTAN

In Pakistan, the traditional system lacks proper control and a legal framework, leading to numerous incidents in various regions. Traditional members often base their practices on personal interpretations, resulting in frequent issuance of unlawful verdicts under the guise of custom and tradition. "The example in this connection is of Maryam Bibi who was stoned to death in Khanewal, a district of Punjab. Reports from the media say, 25 years-old Maryam Bibi, mother of five, was mowing grass on the fields of a local landlord who reportedly forced her to submit to his sexual advances. When she declined the landlord levelled accusations against the woman and took the case to a local *panchayat*, who ordered the woman to be stoned to death. The order was carried out at her home in the early hours of July 18. Her husband, Sarfaraz, was kidnapped, but later recovered."<sup>69</sup>

As a result of the absence of a well-defined framework, facilities, established regulations, and trained government mediators, several occurrences have occurred that constitute a breach of national laws and fundamental human rights. An example of a tragic accident can be seen during a *Jirga* proceeding. On 20 September 2021. In this incident, "at least nine (9) people were killed and sixteen (16) were injured as participants of a *jirga* opened fire at each other in Barawal tehsil of Upper Dir, Khyber-Pakhtunkhwa. The incident occurred during a meeting held to resolve a dispute related to the construction of a road at Ganu Cham, tehsil Barawal. The attendees first engaged in a brawl but took out guns and began firing at each other shortly after".<sup>70</sup> On 3 April 2023, another incident happened and in detail was reported as follows "Gujrat Pakistan Punjab: The death toll in the firing incident at a village *Panchayat* reached five as a critically injured man succumbed to his wounds at Kharian civil hospital. Police stated that the shooting occurred during a dispute over a financial matter at the residence of

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<sup>69</sup>Allah Nawaz, "Jirga and Panchayat as the Precursor to Honour Killing in Pakistan," *Dialogue* 15, no. 1 (2020): 105.

<sup>70</sup>The Express Tribune Staff Reporter, "Nine Killed, 16 Injured in Clash During Jirga in Upper Dir," *The Express Tribune*, September 20, 2021, <https://tribune.com.pk/story/2321086/nine-killed-16-injured-in-clash-during-jirga-in-upper-dir> (accessed April 5, 2025).

Fazal Hussain, adding that other aspects of the incident are also under investigation. Further investigation is underway with no arrest so far.<sup>71</sup>

There have been numerous cases across different areas of Pakistan where the traditional system is utilised to settle disputes, leading to significant human rights violations.<sup>72</sup> These incidents occur because the government lacks proper control over the traditional dispute resolution mechanisms through a formal legal framework. Traditional practices such as *Jirga*, *Panchayat*, and *Faislo* continue to operate with societal acceptance, despite their perpetuation of cruel and un-Islamic rituals. The examples cited above are from previous years, and there are likely many more cases that go unreported. The government must take decisive action against these violations and institute regulations to oversee and regulate the traditional practice systems effectively.

## COMPARISON BETWEEN COMMUNITY MEDIATION IN MALAYSIA AND TRADITIONAL DISPUTE RESOLUTION IN PAKISTAN

Historically, Malaysia and Pakistan have both practised traditional methods of alternative dispute resolution for centuries. Malaysia's cultural diversity, encompassing Malays, Chinese, and Indians, manifests in distinct approaches to conflict resolution. Malays often seek resolution through neutral third parties such as religious leaders (*Imam*), village headmen (*Ketua Kampung*), or community leaders (*Penghulu*). Chinese communities traditionally refer to *Kapitans*, who act as community leaders in resolving disputes. Indian communities in Malaysia, influenced by their historical roots in the Indian subcontinent, continue to practise traditional dispute-resolution methods. Indian Hindus, for instance, historically use the *Panchayat* system for resolving disputes. Similarly, in Pakistan's four provinces, the traditional systems of *Jirga*, *Panchayat*, and *Faislo* serve as

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<sup>71</sup>The Dawn News Staff Reporter, "Panchayat Firing Death Toll Reaches Five," *The Dawn News*, April 14, 2023, <https://www.dawn.com/news/1747468> (accessed April 5, 2025).

<sup>72</sup>Muhammad Hassan Ahmad and Ihtesham Ullah Khan, "A Legal Framework for the Jirga Community Mediation in Khyber Pakhtunkhwa," *Islamic Law Review* 3, no. 3 & 4 (Autumn/Winter 2019): 10,11.

established mechanisms for resolving disputes. Pakistani communities, like those in Malaysia, exhibit diversity, with these systems typically involving gatherings of tribal elders, influential chiefs, and religious leaders tasked with resolving conflicts among community members.

In comparing the legal frameworks for community mediation between Malaysia and the traditional dispute resolution system in Pakistan, significant differences are evident. Malaysia has developed a legal framework for community mediation, whereas Pakistan has yet to establish such legislation. Malaysia's approach includes comprehensive legislation supporting community mediation practices, contrasting with Pakistan where researchers have identified no specific legislation for community mediation.<sup>73</sup> An important historical context is that both Malaysia and Pakistan gained independence from British colonial rule, with Pakistan gaining independence earlier than Malaysia.

In Malaysia, the DNUI was established to enhance social harmony and unity, focusing on developing the structure of community mediation. Conversely, Pakistan lacks a similar departmental structure dedicated to promoting community mediation. Since 1975, Malaysia has implemented the Peaceful Neighbourhood Programme under the DNUI to foster social unity and harmony among society members. This initiative is further strengthened by the MMA, which provides a formal legal framework to promote, regulate, and legitimise mediation practices across the country. In contrast, Pakistan's traditional dispute resolution systems operate without government oversight and a formal legal framework. While Malaysia's system continues to evolve and actively supports community mediation initiatives, Pakistan remains in urgent need of a comprehensive legal framework to formalise and regulate community mediation practices.

Due to the lack of control and a formal legal framework, numerous incidents have occurred in different areas of Pakistan involving the traditional dispute resolution system. Traditional members often interpret and practice it according to their understanding, occasionally leading to unlawful verdicts justified in the name of custom and tradition. It is crucial to emphasise that the sanctity of human life surpasses any adherence to custom or tradition. The

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<sup>73</sup>Intesham Ullah Khan, Nurah Sabahiah, and Sodiq Omoola, "Legal Status and Future of Mediation in Pakistan," *JL & Soc. Pol'y* (2024), 17-18.

examples mentioned are just a glimpse of the unjust judgments rendered by the traditional system, with many more cases going unreported by the media or law enforcement. Despite its deep roots in Pakistani communities, the government bears the responsibility to bring the traditional system under a comprehensive legal framework. Currently, Pakistani statutes do not provide formal regulation for the traditional system. Establishing such a framework is essential to harness its potential as a positive force for peaceful communication and conflict resolution within society. This regulatory step is vital not only to prevent further incidents as described but also to ensure the traditional system operates effectively, upholding justice and community cohesion.

The DNUI centres and area centres under the Peaceful Neighbourhood Programme share significant similarities with the traditional dispute resolution system in Pakistan while also displaying differences in certain aspects. Initially, both DNUI and traditional systems function within communities to resolve disputes. In Pakistan, the traditional system traditionally convenes parties in communal settings to discuss and resolve issues. Similarly, DNUI trains mediators who may establish centres or facilitate meetings through departmental support to aid in dispute settlement. DNUI also incorporates customary roles akin to *Ketua Kampung* or *Penghulu*, who preside over community gatherings to address matters. However, DNUI has modernised these practices over time, refining and advancing its systems to enhance effectiveness in facilitating peaceful resolutions within communities.

The main distinction between DNUI centres in Malaysia and traditional centres in Pakistan lies in their operational framework. In Malaysia, DNUI centres operate within a legal structure, ensuring accountability and oversight. Conversely, traditional dispute resolution centres in Pakistan function based on traditional principles without regulatory oversight from governmental departments. Malaysia has continually enhanced its traditional dispute resolution centres by introducing new structures and improvements aimed at delivering optimal services. In contrast, Pakistan's traditional centres require focused government attention to integrate them within a formal departmental structure. This step is crucial to enhance efficiency, transparency, and effectiveness in resolving disputes within Pakistani communities.

In Malaysia, the training of community mediators is conducted by the National Integration Research and Training Institute, highlighting a more advanced approach in this field. Mediators undergo comprehensive training to acquire skills and expertise, enabling them to effectively engage in dispute resolution. In contrast, traditional mediators in Pakistan do not have access to dedicated training centres. This disparity underscores a significant difference in the level of professional preparation and capability between the Malaysian and Pakistani systems for mediation and conflict resolution.

## CONCLUSION

The study on community mediation in Malaysia and the traditional practice of dispute resolution in Pakistan helps in establishing a structure of community mediation for Pakistan as there is no practice of community mediation under government supervision and it depends heavily on the traditional way of dispute resolution. However, Malaysia has taken an important step in starting a formal community mediation programme under the DNUI. The reports of the community mediation programme in Malaysia are very impressive and the people took an interest in solving their issues with the easy method and to avoid the lengthy procedures of courts. Pakistan needs to look into the application of ADR mechanisms.

In conclusion, to enhance the practices of traditional dispute resolution in Pakistan, several crucial steps are recommended. Firstly, codifying the rules governing traditional proceedings is imperative as a legal framework for promoting structured dispute resolution. Secondly, establishing a dedicated department equipped with resources and a comprehensive structure for community mediation, akin to Malaysia's DNUI established in 1969, is essential. This would provide the necessary institutional support for effective operations.

Thirdly, addressing the informal nature of proceedings, which lack written protocols or standardised terms, is crucial. Government intervention to provide a binding legal framework for the traditional system would ensure consistency and accountability in its practices. While the traditional system serves as an alternative to the formal judiciary in Pakistani communities, uncertainties in procedural structure and mediator skills can lead to societal challenges, including

human rights violations and decisions conflicting with Islamic principles and existing laws.

By implementing these recommendations, Pakistan can strengthen its traditional system, aligning it with legal standards and enhancing its role in fostering community harmony and justice. This approach not only respects local customs but also safeguards fundamental rights and promotes adherence to legal norms, thereby contributing to a more equitable and stable society.

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