

**CUSTOMARY VILLAGE COUNCILS AND THEIR  
IMPLICATIONS FOR LOCAL GOVERNANCE: A  
CASE STUDY OF MAHARASHTRA**

*Disseratation submitted to Jawaharlal Nehru University in partial  
fulfillment of the requirements for the award of the degree of*

MASTER OF PHILOSOPHY

JOSE ALMIN.C



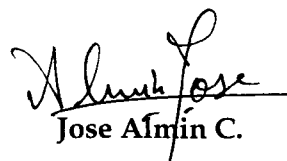
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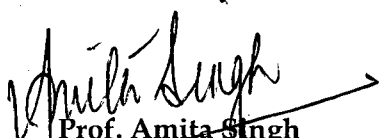
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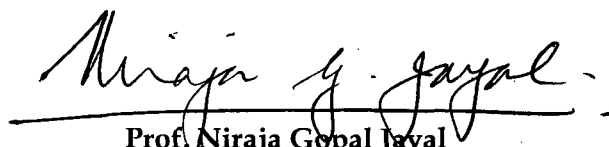
This dissertation entitled, 'Customary Village Councils and their Implications for Local Governance: A Case Study of Maharashtra', submitted in partial fulfillment of the requirements for the award of the degree of Master of Philosophy, is my original work. This dissertation has not been previously submitted for any degree of this or any other university.


  
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**CERTIFICATE**

We recommend that this dissertation be placed before the examiners for evaluation for the award of Master of Philosophy degree of this university.

  
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To  
The Almighty  
&  
My Parents

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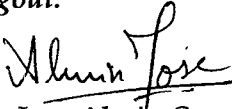
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Jose Almin C.

## GLOSSARY

*Bhatki*: Nomadic communities.

*Bhatki-Vimukta*: These are the nomadic tribes and the denotified nomadic tribes.

*Bhavkis*: Customary village councils in Maharashtra where its members are people from the same clan, since the village would comprise of the same clan members.

*Caudi*: A central clearing made in the village where the Caste panchayats of the Tirumal nandiwallas meet.

*Chagga*: Chiefdom on the slopes of Mt. Kilimanjaro in Tanzania having customary courts.

*Deshadhikari*: The head of a district in the pre- independence period.

*Gacaca courts*: Alternate Dispute Resolving bodies in South Africa.

*Gavkis*: Customary village councils in Maharashtra where its members are the ones who were from that village, generally the dominant caste people.

*Ghatasphot/kadimode*: Divorce.

*Gotra*: 'Gotra' is an exogamous clan whose members share patrilineal descent from a common ancestor.

*Gramadhikari*: The head of a village in the pre- independence period.

*Hunda* : Price taken by the boys, in marriage, from the girls father.

*Jirgahs*: Alternate Dispute Resolving bodies in Pakistan

*Khap*: The customary panchayats of the communities in Haryana are more commonly known as khap.

*Keshavpan*: A ritual among the Hindus, where in if the husband passes away, his widow, was forced to have her head shaven off.

*Panch*: A group of five or more village elders, who are considered the representatives of god when they sit to resolve the disputes among people. They are the decision makers in a village.

*Patil:* Were the ruling, and the land owning class of Maharashtra

*Police patil:* The primary level investigations are done by this functionary, especially in places where there are no police stations. He works as a mediator between the police and the villagers.

*Rig veda:* An ancient religious text of the Aryans, the time of its origin has been contested, it is a collection of short poems, chiefly addressed to gods. It literally means the 'wisdom of God'

*Shalish:* Traditional dispute resolving bodies in Bangladesh, basically handle cases of domestic violence.

## ABBREVIATIONS

ADR- Alternative Dispute Resolution

CVCs - Customary Village Councils

CP- Customary Panchayat

GP- Gram Panchayat

PRIs- Panchayati Raj Institutions

NP- Nyaya Panchayats

GN- Gram Nyayalayas

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Map of India

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## CHAPTER- 1

### INTRODUCTION

*"Local democracy can make governments more responsive and accountable, this is a question of degree. The constitution of the PRIs would create a new leadership at local levels which would not only abjure obscurantism and backward-looking attitudes but also would be instrumental in changing the anti-development outlook of the traditional caste leaders in the villages so that the people could achieve their collective aspiration of developing themselves holistically." (Ghosh and Kumar, 2003)*

Many in the Indian intelligentsia believe in the democratic ideal that when more and more people participate in decision making, and the disadvantaged sections have an equal opportunity to participate, much of the ills of society can be resolved.

The "panchayats will be the legislature, judiciary and executive combined", and there would be "no punishments in the accepted sense" as "non-violence with its techniques of satyagraha and non-cooperation will be the sanction of the village community". (Baxi, 1976: 305) This is what Gandhi and his followers construed village swaraj to be. Differently argued by B.R Ambedkar, "I hold that those village republics have been a ruination of India....What is a village but a sink of localism, a den of ignorance, narrow-mindedness and communalism?" who in his constitution draft speech presented a vigorous defence of the panchayats being excluded from the constitution. (Baxi 1976: 304) The fact, however, is that both the views were two extremes from the real situation.

Indian newspapers often headline horrific and brutal stories of the atrocities committed against disadvantaged sections, including women, by customary panchayats (CVC-Customary Village Councils<sup>1</sup>). These panchayats are different

from the usual Gram Panchayats (GPs), in their nature, structure and composition. The struggle unfolds itself not in dark medieval India, nor in the colonial era. It takes place in the rich rural lands of Haryana, and in some parts of Uttar Pradesh, Maharashtra, Karnataka, Tamil Nadu, and in the twenty first century.

Known by different names in different places, but displaying almost similar character and functions such councils are not unique to India but are also seen in other countries of the world<sup>2</sup>. Mandelbaum, (1970: 294-315) distinguishes two functions of caste panchayats: the redress of ritual lapses connected to norms of purity and defilement, and the settlement of civil disputes. The general opinion is that Customary Panchayats (CPs) are meant for dispute resolution within the village whereas GPs for implementing development activities and hence there is hardly any interface between the two. In a way this implies that CP is perceived as a social institution and GP as a political structure, each with different sets of activities.

**Objectives:**

The objective of this study is to examine how these parallel non-state agencies of yester years have survived and worked as institutions in the period after the 73<sup>rd</sup> Constitutional Amendment Act; whether, and to what extent these CVCs are effective, and accountable to the villagers. The extent of reciprocal relations of exchange and support among these systems of institutions and the extent of their autonomy from each other is the central theme of this study.

The area of my study is Maharashtra, and more particularly Jejuri, in Purandhar taluka in Pune district, Paniv village in Malshiras taluka, Sholapur district. In the process of strengthening grassroots democracy, how do these informal non-state institutions help or hinder people's participation and role in the statutory

(elected) panchayats? The study would also like to examine the composition of these panchayats in terms of their socio-economic standing.

By non-state agencies, we specifically mean here the caste panchayats and such similar bodies, which function till date (in some places more, and in others, some comparatively less, active) inspite of all the odds they face in today's globalizing world. It is possible that many years from now, these institutions would cease to exist, but the imprints of a legacy they have left in the society would always be felt in the social fabric of India.

#### **Locating the Issue in a Theoretical Context:**

To discuss the rationale for the existence of the customary panchayats and laws, we have used three prisms- Legal Pluralism, Decentralisation and Access to Justice. Legal Pluralism denotes a legal system wherein two or more legal systems co-exist. Legal pluralism is said to exist whenever a person is subject to more than one body of law. This leverage is given to territories which were once colonies of the west. Law is a describable set of doctrines or institutional structures, separate from the dynamic and multiple domains of culture and politics. (Davies, 2005) The people in India had their own sets of laws and culture, to which were added the foreign laws brought by the colonizers. In the post-independence context, we can see this difference between state laws and customary laws, which evolved with the interaction of laws and culture, giving rise to parallel legal systems.

The western legal system introduced by the British brought into being a practice of dispute resolution situated some miles away from the site of the dispute; presided over by judges who had imperfect knowledge either of the disputants or of their language; who had barely any sympathy for the culture of the region; who, to add to the plight of the people, kept getting frequently transferred; and

whose decisions were largely based on the fabricated documents produced by the expert pleader for his client and against the adversary. (Cohn, 1965:109) Sally Falk Moore argues that the British revision of indigenous judicial systems was hypocritical: on the one hand, they sought to preserve custom by recognizing customary institutions, and on the other, "they were to be a vehicle for remolding the native system into lines consonant with modern ideas and higher standards. (Moore, 1992:7) It is indeed a matter of surprise that village councils continue to function in spite of more than 100 years of British law administered through the powerful official law courts. (Srinivas, 1959:16)

Robert Cover's influential work in the 1980s theorizes *jurisgenesis*, the creation of legal meaning as a process that takes place always through an essentially cultural medium. (Davies, 2005:108) If law is essentially a cultural expression, then the foundation for its legitimacy is a plural society. The legal pluralists distinguish between deep legal pluralism and state law pluralism, though customary law is a part of both types. (Woodman, 1996:158) Deep legal pluralism is composed of customary laws embedded in state laws, i.e. recognizing and incorporating customary law into state law. In the state legal pluralism, the state law incorporates certain aspects of the cultural components of customary law into state law, so some legal pluralists are of the view that it is not the true sense of legal pluralism. The distinction between the two, as expressed by Woodman, is that deep legal pluralism is so called because its different laws go deeper, separating state law and non-state laws, whereas state law pluralism is merely a distinction within the body of state laws. Thus customary laws applied by the state legal system are quite different when applied by other arenas from outside the state. (Woodman, 1996:159)

In the Indian case, we see that state legal pluralism refers to those laws that have incorporated various forms of customary practices, for instances the personal

laws of various religious communities, especially in cases dealing with marriage, divorce, succession, inheritance, maintenance, adoption, guardianship, etc. When it comes to deep legal pluralism, we see the existence of various systems of legal order being followed in a parallel manner. The customary laws adjudicated by caste panchayats in rural India can be cited as an example. These laws are a real challenge to the state legal system since they claim a rival sovereignty in their domain. The problem arises when one of these systems of law claims exclusive legitimacy, denying the legal character of norms to the others. (Woodman, 1996:157) That is, the problem does not arise primarily because of the existence of more than one legal order, but because of the inbuilt limitations of a singular positivist notion of law. (Davies, 2005)

The point of criticism against other forms of law, including customary law, is that it violates both implicitly and explicitly the principles of legal justice and of fairness, such as the rule of law, and equality before law. Though we cannot be certain that the State law which claims superiority over the other forms of law strictly adheres to these principles, it is at least accepted on paper.

The principal objection to deep legal pluralism is that it is inimical to the rule of law. The conflicting norms are not subject to overarching ordering; competing legitimacy gives rise to competing duties, consequently flouting the rule of law. The 'new' legal pluralism of the 1970s however goes a step ahead in that it argues that all societies, colonized or not, had their own legal system. Many forms of law thus existed which were non-state or international, and non-territorial. (Davies, 2005:105-6) Certain laws of the non-state systems are by nature unjust, cruel and unusual in the treatment of some categories of citizens. For example, their attitude to women is grossly objectionable. On the other end, state law pluralism, many a times, is seen as having complex and unjust modes

or underpinnings. Also it is hardly justifiable to impose the culture of one particular section on other sections of society. (Woodman, 1996:164)

Another way of looking at these institutions would be through the principle of **decentralization**, or grassroots democracy, where people sit together to decide how to shape their own decisions in matters of growth and governance, wherein the efficient management of the village resources can be done with the people participating in decision making bodies. This was the main objective of the revival of the age-old tradition of panchayats. Decentralisation is often founded upon a wider critique of central state planning, which holds that large and centrally administered bureaucracies tend to be an inefficient and potentially destructive means of allocating resources; and that central state agencies lack the 'time and place knowledge' to implement policies and programmes that reflect people's 'real' needs and preferences. It is also considered that decentralisation creates the conditions for a more pluralist political arrangement, in which competing groups can voice and institutionalise their interests in local democratic forums. (Johnson, et al 2005: 941)

The panchayats of today are not those that were envisaged by Gandhi as a constellation of village republics. Neither are they as imagined by Ambedkar-sinks of localism, dens of ignorance and narrow mindedness. The truth lies somewhere in the middle. Panchayats were given a constitutional status only by the 73<sup>rd</sup> Constitutional Amendment, 1992. Since one set of panchayats has been given a legal basis, caste panchayats too try to clamour for their place although they are neither elected, nor do they have any legal validity for their existence. They try to reach out for a more dominant place in the society through the back door, by trying to get influential people of the CVC placed in the official positions of the panchayats, thus re-routing caste politics. Respecting the regional differences of the country, the amendments were framed in a manner



that regional differences could be taken into consideration. Therefore, besides some mandatory responsibilities (pertaining to the structures), other options were left to the respective states to legislate. This was to be done by the conformity laws, provisions for which are sometimes used by the local influentials to bring down elected representatives, and in turn to replace people with credibility of their own choice. This is seen more commonly in seats that are meant for the reserved category .i.e. women and other disadvantaged sections. Here elite capture, of the panchayats especially by the dominant class/ caste, is clearly evident. The flaws and loopholes in the conformity acts have made room for the customary panchayats to play their role.

Barring a few exceptions, the main function of caste panchayats today is to act as a parallel mechanism of dispute resolution mainly with cases regarding marriage, divorce, remarriage, theft, domestic feuds, etc. Justice is given quickly, within the next sitting of the caste panchayat. However, the concept of 'justice' can be rather misleading in these cases<sup>3</sup>. Decentralisation creates the potential for greater variance in local governance structures and the way people use customary law. (Decker, Klaus et al, World Bank Report, 2004)

Lack of access to formal judicial system also forces the people to take resort to the customary panchayats even if they do not wish to especially when they neither have the resources to pay for litigation (as court fees and other fees), or to hire an expensive pleader. Nor do they have time, to attend the sessions of the court, especially because it can take years to obtain a verdict in a civil dispute. Also, most people in rural India are wage earners or subsistence farmers. For them, attending court sessions would cost them their livelihood as the courts are not situated in the rural areas, but in towns and cities. The cost of commuting and other expenditures are too heavy for them to bear. The prolonged business in the courts keeps them off the courts, quite apart from the backlog of cases in

the lower courts<sup>4</sup>. Further, many litigants are illiterate and do not understand the legal language and the procedures which makes them afraid of the formal legal systems. They are apprehensive of the judge as they do not understand the court room.

However, in the caste panchayats they know the language, and are aware of the proceedings. All the people in the village know each another and that saves a lot of time in making the case known to the panch members who are most often from the litigant's village. People are more or less aware of what punishments would be given in the case if proven guilty. Generally, verdicts consist of some fines; at times it can be lynching or social shaming and ex-communication the maximum. For the people, paying the compensation is more viable than going to courts. For quick, easy and cheap justice, the CVCs are more suited than the courts. However, there is a darker side to the caste panchayats as well. Though not widely practiced and a recent development stripping in public and killing are deplorable.

With intent to improve access to justice, Nyaya Panchayats which are a mix of tradition and modernity, incorporates informal dispute settlement mechanism at village level. But has still not succeeded in delivering justice to the people, because of many inherent problems it carries. The main problem is the lack of professionalism and genuine participation of the people and their vulnerability to mala fide interests. To look into the matter further the Nyaya Panchayat Bill was passed in the parliament in its winter session of 2006 under Article 39A of the Constitution of Indian to provide for free legal aid by suitable legislations to ensure the opportunities for securing justice and not denied to any citizen by reason of economic and other disabilities.

Panchayati Raj experts were not in favour of replicating the existing formal courts in the rural areas (or newly formed Gram Nyayalayas GNs<sup>5</sup>) for various reasons including the cost involved, inaccessibility, and insensitiveness to the local mores and customs. Prof. Upendra Baxi, who favoured participatory justice system at the grassroots, was the main exponent of the NPs in India. Reformers who favour the participatory form of dispute resolution now endorse the recommendations of the Baxi Committee<sup>6</sup>, which calls for the revitalization of NPs. They claim that establishment of NPs, is not a viable solution, not just for the large number of personnel that would need to be recruited, but more because, considering the voluntary nature of the legal profession, the lawyers are mostly in the cities, and a rural shift seems to be too romantic and remote. Informal courts under the PRIs and with local participation have sprung up under different names such as 'gram katchahry' in Bihar, 'gram panchayat' in Himachal Pradesh, 'gram nyayalaya' in Chattisgarh and 'nyaya panchayat' in Uttar Pradesh. These are all experiments in NPs, of varying degrees of success, but the state of Madhya Pradesh NPs failed to replicate similarly.

**Methodology:**

The choice of the locations was made in such a way that people from different communities having their caste panchayats could be interviewed, though the case studies do not claim to be fully representative. The data for the case studies were gathered through in-depth interviews with the people involved in the caste panchayats, along with existing background information. Respondents were identified with the help of local facilitators and other community members, and interviews were conducted individually. The case studies provided an understanding of the general perceptions and experiences of dispute-resolution. The patterns identified in the case studies are also compared with the existing literature on rural justice in India, and Maharashtra in particular.

This research is descriptive and exploratory in nature, using both primary and secondary data. The latter part of the study mainly relies on primary data through field study, undertaken in three districts in the state of Maharashtra. The fieldwork includes interviews with villagers and the members of the panchayats (both Statutory and the CVCs). The other primary sources are Ministry of Panchayati Raj Reports, and the Government Reports and Gazettes. Secondary sources would be the existing literature in this field.

The field work for this study was conducted in January 2007. Two methods were used: a questionnaire based survey and an ethnographical investigation of the people from castes having their panchayats. The study focuses on the nomadic communities who continue to use caste panchayats, and were living in their temporary makeshift houses made to suit their life purposes. The study included respondents mainly comprised of men belonging to these castes, some women from among these castes who were permitted to speak, and children (representing the new generation). This study also included some others who did not have such panchayats, but who belonged to that village/locality, or knew of the existence of the caste panchayats. They were people who belonged to middle order caste in the hierarchy and some from the comparatively higher castes like the Marathas who formed the majority of the population in the state. Interviews of some of the nomads who no longer continued with their nomadic lifestyle and had more or less settled on the outskirts of Pune city, were also taken.

In the next phase, interviews with people holding positions in the statutory panchayats in the nearby regions were conducted. The respondents here were both current members of the panchayats and some who were, in the recent past, active members who continue to extend their support for the smooth functioning of the panchayats. From the information received from respondents, the study tried to draw out their understanding and interpretation of the caste panchayats,

their deeper understanding of the benefits and limitations of these caste panchayats, the levels of participation in both types of panchayats, and the general qualities that a leader should possess.

The survey yielded a set of information about their respective castes as well as a better understanding of their participation and the kind of leadership they are looking for. Making a caste based classification in the study was essential so that the research does not miss out on any of the caste people or castes having caste panchayats present in the field. The study attempts to reconstruct in rich detail the social reality faced by the nomads and to understand from their perspectives what kinds of choices they faced, what motivated them, and what kinds of interventions would have enabled them to resolve their problems better.

#### **Outline of the Chapters:**

The chapters following the Introduction will be dealing with the various aspects of this complex institution. Chapter Two particularly attempts to bring to light the contending views in the existing literature on CVCs in various parts of India, particularly with reference to the northern states of Haryana, Rajasthan and western Uttar Pradesh where they have been depicted as exploitative, parochial and undemocratic, vis a vis those in the state of Karnataka where the CVCs have been portrayed as empowering<sup>7</sup> with regard to their potential for enhancing participatory democracy. A section on the evolution of CVCs. We also seek to explain why Maharashtra was chosen as the field site for research.

Chapter Three provides an historical account of the PRIs in general, and Maharashtra in particular, as well as the respondents' interviews and the researcher's experiences in the field.

Chapter Four provides a detailed analysis of the field in the wake of the scholarly literature and at times comparing it with field experiences. The changes that have occurred over the years are recorded, though the focus is different from that of the earlier works as it has a multi-dimensional look at the CVCs. Comparison with other studies in this area were undertaken so as to bring out the similarities and dissimilarities. Attempts have also been made to incorporate the different views on participation in democracy, women's role in these CVCs, the civic amenities made available by the state, and their current situation.

Chapter Five concludes the dissertation. The thrust of the research has been to identify the problem in the area, and the study leaves enough scope for further study to find out the solutions for these problems.

**Research Questions:**

- 1) What is the interface (if any) between the statutory PRIs and the CVCs in villages where both these institutions function simultaneously?
- 2) Who are the functionaries in both these institutions? What are their functions in the CVCs and their relationship with the gram panchayat or its individual members?
- 3) What are the networks within which these two kinds of institutions function, i.e., their divergences and convergences?
- 4) What is the participatory response of the people in such villages?
- 5) What is the role of women in the CVCs?

**Null Hypothesis:**

The CVCs play an important role in the strengthening of democratic local governance.

### **Embarking on the Study:**

I chose the field of my study as Maharashtra, because very little work has been done on CVCs in this state though this happens to be one of the states which had PRIs even before the 73<sup>rd</sup> Amendment Act was passed. The CVCs in many other states caught the attention of the media due to their often outrageous decisions. Maharashtra was a state of which very little was known in this regard until some sporadic nonetheless serious incidents began to occur, like the one that took place in Khairlanji in Nagpur district<sup>8</sup>. Another incident took place in Talegaon, fifteen kilometers from Sholapur, not far from the commercial capital of India. The humiliation of a native woman of the Chamar caste was not an eye opener<sup>9</sup> any more. Medha Kotwal Lele in her studies of such CVCs (which are called 'gavkis', and 'bhavkis' ) in the villages in and around Pune. She had described how the gram panchayats had become devoid of powers because these 'gavkis' (village collectives) were able to influence favours from the local politicians and contractors, which were quite detrimental to the PRIs. My conversations with sociologists in the region gave me the idea that caste panchayats still existed among the nomadic and the 'denotified' castes<sup>10</sup>

The next attempt was to identify which of these communities had caste panchayats and how often they met. The information gathered was astonishing. In Maharashtra, caste panchayats do not survive any longer within the general population. The onslaught of modernity possibly faded away this social institution. It is prevalent only among the nomadic communities/castes today. Moreover, in communities where these castes have taken to a settled life style, they do not bother to attend the caste panchayats, thus sending them into oblivion.

### Area of Study:

Before venturing into the field, many incidents reported in national as well as regional newspapers on the judgements given by caste panchayats, the traditional instruments of oppression, especially among the northern states of Haryana, Uttar Pradesh, Rajasthan were studied. With no exception, these judgements were based not on the rule of law, rather on caste. They went to the extent of physically torturing them, parading the 'guilty' nude or, at times even as gruesome as 'honour' killings. All these took place in the backdrop of the villages where grassroots democracy is functioning, suggesting that such blatant violations of the rights of individuals could not be checked by formal institutions of democracy. Even after the advent of 73<sup>rd</sup> and 74<sup>th</sup> Amendment Acts, with the People coming closer to the administrative machinery of the state, the occurrence of such atrocities implying violations of individual rights undermines the democratic norms and values

Another set of scholarly writings on the village councils in the state of Karnataka propose an altogether different view of the issue. It has been argued<sup>11</sup> that these bodies were in all senses very effective in reaching out to the people and in ensuring their participation in the local bodies. These informal institutions were instrumental in channelising participation in the formal structures of local self governance (PRIs), to the extent of deciding who would be contesting, or whether to go for a consensus candidate. They also managed to effectively channelise the funds that came to the PRIs as part of administrative decentralization.

The present study is meant to be a contribution to the study of dispute-resolving institutions in India through an examination of this traditional mode of dispute-resolution, and has relevance to larger questions in the social study of law. The field work involved the collection of data from two villages Jejuri<sup>12</sup> and Paniv,



both close to each other. Jejuri in Purandhar taluka in Pune District is an hour and half journey from Pune and Paniv is in Malshiras taluka in Sholapur District. Nomads from all over the state had gathered here, mostly belonging to the Veidu community which has its caste panchayat in Jejuri once a year. In addition, the Nandiwallas and the Kaikadis castes have Pune and Sholapur as important places for their religious meetings and unions, as these places fall on route they typically travel, across the length and breadth of the state, throughout the year<sup>13</sup>. Their caste panchayats are generally conducted in their home towns like Wadapuri and Phaltan.

Though CVCs (Customary Village Councils) are present in many of the Indian states, and occasionally these bodies make news because of their dispute resolving character, they actually challenge the state's sovereign power to dispense justice. Though little is known in news of the existence of non-state local governing bodies in Maharashtra, whether they existed or not was not a question to ponder, as is evident from the writings of Hayden, Marc Galanter and Laxman Mane of their existence in the state. However, very little is known about the manner in which these institutions interact, if at all, with the statutory bodies established after the 73<sup>rd</sup> Amendment Act, so also to see people's participation in these non-state local bodies and the participatory influences.

The discourse on democratic decentralisation should look at the institutional interface between customary and democratically elected bodies in order to understand if they are a facilitator or barrier to effective decentralisation. Since CVCs attend to elements of social security and local laws, their role at the village level assumes significance. The intervention of CVCs in Gram Panchayat activities may not always be negative but as per the studies shown in Karnataka, CVCs may play a positive role in village governance, but concentrating on the

reach of the formal system and their accessibility can further neutralize the negative impacts of CVCs.

**CHAPTER-2**  
**CUSTOMARY VILLAGE COUNCILS PAST AND PRESENT AND THEIR**  
**RELATION WITH PANCHAYATI RAJ INSTITUTIONS: A REVIEW OF**  
**LITERATURE**

The word 'Panchayat' is derived from the Sanskrit word *panch* and literally means 'a gathering of five' in reference to 'elders' or others gathered to decide a dispute, although this number is not always fixed.<sup>14</sup>

It is believed that in the Vedic period the panchs were known as '*panch parmishwar*' which means 'God is in the elders'. They held the control of the supernatural sanctions of the village deity. Village communities in India during the time of *Rig Veda* (1200 BC) are believed to have had self-governing bodies called '*sabhas*'. The local bodies regulated and administered the villages so much so that they were termed as 'little republics'. (Rai, 2004) The other village assemblies of that period were the samiti, vidhata, and gana. Of these the vidhata was the oldest. A samiti was more inclusive in comparison to sabha which was more an exclusive body. Women attended the sabha and vidhata in the RigVedic period.

The quadruple division of society, based on varnas made its formal appearance in the Tenth Mandala of Rig Veda (*Purushsukta*). (Hunter, 1990) Though the varna system was more flexible in the ancient days, in course of time this turned to be more rigid and caste based. Earlier people could change from their varna into which they were born to any occupation that they would choose. Caste came to be more identified with their occupations and both became synonyms. This further strengthened castes, which later matured into caste system, a network of hierarchies attached to occupations. The term "caste" owes its origin to a

Portuguese word "casta", meaning race or lineage cast or mould, race, kind, quality etc. Caste corresponds with the Indian word jati. (Mishra, 1989: 38)

The caste hierarchy is defined in terms of the ritual axis of pollution and purity. In Indian society, castes (jati) were identified with a particular occupation, carried on in hereditary fashion, through succeeding generations. Caste also determined the social status of the people in the community hierarchy. These were the typical forces that drove the Indian communities, with villages as the basic unit of administration.

Bernard Cohn identifies four kinds of village structures. They are 1) villages with a small population of a single caste, 2) multi-caste single head villages, 3) multi-caste dominant caste villages and 4) multi-caste, non-dominant caste villages. (1965: 83) Similarly M.N Srinivas classifies Indian villages into three types:

- a) villages with a small population of a single caste,
- b) multi-caste villages with a single head
- c) multi-caste villages with a dominant caste. (Srinivas, 1962: 118-119)

These villages had their own system of dispute resolution. There are three types of customary practices which exist with different levels of dynamism in Indian villages. Very commonly these are caste-based councils, community based councils and an innovative/reformist system. (Baxi, 1986: 235) One most dominant common element that drives all these systems is that they deny pre-eminence to state power. The CVCs also share other common features like those of informality, flexibility, democracy and decision-making across the country. The indigenous/traditional dispute resolution systems were described as notoriously informal, since the parties to the dispute are personally known to the panch and panchayat.

### Historical Account of CVCs/Village Councils:

In the earlier days the King, aided by the Brahmin priest and other counsellors, dispensed justice. They also had a system of appeals, from courts of kinsmen to those of the same trade, and to townsmen. Further appeals could go higher in the order, finally reaching the King's court. Judgements were given only in the presence of persons learned in the law of the land. The punishments increased in proportion to the dignity of the person against whom the offence was made. However, the chief judicial institution was the village council itself or the panchayat. The panchayat was assembled by the order of the *grámádhikári*, or the village headman, and appeals from here goes to the *deshádhikári* or the head of the district. (Gazetteer of the Bombay Presidency, III, 1985:4)

The panchayats have existed traditionally in the Indian society giving it a very distinctive characteristic. The panch were considered the 'panch parmashwar', the five gods who came together to dispense justice. Thus each caste evolved a system of caste panchayats, and gave the elders of the community the pre-eminent role in these. Thus, caste panchayats also find their sanction in the socio-religious organization of the then Indian society.

Available accounts trace the history of these CVCs to pre-Mughal times. (Altekar, 1958; AnanthPur and Krishna, 2006) CVCs have existed in various forms and names since then, but performing more or less similar functions, through periods of history and different kingdoms. The CVCs are usually composed of people from the upper caste founding families, or big landlords but the so-called lower caste people also had their own councils, specifically for them. Historical sources suggest a more egalitarian set up in terms of representation in these bodies, including the Scheduled Castes. (Tinker, 1967 cited in Ananth Pur and Krishna, 2006)

The Councils during the Mughal and pre-Mughal period generally resolved disputes, allocated taxes, managed local schools, constructed tanks and in places also acted as bankers. (Altekar, 1958 cited in AnanthPur and Krishna, 2006) In the beginning of the nineteenth century, the British had introduced codified laws and regulations, which led to the creation of a new legal system. (Galanter, 1972) As a result, the informal system was supplemented but not replaced by the formal system. The new system that was formed was forced on to the local people, who did not accept it whole-heartedly. Thus, these formal systems continued to exist outside the lives of the people. The composition of these village committees and the powers they exercised varied enormously from province to province. Most were democratically elected, although in the United Provinces, all elections by the gaon (village) sabha had to be approved by the local magistrate.

In the hands of these later colonial administrators, the main purpose of the Panchayat, or council of elders, was that it purported to be a natural and customary source of authority upon which the government could legitimately devolve certain responsibilities. This would be beneficial in avoiding the costs of a detailed system of policing and law, whilst at the same time avoiding the time-consuming and contentious business of holding elections and setting up local authorities to deal with matters such as street cleaning and petty theft. But this turned out to be an apparatus upon which to heap the burden of jurisdiction and the legal standards expected within a British-style system of justice. (Rudolph and Rudolph, 1967: 264-268)

In the contemporary world the CVC is a congregation of village and caste heads, and has powers extending till the territorial expanse of the village. They principally deal in dispute resolution, and perform other social functions in the

village, with their role of moral policing having become even more active in recent times.


**Significance of the Study:**

Anthropological studies do not study the interaction between the CVCs and the State legal systems, sociologists do not look into the legal dimensions and political scientists would only be interested in the political participation and make-up of these CVCs. This work, by contrast, aims at a multi-dimensional understanding of the CVCs. Looking around us, we see a plethora of state and non-state institutions. This study would be useful to understand the interaction of the traditional institutions based on caste identities with those of the new institutions set up as a result of the democratic decentralization of the 1990s.

However there have been skepticisms raised about the viability of PRIs as transcending primordial identities and hierarchies. Vaddiraju and Mehrotra argue that Panchayati Raj Institutions (PRIs) operate in a complex social set up in which "caste, class and gender hierarchies have a crucial bearing on institutional processes and democratic practices". ( Vaddiraju and Mehrotra, 2004:4141)

Kripa AnanthPur's study on the CVCs showed these to be a very positive site of social transformation, especially when it came to the participation of the people in the local administration which were actually carried under the 73<sup>rd</sup> Amendment Acts, followed by the conformity acts passed by the state governments. Her study is based entirely in the state of Karnataka, which has a very progressive record in terms of local governance. The formal bodies of local governance existed here even before the constitutional amendment. In spite of the PRIs functioning side by side, she found that in areas where the informal groups functioned they were instrumental in raising the participation levels of the people belonging to them even in the formal state structures.

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Kripa AnanthPur's research findings in the state of Karnataka show that customary institutions influence the formal institutions at the local levels in two ways- either directly, as an institutional intervention, or through the leaders who constitute these institutions. (AnanthPur, 2006) She suggests that the interface between the two kinds of panchayats has not been studied properly. Here interface would mean the points of interaction of the two sets of institutions.

Among the positive aspects of the working of the CVCs in Karnataka, AnanthPur identifies dispute resolution, temple activities, (organizing festivals, and related religious processions) networking with neighboring villages, a support system, for the destitute, widows and orphans. It also acts as a village corporate body, raising and managing funds for the local economic activities.

From her findings there is an understanding between the customary and village panchayat, swift action is possible. It is the customary panchayat that acts like a gate-keeping institution- controlling nominations for elections to the formal, statutory panchayats. Only those who have had prior sanction from this informal institution (CVCs) can approach the people. AnanthPur thus misses out the point that this would actually derail the whole process of democratic decentralisation.

AnanthPur's study also shows that the customary panchayats were not very supportive to women. She presents a mixed picture of the effect of these self-styled panchayats and suggests that there were not many negative perceptions of such CVCs as they were effective in providing fast and inexpensive verdicts to the locals knowing the ground realities. AnanthPur draws parallels from both the CVCs and the Gram Panchayat (GP), and is of the opinion that, even if they seem to work at different levels i.e. CVCs for dispute resolution and GP for developmental works, they often work in tandem at many points, which she



describes as intersecting points 'interface'. She divides these points of interaction into pre-election phase, and post-election phase.

In the pre-election phase, strong CVCs can influence the type of candidate that is fielded in local governance. The list of candidates for the GP may also be made by the CVC. In places where unopposed elections have taken place, the short listed candidates are asked to contribute to the village fund, and further, as pre-decided unanimously elect one. In cases where the seats were reserved for women, the CVCs permit them only for a term, but when it comes to a second term by which time they have had some training and acquired experience, they are not allowed on the grounds, that this would be denying rights to other women. Overlap of leadership between the two agencies can also occur. It has often happened that the leader of the CVC has also been the head of the GP.

In the post-election phase, AnanthPur identifies three forms of interface. CVCs support the elected representatives who are new entrants. CVCs put pressure on the GP to get works done for their village; and finally, they also intervene in the process of selecting the beneficiaries for the various programmes that come to the GPs. Conflicts between them can also take place when it comes to the matter of owning the common property resources of the village like ponds and forests, since both reinforce their areas of influence and control.

AnanthPur's study dispels the general assumption that customary panchayats are 'traditional' and shrinking in the face of competition from elected local bodies. In fact, traditional/customary governance structures and leadership are emerging as important variables in influencing the process of local governance from the studies on Karnataka.

CVCs have 'functional' and 'progressive', as well as 'oppressive' features according to AnanthPur. Instead of shrinking in the face of competition from

Gram Panchayats, the CVCs have found new ways of interacting with them. Equally, Gram Panchayats influence CVCs through, for instance, the inclusion of Gram Panchayat members - including some new leaders from low status backgrounds - in CVC activities; and in some rare cases, the involvement of women Gram Panchayat members in dispute resolution.

This study presents a sharp contrast to the reports coming from states like Uttar Pradesh, Haryana, Rajasthan, where these CVCs apparently wreck havoc on the lives of the people, especially in cases relating to marriage which cannot be held without the consent of the CVCs, and not within the irrational codes of the caste dictates. This encourages runaway marriages, and those who failed to elope, could be caught and tried by their CVC. On being caught, the couple would be brought before the CVC and asked to do things that the CVC decided. If the couples were not ready to accept their decision, the whole family would be outcast. There were many such cases reported in the newspapers, which were not isolated examples and exceptions, but justified in the name of the so-called family honour, and people did not spare their own children offering them at the alter of the caste panchayats. The laws of purity and hierarchy would be differently applied, as the case demands. All these customary laws have some of their own general and some specific codes pertaining to particular village, its caste composition and history of their respective gotras<sup>15</sup>. 'Gotra' (also 'got' in short) evoke rule of exogamy for matters relating to marriages. (Chowdhary, 1997)

The Khaps [the CVC in the state of Haryana among the 'Jat' community, are commonly called Khaps] are becoming a law to themselves, wreaking havoc in the lives of the newly married couples. They are active even today in the rural northern belts of India, especially in the states of Haryana and Uttar Pradesh. Alliances in marriage are considered status symbols, so the khap keeps a sharp

vigil over all such alliances and annulling marriages if they are not according to the norms laid down by it. Though they have no legal standing, the khap today is in the race to revamp its past glory in the society, taking stands that have no apparent logic or reason. As punishments their edicts comprise of honour-killings, lynching, and social boycotts<sup>16</sup> and more recent form of punishments and exhibition of power has been public stripping and death punishments. Their main task has been reduced to that of keeping a watch (social policing), of who is marrying whom, though they were earlier forces to provide security to the villages and to foster brotherhood among them. (Chowdhary, 1997) To keep the sanctity of the community, the khap opposes all inter-caste and intra-gotra marriages. The khaps cannot however withstand the cultural liberalism, as marriages of choice of the youngsters in villages, especially within the gotra are no longer a taboo for the new generations which stands in conflict with them. The sharp declining sex-ratio<sup>17</sup> (Census Report, 2001) in this part of the country leaves the youth with fewer choices, and the desire of the youth to choose for themselves has only led to a rise in these incidents.

Khaps are clandestinely governed by caste elders and unemployed youths. Recent trends have shown that CVCs leadership has changed hands from the old elders to a new set of leaders who are more intolerant of the people defying their judgements. This would suggest the influence of economic and political considerations than traditions in deciding the codes of the CVCs. The truce remains fragile in these villages relating to inter-caste feuds. When the supremacy of the growing urbanization overweighs the caste elders, they try to fight back with their idiosyncracies, in a struggle for their existence. Khaps neutralize the elected panchayat members and the police machinery, making the state machinery ineffective in the villages to meet the challenges posed by the CVCs.

The administration and politicians have watched silently as they want this 'social matter' to be settled by the caste panchayats, (Chowdhry, 1997:1022) and would not want to make a dent in their vote banks. In any democracy, we see parallel structures vis-à-vis the state secular agencies, and in India's case it is undoubtedly 'Caste'. The power of dispute resolution enjoyed by these non-state agencies to the extent of taking away the right to life, has sadly very late paid heed and recognized by state agencies like the judiciary, as and when brought before its notice asking the village heads not to interfere in the marital life of couples. This is evident from public interest litigations that have been filed, and in response to which the Haryana and Punjab High Courts have issued notices to some panchayats and the government for violating the Protection of Civil Rights Act, 1955. (RajaLaxmi, 2007:38)

Even the author of the Sahitya Akademi Award winning book 'Upara', Lakshman Mane, had to apologise for marrying a girl outside his own caste. This was done so that Mane's father could give his daughters in marriage, within the Kaikadi caste to which they belonged, who had isolated the author and the rest of the family members, and demanded a public apology in the Caste Panchayat and performance of some rituals as purification on the part of the author on account of his act. Since he was educated, he was not in a position to carry on with the same old beliefs and value system of his caste. He refused to continue the family occupation and went into town to carry on his further education and looking for some job. Mane was other wise exceptional, and was taunted time and again by people in his caste, as they were not in favour of educating children, because they believed it was after all the new generation who had to carry on with the caste occupation of basket weaving. The pressure mounted on the family was so bad that he had to leave his family and go into a nearby village to continue with his further studies.

The brunt of being an outcaste was felt most by the author's family who still lived in the village. Though Mane flouted the caste norms, for the sake of his parents and siblings, he had to give in to the demands of the caste panchayat. This was the social reality he had to face, and showed that the society was still under the influence of CVCs.

Hayden's *Disputes and Arguments Amongst Nomads*, focuses on dispute and dispute settlement in the context of the social structure and culture of the Tirumal Nandiwallas, a nomadic caste in the state of Maharashtra. Nandiwallas<sup>18</sup> meaning, 'those who work with bulls', were non-pastoral nomads serving the settled people in the neighboring villages. Disputes among them are processed by a community council of elders known as the panchayat. This was an unusual panchayat, subject to study, as the nomadism of the Nandiwallas makes the patterns of their dispute activity rather different from those of the settled people's panchayat. (Hayden, 1999: 2)

The introduction of the institution of the courts by the British in the eighteenth and the nineteenth centuries, made Indian villages bi-legal, in that the people have made use of both 'local law-ways' and 'lawyer's law'. (Galanter, 1963) As Galanter puts it, the 'local law-ways' were the customary practices of resolving disputes while 'lawyer's law ways', were the formal courts that were established. The nomads avoid the courts as much as possible, and resolve their differences and problems within their panchayats. This could be because while the adversary systems of the state law seek to individualize justice, the village law seeks to collectivize justice, and ensure village harmony. (Baxi, 1986: 238)

The Nandiwallas have a primary occupation like playing tricks with their trained bulls, while the Kaikadis are basket weavers, Veidus specialise in folk medicines, while yet others were wandering beggars. Hayden called these nomads as

'service nomads'<sup>19</sup>. However, most of these nomads substitute their primary occupation with other secondary occupations, since they can depend very little on their primary occupation for their sustenance.

Of late, the traditional occupations have become even less reliable sources of a decent income for these nomads, especially those who go around entertaining people with their tricks and their trained animals. People have developed other means of entertainment, and these tricks are no longer a source of amusement. Thus, many of the Nandiwallas have changed from being bull performers to bull traders, as this is more rewarding. Moreover, some others who were left with some capital in hand have become moneylenders. (Hayden, 1999: 17)

The slow demise of their panchayat is not unique to the Nandiwallas, but so is the case with other nomadic communities in Maharashtra, whose panchayats were active some decades ago, but declined as they took to settlement, and no longer meet as a panchayat. It seems that the nomadic adaptation, which prevented recourse to state institutions, was the key feature in the preservation of their panchayats, for when they ceased to be nomads their panchayats died. (Hayden, 1999: 5)

Nomads generally have their village, where they meet once a year, during a particular time and in a fixed place for that purpose. They meet during some festivals of their deity or in other cases during the rainy season. In Maharashtra it would be during the months of June to September. It is in these places where they come together to attend their caste panchayats. These caste panchayats are in a sense responsible for maintaining some stability to the otherwise wandering communities.

They have a language of their own when they speak among themselves i.e. Telugu, but they also speak the language of the locals, depending on the place of their settlements- Marathi, Kannada, Gujarati, and Hindi as the case may be, but in Maharashtra, they speak in Marathi. In their caste panchayats too, Telugu is used. The home village of the Tirumal Nandiwallas was Wadapuri, in Indapur taluka of Pune District. It is in this place that they conduct their caste panchayat once in every three years. This part of Maharashtra is frequently prone to uncertain rains and famine. (District Gazetteer of Pune, 1954)

The Nandiwallas comprise of three sub-caste clusters -the Tirumal Nandiwallas, (they operate and have territories in Ahmadnagar, Nasik, Pune, Sholapur), Fulmali Nandiwallas (they have their territories in Ahmadnagar, Bhir and Nasik) and the Joshi Nandiwallas (Sangli and Kolhapur). They considered each of these sub-divisions as different castes and did not inter marry. (Hayden, 1999:15)

The nomads have divided the territories and these boundaries are respected reciprocally. These communities do not compete with one another, as they operate in separate towns where they have reserved the territorial rights hereditarily. In the case of the Kaikadis (a nomadic caste, basket weavers), even for specific families the territories are divided. It was only from the allotted village that they could collect their necessities, and sell their articles, or going around asking for alms. These territorial rights were strictly adhered to, if not, would call for an offence which would cost them excommunication (Mane, 1980). The concept of territory of the Nandiwallas was known as *vatan*. They had an exclusive right to work in that particular village, which in turn is protected by the caste panchayat along with the other functions entrusted to it. Other meetings could be held anywhere, but *nya:yam*, (means justice) when the panchayat sits<sup>20</sup> as a dispute resolving body, would be near the guru's<sup>21</sup> tent. Likewise, proximity to a temple was desirable although not compulsory.

For dispensing justice, money was collected as fines from the disputing parties. In the end, after paying the caste guru for his services and meeting other such expenditures, the remaining money would be distributed among the caste people equally. Soon the encampment breaks and all set off to their respective villages.

Nomads follow well-established routes in their wanderings, and often have established ties of service or even friendship with villagers in their territories. (Hayden, 1999:131) Since the service nomads were totally dependent on the settled population, they maintained the good relations with people of the village among whom they camp, so chances of an active dispute with them are limited<sup>22</sup>. If at all any disputes between the nomads and the other community members broke up, they were solved informally, either by self-help or coercion in such *ad hoc* manner. There was never a panchayat or any kind of open council comprising of all the villagers in view of the long-standing relationship between the nomads and the villagers. The absence of an institution to handle disputes between one caste and the rest of the village seems contrary to what would be predicted by much of the literature on panchayats in India. (Hayden, 1999: 144)

The nomads have been historically looked down upon by the people of other castes, branded as anti-social elements in society. The British government in India also viewed the nomads with disfavour, stigmatizing many of them as 'criminals' and restricting their movements. (Misra, 1970: 153 in Hayden, 1999:131, also in Mane,1997) In *Upara*, Mane makes a passing reference to an incident about how, whenever his family moved from place to place, they had to report their arrival to the village elders. The then British Government passed a resolution asking the nomads to report at the respective police stations. For any offence committed in the village these nomads would be caught and paraded in the station till they could extract a confession from them.



Since these people lived in absolute poverty, the villagers were aware of their life style. And even if they would steal some grains, or cut some bamboo canes from the field, the villagers would not make a huge issue out of it. But at times if they were caught by the villagers they would be thrashed into pulp. When at times men from the Ramoshi caste were taken to custody, the women of the Ramoshi caste would not sleep inside their house until their husbands were set free from the police station, which was almost a normal routine for them.

The theoretical right of every caste-members to invoke a jati panchayat and speak freely at its sessions is often breached in the meetings. The prevalence of so-called consensus in India needs very critical examination, for the appearance of consensus can be very well a mask for domination. It is the dominant caste's view that gets translated to consensus. Many times, this consensus is fabricated or manipulated. (Baxi, 1976a) The CVCs have a series of sanctions, which include fines, censure, civil boycott, ostracism and potentially have the sanction of "outcasting".

The extent of the CVC's territorial jurisdiction is "conditioned by the means and the speed of transportation", and by "the kingship radius of the convenors". (Mandelbaum, 1966:271, in Baxi, 1986: 236) The people participating in the CVCs would comprise of people, who lived within a certain region, and to whom the time and venue of the meetings could be communicated in advance, especially in castes, who did not meet at one fixed place and time of the year. Also important is the participation of those in the meetings who have some stake in the decisions, along with their kith and kin.

The process of the CVC delivering justice is different for different castes. In the case of the Nandiwallas, the parties in the dispute speak for themselves, but the opinion which is formed on hearing is generally the opinion of the majority,

except in cases which cannot be resolved which are then taken to the caste guru, who gives the final word. With the Kaikadis the disputants do not speak for themselves, there are pleaders within their relations who speak for the accused. Intimate knowledge of the dispute and the disputants by parties and village elders exists, provide a 'pre-existing' image about the case. Thus the facts are fitted into various configurations, and on hearing the case the image remains unchanged. The witnesses of the speakers through their reputation and unwritten rules (hearsay rules) enable in narrowing down of competing versions to the "true facts". Favouritism or nepotism occasionally influences the decisions. The CVCs are oriented to the ideal of justice on moralistic, religious considerations and influenced by "public opinion" to a certain degree. (Srinivas, 1962:112)

The Vanniyars and Dalits in Tamil Nadu had separate panchayats, informal institutions of justice and local administration. The Vanniyar panchayat also dealt with disputes among other caste members who resided among them. The Dalits had a separate panchayat. Whenever disputes arose between Vanniyars and Dalits, both the panchayats met, examined cases, and made decisions. (Bhalerao, 1964: 806) These rural oligarchs constitute what Prof. Srinivas calls "Vote Banks" which the urban politicians have to cultivate if they wish to remain in power. The new rural elites were now emerging as powerful forces in Indian politics, belong to the dominant castes leading to elite capture.

Andre Beteille's study in 1965, in a village near Tanjore, showed the CVCs were much more powerful than the statutory panchayats which had constitutional and political backing. He says this was because of the contrast between an "imposition of democratic formal structure on a social sub-stratum which is segmented and hierarchical in nature", and the effectiveness of the CVCs due to its "social homogeneity and the pervasive nature of moral bonds which unite its

members". The vitality of these CVCs lay in the strength of "correspondence" with the structure of the "community which it represents".

Most problems and disputes were seen to be settled within the caste by caste elders, or by elders constituting the caste panchayat. The Tirumal Nandiwallas as a caste panchayat received disputes, deliberated on them in public, and settled them, public opinion. The position of the headman was highly respected, as he was the head of the community and of the panchayat. Cases were presented by the headman and the "speakers" argued the case. The headman was a person who could command the trust of his community; he had to be wise and know to settle the disputes. Those assembled also joined in putting forward their views. Among the Tirumal Nandiwallas, the cases referred to the panchayat related to the violation of caste rules of association, transaction, marriage, funerals, and religious practices. Cases of cursing, illicit sexual conduct, false accusations, wife battering, violations of panchayat rules, stealing, and fighting with a knife were also brought before the panchayat. Among the Nandiwallas, the show of a knife amounts to a wrongful act, threatening while using a stick beyond a certain dimension was also considered offensive.

Changes and improvements in the economy have especially reduced dependence on caste hierarchy; increased involvement of people in new occupations; reduced interaction with caste members; and dispersed people away from their home villages could have been some major factors in its slow demise. What were the causes for the dissolution of the CVCs in the Nandiwallas case, and whether economic diversification led the people out of the circle of the CVCs and caste hierarchies, are questions yet to be answered, though Hayden mentions only the fact of their settlement as a possible reason.

Erin P. Moore's (1985) research in the state of Rajasthan, among the Meō community in the village Nara, showed that the state courts and village

panchayat are the two main public-dispute resolving forums used by the villagers. For women, however, pluralistic legal formations can be seen as fields of overlapping and intersecting forms of subjection. (Abu-Lughod, 1990: 52, Moore, 1985) Women are generally excluded from attending the panchayats, unless for presenting their testimony if invited. When it comes to family honour it is the women who become the repository of it. (Chakravarti, 2005: 310 )

The panchayats of the Meō dominant areas dealt with domestic conflicts along with other kinds of cases. Moore has described one such case that came to the Nara panchayat of Rajasthan. Honey's case served as a good example of women's resistance to the panchayats, which is a rare occurrence. Honey tried to interrogate the male domination in the panchayats in the village; she did not oblige by the panchayat's decisions (Moore, 1994: 83). When she was not happy with the panchayat decision, she approached the formal courts. For Honey it was like jumping from the frying pan into the fire. There, in the courts, because of the then prevailing laws, she was not able to get justice due to the skewed nature of personal laws. As she was denied the right to alimony, Honey learnt that a master's tool will never dismantle the master's house.

All this is possible because of the widespread sanction of violence in many countries and ,the survival of institutional mechanisms within these communities for internally policing dissenters and nonconformists (Chakravarti, 2005: 327).The flip side of many of these 'panchayats' is that they are currently undemocratic, often run by self-designated 'elders' with vested interests to protect. Many such, especially in the north of the country, have chosen to uphold outdated and exploitative 'traditions' in the name of caste 'honour', rather than foster a modern and rational outlook. This has only increased inter-caste discord. (Chakravarti, 2005: 316)

Although India has a unified legal system, we still have not come to a consensus on a uniform civil code. Every religion has its own personal laws on civil matters. And if the case involves women it becomes even more complicated to resolve. A classic case cited by all legal anthropologists for this is the Shah Bano Case<sup>23</sup>.

Moore rightly argues that, in the Indian context, women's emancipation is closely interlinked with the struggle for the abolition of the caste system. The largest number of 'edicts' against women are issued by caste panchayats that pose a challenge both to the parliamentary processes and the judicial structures that are expected to promote the secular, democratic ideal.

After a brief survey of the literature on the CVCs and their interface with the PRIs of the past and present, we look into the ethnographic study conducted in the field on these non-state dispute resolution mechanisms of the various communities having such mechanisms, their socio-cultural specificities and their participation in the local governing bodies.

**CHAPTER- 3**  
**PANCHAYATI RAJ INSTITUTIONS AND CUSTOMARY VILLAGE**  
**COUNCILS: EXPERIENCES FROM THE FIELD**

Development occurs in an institutional environment defined by customs, social norms, and implicit codes of conduct- and such formal structures as laws, regulations and economic institutions. (World Bank Report, Engendering Development, 2001:107) Behaviour outside the accepted boundaries can unleash formal and informal systems of social sanction.

The preceding chapter presented an account of the earlier literature on CVCs, against which the evidence from the field in the present study may be compared and contrasted. The impact of CVCs on the institutions of local governance sets the stage for analysing the evolution and working of the PRIs as institutions of local governance, especially in and around the area where the field study is located. This chapter contains a brief history of Panchayats in Maharashtra, followed by a profile of the field where the study was conducted, and the details of the field study that was undertaken.

**History of Panchayats in Maharashtra:**

So far as the Maratha kingdom was concerned, especially in the eighteenth century, the state was responsible, and played a vital role in matters pertaining to caste: from the forfeiture and restoration of the caste status of individuals to the division of caste, the formulation of caste codes and the stabilization of the caste distinctions. The caste system was an order of society protected, controlled and stabilized by the government. (Fukuzawa, 1991) There were some practical as well as ideological reasons for the state's protection of the caste system; firstly, there were administrative reasons, as the state could punish the so-called deviants to the existing social system. Secondly, this kind of social system could

be a source of income for the state treasury, i.e. the income collected from disputes and the fines collected from the deviators of the norms. There were also ideological reasons, as in the traditional Hindu concept, rulers were morally bound to maintain the status quo of the society, and the Marathas were no exception to this. (Fukazawa, 1991: 107-108) Under the Peshwas, civil justice was administered by the *pátíl*, at the lower level above him was the *mámlatdár* and *sarsubhedár*, and above all the Peshwa.

The village administration under the panchayat system continued in force except for minor changes, after the British took over the administration. Except for the names of the offices, the functions performed by the functionaries remained more or less the same. (Elphinstone's Report, 1819: 54-5; Gazetteer of the Bombay Presidency, III, 1985: 4) After the British conquest of 1817, no major changes in the judicial administration were made till 1827. Later, Commissioner Elphinstone appointed collectors who were vested with powers of revenue collection, and magisterial authority which resembled those of the *sarsubhedárs*. The panchayat functioning as a jury was the only institution that survived these disturbances, but in cases of appeals the panchayat proceedings would be held under the auspices of a collector. Especially at Poona, in cases pertaining to the government, it had representation of the officials in the panchayat. The collector in turn had five judicial *amins* (legal officers) in case the population was large and the numbers of litigations were many, the district of Poona was one such case. A special jury would be appointed only in cases of gross injustice done in the panchayats. This jury would be a nominated group of officials. Before going into the matter, securities were collected from the litigants to confirm that the parties would abide by the jury's decision.

Later they started with the system of munsiffs, which went into the formation of the various courts in the province. A headman called *police pátíl*, was appointed

for life, by the Commissioner of that Division, headed the village police under the direct orders of the District Magistrate. (Gazetteer of the Bombay Presidency, III, 1985) Later on the, judicial functions were taken over by the courts, and panchayats were divested of their judicial responsibilities. In 1870, Mayo's Financial Decentralisation and later, the 1882, Ripon's Resolution on Decentralisation went a long way to reinstitute local self government. In the wake of the Resolution of 1882 the Bombay Local Boards Act of 1884 was passed and various local boards were created, though they were not democratic in the true sense since they were run by officials. The Royal Commission of 1907 on Decentralisation, and the further Government of India Acts, kept the ball of decentralization rolling. It was the Bombay Village Panchayat Act of 1920, which provided for the first time a wholly elected local body. (Status of Panchayati Raj in the States and the Union Territories of India, for Institute for Social Sciences, 2000)

In June 1925 the Hatch Committee was appointed to look into the existing position of the village panchayat and to make recommendations and proposals for increasing the sources of income and to suggest amendments to the village panchayat. No action was taken on its recommendations till 1933 when a new law, the Bombay Village Panchayats Act, was passed which included some of the Hatch Committee's Recommendations. This Act conferred voting rights on women for the first time. But the panchayats were not made mandatory and the absence of financial assistance to the panchayats diminished the bodies.

When the first Government was formed for the province of Bombay by the Government of India Act of 1935, it amended the act of 1933, and the new act, Bombay Village Panchayats (Amendment) Act 1939, came into force. Panchayats were made mandatory, house tax was introduced, and Bombay was the first to implement the appointment of secretaries by the provincial government to the



village panchayats. In 1956, after the reorganisation of the states, a comprehensive legislation for village panchayats called the Bombay Village Act 1958 was passed, which assigned the responsibility of revenue and land records to the village panchayats. This act has since been amended by subsequent legislations.

The Marathi speaking state came into existence on 1<sup>st</sup> May 1960. Maharashtra became the eleventh state to have introduced the PRI system. On the lines of the Balwantrai Mehta Report (1957), in Maharashtra a committee was constituted called the V.P Naik committee, which settled for a three-tier PRS (Panchayati Raj System).

Elections to the local bodies in the state were held in 1962, 1967, 1972 and 1979. The elections that were due in 1985 could, due to some stay orders brought by the Bombay High Court, these were held only in 1992. Before the Union Parliament could come up with the 73<sup>rd</sup> Amendment Act, the state had already had four rounds of PRI elections. Even before the constitutional amendments, Maharashtra had adopted many principles of Panchayati Raj, such as provisions relating to the Finance Commission, State Election Commission, reservation of seats for women and backward classes, etc. Panchayat elections have also been held more or less regularly.

The state of Maharashtra amended its Village Panchayat Act of 1958 and Zilla Parishad and Panchayat Samitis Acts of 1961, through Act no.XXI, which came into force on the 2<sup>nd</sup> of April 1994, following the conformity law that was made mandatory to all states after the 73<sup>rd</sup> Constitutional Amendment Act. This amendment has brought in many new components, specially the reservation of seats for the deprived and the women, in proportion to their population and 33% respectively. The deprived communities are generally the so-called deprived

castes, since caste and class are very much interrelated in rural India. Along with the evolution of PRIs which had a constitutional basis, the CVCs were informal parallel structures. In areas where the PRIs were very active and possessed proper resources, powers and functions, the CVC declined and even disappeared, but in regions and communities where local identities were more dominant, the CVCs continued to exist along with the PRIs.

Caste membership is fixed by heredity, but the CVCs had extensive powers to either expel someone from the caste or to reinstate them to the original status to which they belonged before the commission of the unfortunate event. This process in Maharashtra has been called as 'Jatint Gheneen' (that is restoring the caste status). For unpardonable faults, the members would be permanently expelled with no means of reconciliation. Thus the members would lose their caste membership permanently, known in the local parlance as 'ghatasphot'. More recently, the strict boundaries between castes have started dissolving, some lower caste have tried to the occupations and adopted names of the so called higher caste or intermediary caste.

The sociologist J.H Hutton points out various factors for the rise development and continuity of caste system, one of these being political. He declares that "the ultimate controlling authority is secular and mentions that in many of the princely states of India in the 1930's the caste system was under the control of the state and important caste affairs like expulsion, re-entry into a caste, and disputes about caste ranking were either decided by the King or done with the King's recognition". (Fukazawa, 1991: 92) It was ultimately state power that suppressed untouchables and kept them in the lowest position in the society. (Fukazawa, 1991: 107) Caste panchayats may be composed of members belonging to one particular caste, or drawn from various castes, but in such cases, the leader or the headman would be the one belonging to the dominant

caste. A dominant caste would be one which has numerical strength with economic clout and also the ability to influence the others with its ritual position in the hierarchy. (Srinivas, 1959)

**Profile of the Field:**

Jejuri is witness to the Veidu community's caste panchayat which takes place every year, when people of this community gather here from all over the state. The main temple of many of these nomads the 'Khandoba Jejuri' is very strategic because people of these castes frequently paid visits to this temple. Jejuri being a Nagar Palika is a fast growing town, and many flock here in search of work. The unsettled tribes in Pune make almost 6% of the Hindu population. Some of the major tribes in this category are the Kaikadis, Vadars, Ramoshis, Vanjaris, Berads, Bhils, Phasepardhis, and Khatkaris. (Gazetteer Bombay, I, 1985) Not all these tribes have their caste panchayats. Some have a headman who settles the disputes, some others resolve their disputes in separate groups and meetings with no headman, while others have a full fledged caste panchayat. In Maharashtra, there are around forty-two castes that come under the nomadic and 'denotified-nomadic' tribes. Of these the 'denotified nomads' category consists of eleven tribes and the rest are nomads. Some of these castes trace their roots from northern India, they are Chapparband, Rajput bhamta, Bestar, Kanjarbhat, Pardhi. Some others like Kaikadi, Vadari, Ramoshi, Mang- Garudi, Takari and Bedar trace their roots to the southern parts of India. (Mane, 1997: 256)

Jejuri is a developing town, well connected by road. It has religious significance, in the form of the temple of the Khandoba which is actually the deity of the Dhangars, a nomadic community. In general, this temple gets pilgrims all through the year, from various castes. The placement of this temple is strategic, and can be seen right from the time one reaches Jejuri. Jejuri has a rural fringe

along with this Nagar Palika. The people of the nomadic community live in tents and huts built on clearings. Some come in search of manual jobs, while others carry on with their family occupation.

In the state of Maharashtra, the nomads make up 18% of the total population .(Mane, 1997) The Brahmins, the only upper caste, here in Jejuri comprise 4% of the state's population, the middle caste group comprising of the Maratha-Kunbis constitute another 40% of the state's population. And the scheduled caste population is 13% in the state. Due to the efforts of Ambedkar, a large number of them have got converted to neo-Buddhism. (Ghosh and Kumar, 2003:37-38) According to the 1990 census, population of nomads was eight lakh sixty four thousand and five (8,04,005) and that of the liberated tribes was eighteen lakh nineteen thousand four hundred and fifty five(18,19,455). (Mane, 1997) The reliability of this data is however questionable, as these surveys were not conducted specifically on them. The total population of Pune district is around 42,00,867 according to the 2001 census. Pune district comprises of thirteen talukas, Purandhar being one of these, where, Jejuri (Nagar Palika/Rural) is located. Jejuri has a total population of 12,000 according to 2001 population census. Males constitute 52% of the population and females 48%. Jejuri has an average literacy rate of 73%, higher than the national average of 59.5%: male literacy is 79%, and female literacy is 67%. In Jejuri, 14% of the population is under 6 years of age.

#### **Field Work:**

In a pilot study conducted in the Sindhurg district of Maharashtra, adjoining Goa, I found that sedentary people in Maharashtra had long ago shed their caste panchayats and did not meet as such any longer. However, castes have associations, some registered and some unregistered, but characteristically the nomads still maintain the practice of caste panchayats. These sedentary people's

associations were associated with functions like providing hostels for students of their caste, or managing educational institutions. These were mainly the Boudh Samaj (Buddhist Society), Dhangar Unnati Mandal, Charmakar Unnati Mandal. These associations had their own organizational mechanisms, going from local units to regional offices and headquarters at Mumbai. These associations keep the people informed of the various programmes of the government. They also have a role as dispensers of 'justice' within their communities. Though this might only be one of the alternatives which people can think of, these societies act as an intermediary between the state and the society.

The leaders of these associations are generally elected by the people of the community. The most impressive or most popular candidate, gets elected along with some other members to a panel. Since the person who gets elected is one among them and knows the people, it becomes easier when it comes to deciding litigations. They claim to resolve any conflicts, but the cases cited to me related mostly to property disputes, domestic violence, and petty thefts. Social pressure is used to implement their decisions. When these measures fail, people are free to approach the courts. At times these same organizations/caste associations act as a lobby to get things done for their community. One person interviewed was an office bearer in one such organization. He said that their organization had limitations, for they run on membership funds and some donations that occasionally come in. At times it is also very difficult to get the people to abide by the decisions of the association. This further hampers the position of the caste organisation.

In Maharashtra, as elsewhere, the caste panchayat meets at a fixed place, usually once in a year, though some would meet more and others less frequently. These meetings are frequently held in places which have some religious significance to their caste. The people whom I met and spoke to, in the field, belonged mainly to

nomadic communities. In these communities, caste identity still dominates, and people abide by caste dictates. Some of them have become settled communities, though most continue to be nomads. Nomads are the ones who still have the caste panchayats continuing. The Dawari caste in Paniv(village in Sholapur District), have almost a settled kind of living, but some still go on wandering with their families. Their main occupation is carrying their Gods over their heads wandering from place to place, begging for money and kind.

The other castes which had their caste panchayats were the Nanadiwalas, on whom Robert Hayden has written extensively especially the Tirunal Nanadiwalas (whose settling down causes the caste panchayats to wither away), Mati Vadari, Veidu, Kaikadi and the Dawari. There is another caste known as the Kolatis (with two sub castes; bhatu kolati, who perform 'tamashas'<sup>24</sup> and the other dombari kolati, who specialize in tamashas done on a rope) who also have their caste panchayat.

#### **The Veidu:**

These are people who were traditionally doctors (not registered). Traders from among them, also come to have their goods and animals traded at such meetings. It is generally held on the days of jattras /mela, feast days especially in the vicinity of temples or a temple dedicated to their caste. For example the Veidu caste people had their caste panchayat on the 3rd January 2007, in Jejuri, near the Khandoba Temple. This is a pilgrimage for people of all castes, but people belonging to the so-called low castes are found visiting more often. The Hindu Gurav caste, which is a priestly caste in the village, performs all the poojas required in this temple. However, this caste too falls into the category of backward castes (OBC). In addition, Jejuri at this time is all set for trade in donkeys. The Veidu, and for that matter almost all the nomads, make use of the donkeys to carry their house and hearth over their back, so they are very useful

animals for these castes. Simultaneously when the panchayats meet, the biggest market is set up, and people from all over come to trade in them.

The original Veidu castes were traditionally folk medicine practitioners, but as time passed, they took to other occupations, such as the making of utensils and trading goods. The Veidus have their caste panchayats three times in a year at three different places viz, Jejuri, Madhi, and Malegaon. In addition, in case of exigencies they hold additional meetings, over and above the usual annual meeting. . The people belonging to this caste have settled in many places today. On the days of the panchayat, they all come together at the place decided in advance.

In the Veidu caste, the caste *panch*, who sits to resolve the cases, comprises of eight to twelve members from different villages. These *panchs* are selected on the basis of their leadership qualities, wisdom and convincing power. In the caste panchayat, they bring in issues that need to be resolved within the caste. The caste panchayat takes up issues of marriage, divorce, remarriage, thefts, and other sorts of disputes. Those who do not accept the verdicts are punished by levying fines at various levels ranging from Rs.1000-5000, and excommunication as a last resort.

At Veidu marriages, the fathers of the bride and groom sit and decide, and once the marriage is fixed, the groom's father pays the bride price to the bride's father and in turn the groom is considered to be married to the bride. They say that the girl's father sells her to her husband who buys her for that price. The terminology during the process is in clearly not sensitive to gender, and especially unfair to the bride. All this is done in the caste panchayat, the entire community being witness to the transaction. The interests and choice of the boy and the girl are not considered. It is a norm that the less educated the girl, the

lower would be her bride price demanded at marriage; if she is more educated the groom would have to give more. Therefore, in this caste the women are not educated beyond a certain level so that there are men willing to marry them. At times, when it turns perverse, the bride's father takes this as an opportunity to make some easy money. He would claim that his daughter who was given in marriage, is not happy and may manage to get his daughter a divorce, by influencing some of the *panch's* to take his side which is not very difficult. In this case the bride price is not repaid, and the father then sells his daughter to another man in marriage. Such instances are apparently not very uncommon.

The younger generation who were interviewed were not very happy about these practices; they say they would like to have the right to make choices of their own. They want to marry educated, working women (though their numbers are not many and their levels of education are not impressive, some would be primary educated, very few have reached till matriculation). They want to do away with these traditions.

The people of this caste are not very highly educated. They know that the gram panchayats and the caste panchayats are two different bodies, but do not know very much about the functions of the Gram Panchayat, nor do they try to avail of the facilities given to them by the government. For them, the caste panchayat is the cheapest, fastest and the most accessible and reliable source of getting justice. They do not need to go to courts; panchayats save time and money, by avoiding all the court fees and the hassles of hiring a lawyer and save them from the torture of the so-called court language. This is more so as they are not sure what would be the verdict from these courts that seem so alien to them. They have no conflicts with the people from other castes and hence find no need for any other means of dispute resolution.



Another unique feature of the Veidu caste panchayat is that, along with dispute resolution, traders also have place to buy and sell goods and animals. It is said that the biggest market is set up for the trade of donkeys on these days, its significance being that this animal serves as the cheapest mode of transport, especially with the wandering groups. The animal is loaded with all the household belongings, and at times children, when they are on the move, and this is also the case with the Kaikadi caste people.

#### **Settled Veidus:**

There is another group of the Veidu communities who have settled, and have consequently lost their caste panchayats and much of their caste identities a long time ago. This particular group live in the suburbs of Pune City, taking up a variety of work like masonry, carpentry, clerical jobs, government officials (if they are more educated), and earning their living as service providers to the village, and the adjoining Pune city. Naturally, they live in permanent (pucca) houses, and their living standards are much higher as compared to their so-called caste brethren, who live in parched tents which can be very easily removed as suits their lifestyle, so that they can reinstall these in some other place. The settled Veidu community discussed here were once upon a time Raj Vaidyas. In Jejuri town, I met a member of this community who is a Practicing R.M.P<sup>25</sup> (thus following his family occupation) and his sister who is in the Police Service (woman havildar). They describe themselves as Vasudev Golla Veidu. They have their own caste meetings not as a panchayat sitting, but as a registered association. This suggests similarities with the other caste associations seen during my pilot study. They have their meetings in Sangli and other districts of Maharashtra. In their organization, women too participate and are office bearers. However, since their family had moved out from there two generations earlier to settle in Jejuri, they had very little knowledge of their organization. They are not very regular participants in their caste meetings either.

### **The Kaikadis:**

Another caste group interviewed were the Kaikadi, also a nomadic tribe. They claim to be from Telangana region in Andhra Pradesh, but their exact origin is not known. They are divided into Marathas and Kuchekaris. (District Gazetteer, I, 1985) The kaikadis live in a group of ten to twelve families in a village, and are in their houses only during the rains, for the rest of the year they go from place to place. (Mane, 1980: 47) Though they carry their gods in their basket, but once in a year they visit the mother goddess. (Mane, 1980: 59) Their speech at home is a mixture of Kanarese and Telugu, though outside they speak Marathi. Their main occupation is making things out of bamboo and cane; and basket weaving of various sizes, for storing grains, other articles, bird's cages children's toys. Women go to the village and work as domestic helps and in turn collect the stale food and the leftovers. They do not have fields where they grow these canes, but collect them from the fields wherever they go. Once the canes are in short supply they simply wind up their "hearth and home" and move to places where these are available in plenty. Every family is given the right to collect provisions from the village that is duly assigned to them, no other Kaikadi family has the right to collect provisions from that village. The kaikadis have divided the villages for this purpose and even fixed the boundaries, anybody venturing to break the laws of the community encroaching the boundaries will have to suffer the wrath of the community. (Mane, 1980: 100)

Their caste panchayat meets once a year at a place called Phalton. If situation demands, they meet more than once as well. [Prasangik Bapthi-meaning as the situation would demands]. On hearing the case put forward, the panch gets to work out the course of justice. Before the hearing of the case, both the parties to the dispute need to keep an amount decided by the panchayat as fees, once that is done the case is opened. The petitioner and the defendant place the amount before the panchayat. The guarantor begins pleading on behalf of either of the

parties, here the defender or the petitioner do not have the right to plead their own case. Like a pleader who defends the cause of his client, strewing his defence with extracts from certain verdicts, the dictums, proverbs and other things.

The one in whose favour the case turns would be compensated from the fine imposed on the opponent. In case of non-compliance with the caste panchayat, the fine is varied again and brought very low. This sort of punishment seems to be a bit different from the rest. It serves to shame the person convicted by asking him to pay a sum as low as two rupees. Social shaming is the best weapon used by these panchayats; excommunication would mean that they will have to live outside the village not with the rest of the community. No one will marry their daughters or will be given in marriage to their sons, and no one from their community would attend any auspicious ceremonies or funerals in their family. In other cases, fines would range within few hundreds of rupees. The view of the respondent when asked about the qualities of a leader, was that the leader should be one who has the ability to resolve conflicts and has the personality to impose it on the community. This caste has no divorce (ghatasphot/kadi mod). In this caste, the community has a good role to play; it has the responsibility of bringing the wrongdoer to terms with the community, and see that he lives in harmony, according to the norms of the caste. The one who takes responsibility stays as a guarantor for the person's further conduct. There is a possibility of a modification over the years. Laxman Mane writes that within the Kaikadis, the contending parties could divorce their existing spouse, and remarry, either the same person or someone else. This freedom was given to the women too, but the respondent to my questions replied that he was sure that the option of divorce did not exist in case of conflicts within a marriage today. They had either to drag along their relation, or stay separately by consensus.

The level of participation of these castes in the Gram Sabha is only to the extent of casting votes for the Gram Panchayat. They cast their vote based on propaganda, and whose symbol they remember at the time of casting votes. Since they are illiterate, they do not know to read names. They do not attend any gram sabha meetings. They do not know of the functions these institutions perform and what role they can play in these. To them, attending the caste panchayat is a sign of solidarity and in turn, they get benefits of easy and cheap justice. In addition, there has been no inter-caste conflict at all till date.

A woman from the Kaikadi caste said that women are not allowed to attend or speak in caste panchayat meetings. Only when it comes to her children's wedding can she attend these meetings. In case a woman is involved in the dispute, she is represented by her father or her husband. In either case, she does not speak for herself. She also knew that the Gram Panchayats were something other than the caste panchayats, since she too goes to cast her vote in these statutory bodies. She does not know what functions these bodies have.

She was sad about the fact that, in their caste panchayat, divorce was not a means to solve any family problem. Divorcees do not exist among them. If the couple reaches a consensus, they can live separately, but remarriage is not possible. Of all the people I met, members of this caste lived in absolute penury though others were only a shade better.

#### **The Vadars:**

The caste panchayat of the Vadar caste, (also a group of nomads) takes place once a year, any day between the festivals of Holi and Gudi Padwa (New Year of the Maharashtrians). The place, unlike the practice followed by the other caste panchayats discussed, is not fixed in advance. The strength of the *panch* would be about four to five members who are wise and who possess the qualities of good

leaders and a desire to work for the people. Their main occupations are working as agricultural labourers and digging pits for erecting poles.

In this caste too there are other sub-castes; mati vadari (agricultural labourers working in the soil, quarrymen, who make their asses carry the earth required in the building and earthwork contracts of roads and railways), jate vadari (grind stone men, who do rock cutting and stone works), gadi vadari (cartmen, and taking care of donkeys). They too speak Telugu, where language outside the home is Marathi. For nine months in a year, they travel in search of work, and spend the remaining three months in their own villages. Though they are nomads (locally nomads are called bhatkis), they still have some roots in some village, where some retain their political rights.

The decisions taken in the caste panchayat are not taken just by the *panch* leaders, instead they listen to what the congregation gathered has to say about the issue, and then the collective opinion of the people generally takes the shape of the verdict. Another feature of this panchayat is that in its dispute resolution process, the parties to the dispute have to keep a certain amount of money with the *panch*, following which discussion on the case is initiated. Once a decision is reached, and the case is resolved, the money which was kept as a deposit, is to the victor in totality, the victor, out of the amount received, gives some to the *panch* as fees for hearing the case while some is spent on tea and snacks for the people gathered.

As usual, women do not participate. Not only that, the men did not allow the women to speak to me on the pretext that they do not know anything regarding this and also that their women do not speak to outsiders. However, in this caste panchayat divorce is permitted and the fee extracted for it would range from Rs. 5000-10,000.

The Vadar respondents were frank enough to admit some of the problems faced in the caste panchayats. Firstly, it is a lengthy process because they would meet once in a year to resolve their disputes, waiting till the next caste panchayat was tedious, and if one of the parties to the dispute did not turn in the meeting, the case would not be taken up in the caste panchayat. This would mean yet another year by the time one would get justice. Secondly there is a requirement for a minimum number of people from the caste to participate, something like a quorum for the panchayat to take place. This makes it difficult and ineffective to deliver justice to the needy on time.

One of the most educated from amongst them, is a boy of 17 years, studying in class X. He said he had never attended any of the caste panchayat meetings and even if children of his age group would go there, they were not allowed to speak. He did not know much about the traditional set up for dispensing justice. Change is clearly coming into these communities through children like him, though he was asked by his father to look into the notes we took down in sheets, to see that we did not write down anything incorrect.

#### **Nandiwallas:**

The Nandiwallas were the last community of the nomads that were interviewed. Their main occupation is cattle rearing and trading. They have their caste panchayats once in three years (triennial), and they have smaller sessions in between to resolve disputes in case of exigencies. Their *panch* comprises of four to five members. Moreover, the one interviewed was himself one of the *panch* members. According to him, a *panch* should be one who is capable of giving justice and one who speaks for his people. Very much similar to the other caste panchayat, this caste panchayat resort to fines as punishments, that too ranging from Rs. 5000-7000.

They participate in the local statutory bodies to the extent that they cast their vote, but participation is limited to this. The criterion for choosing the candidate is his capability. They are not present in their villages to enjoy the benefits of the programmes sponsored by the government. The respondent was of the opinion that the caste panchayat should continue.

With no exception, here too the women do not participate. For their weddings, the groom's family meets the expenditure. The practice of divorce does not prevail; if one were still adamant and not willing to abide by this principle, he/she would be excommunicated. The question of remarriage is considered only in the case of a widow/widower, and even in that situation it is not treated as equivalent to marriage.

The unique feature of this caste group is that it has a common bank account managed by the caste panchayat. The money collected is to be used in the feasts/jatras, for conducting poojas (religious rituals) and in building temples. Till date, they have built two temples in Vadapuri in Indapur taluka and the construction of a new temple is in progress. The respondent, who was also a *panch* member, too claims that they have never had feuds with people of other castes, but was of the opinion that, if in future it arose, the courts of formal law would be the only option out. The people of these nomadic communities spoke their own dialects. The Nandiwallas and the Vadars spoke Telugu language and the Kaikadis spoke a different dialect of the same language with a mix of Kanarese.

Interviews from some of the other major caste people of that village was incorporated to see what were their opinion regarding these social institutions. One respondent was a man belonging to the Ramoshi caste, (considered to be a 'criminal' community) which has taken the responsibility of village security and guarding of the village. They do not have a caste panchayat, but do have an

unregistered association. Participation in the Gram Sabha meetings from among them was again negligible like the others, but to some extent is aware that these bodies have programmes run by the government which the people could benefit from. With changing times, he would like to see all the institutions of the past that still retain caste identity to fade into oblivion.

The last of my respondents, was a person from the priestly community, called the Gurav who perform pooja in the Khandoba temple in Jejuri. This temple is a place of pilgrimage where people from all sections visit and make offerings (in the form of slaughtering of goats). Today many from the Gurav caste have taken up other supplementary jobs. In the village caste hierarchy, they rank high and are respected, but otherwise they fall under the OBC category. Though the caste to which the respondent belongs does not have such caste panchayats, he does not involve in meetings of the Gram Panchayat either, but goes to cast his votes during elections to the local bodies, based on caste identity. However, in his opinion, the caste panchayats are a good means of providing justice to the poor people of the respective castes.

A villager who accompanied us was of the opinion that Gods also have their caste. The people who come here generally do not belong to the high castes, but are from middle and low castes, and are generally poor. Not very far from this place is the Pandharpur temple in Sholapur district, where the rich and the high caste people go.

There are other traditional dispute resolution bodies in this region called '*gavkis*' and '*bhavkis*'. *Gavkis* are village assembles, either comprising of a single caste or a mix of various caste. The dominant caste stands at the helm of affairs in such villages. In the case of *bhavkis* it comprises of people belonging to the same clan (gotra) or the extended family. In such villages, the head generally would be



from among the elders in the community. Here they do not have any formal set of rules that they follow, but based on relationships. Other than caste panchayat, I also found some other customary village councils, which resemble the '*Gavkis*'. This was in a village called Paniv in Sholapur district. The Gram Panchayat functioned most appropriately like a *gavki*. Historically these were feudal village collectives, rendering services to the people, like providing security to the village, maintaining the treasury, getting messengers to transmit messages and to the villagers assembled at a place, and many other functions for a self-sufficient village. These were based on traditional rules and customs. The *gavkis* decision making powers have extended to issues like public construction works, sale of lands, fund-raising for different causes, mostly religious ones like fairs, festivals .(Lele, 2001: 4703)

The person interviewed here was the ex-sarpanch of the Gram Panchayat, currently is a member in the presently body of the panchayat. This respondent has worked a lot for the upliftment of the women in this village. She belonged to the Hindu Maratha caste that is considered high in the village caste hierarchy, since they do not have any Brahmins in their village. The Maratha castes are in majority in the state according to their population. The Marathas along with the Kunbis form one third of the total population of the state. This caste is considered the ruling class in this particular village.

There has never been an election to the Gram Panchayat from this village. Till date, the members are unanimously elected or decided unopposed by the so-called 'patils'. After the 73<sup>rd</sup> Amendment Act, they have organized the structures of the village councils and modified their functions in a way that they seem to be proper panchayats. This panchayat has another specialty: it is an all-women panchayat. The first gram panchayat in the village that was formed under the provisions of the 73<sup>rd</sup> Amendment Act was constituted in 1997. Till 2002, the

sarpanch was an upper caste Maratha woman. In the next phase (2002-2007) of all-women panchayat, the sarpanch is a woman from the Gurav (Priestly) community (OBC-other backward caste) as the sarpanch post has been reserved. This time too, it was not an elected body, comprising of nine members. The gram sevaks and the other staff and functionaries all decided by the so-called patils of the village. They still have the functionary called the 'police patil', and presently this office is held, by the ex-sarpanch's brother -in -law. The primary level investigations are done by this functionary, especially in places where there are no police stations. He works as a mediator between the police and the villagers. Here gram sabha meetings in the true sense of the term are not held; the decisions are simply taken by the patils and announced in the village. For this reason, they have some messengers who go around the villages and inform the people with drums, or they put up notices at common meeting places in the villages. The BPL (Below Poverty Line) lists that are made for the people who belong to the village are further scrutinized by the *panch*. They claim that they give the benefits to the genuinely deserving persons. Also in the case of the Indira Awaas Yojana, the benefits are given to the needy. There is no participation from the people at all in the decision making process. It was only in times of crisis that they would approach the panchayat. Since it was an all-women panchayat, liquor was not permitted to be sold in the village, which was a good feature. This is not to suggest that this is not an efficient panchayat, but rather that the participation of the people in governing themselves has been low. Such customary councils in the garb of helping the poor and the downtrodden have only hampered their ability to speak for themselves.

The ex-sarpanch, also said that at times the caste leaders of the village do come and discuss various issues with the *panch*, and narrated a recent case of a minor girl from the Dawari caste, eloping with a boy of the Maratha caste. This created a big uproar in the village, inviting the interference of the police patil as well.

Otherwise, mostly of inter- caste conflicts have been rare and if they did occur by any chance, the members would talk it out across the table. These are described as fights under the same roof. The issue of non-compliance is not a big issue, because the lawmakers and the law implementers all belong to the same nest.

This chapter has briefly surveyed various caste groups in Jejuri in Purandhar taluka of Pune district, Paniv in Malshiras taluka in Sholapur, and some villages in Sawantawadi and Vengurla talukas in Sindhudurg and examined the range of customary institutions from caste panchayats, *gavkis*, to registered caste associations used by the people. It has also provided a data on the extent to which members of these groups participate in the statutory panchayats their ways and means of dispute resolution. The succeeding chapter would make analytical study of these components.

## CHAPTER-4

### NON-FORMAL DISPUTE RESOLUTION BODIES: PARTICIPATION AND JUSTICE

The CVC being a non-state entity can legitimately be described as a part of civil society. This chapter presents the main analysis of this study of the participation of people in governing themselves using a 'rights-based approach' to participation, and attempts to assess how far these CVCs have influenced such participation. A section which discusses the civic amenities available to nomadic communities, the condition of their women and current situations of these nomads has also been incorporated. There is, finally, a section on the experiences of CVCs from other countries of the world.

*"The Indian quest for public participation has led to many experiments in village programmes of community development. Attempts at decentralisation through the system of Panchayati Raj have resulted in large scale standardization of these structures throughout the country. All this has no doubt led to a growing politicization of villages and an emergence of new hybrid bases of power and influence out of the interaction with the existing structures of domination as in the CVCs with that of the PRIs." (Baxi P, Rai Shirin M and Ali Shaheen Sardar, 2006: 1239 - 1253)*

Enhanced participation of the masses in governance is an ideal still waiting to be achieved, and it is not clear what the impact on participation is of more non-state participants entering into the fray. Recent writings on governance make the link between people's participation and civil society inevitable. Neera Chandhoke observes "Civil Society in India is seen by most theorists as a fluid association of social groupings which are based on caste and kinship linkages or on religious mobilization as much as of voluntary social associations". Thus in the contemporary times CVCs qualify to be a part of civil society, and a non-state institution, which does not accept the sovereign right of the state. Rajni Kothari associates civil society with people-centric institutions; consequently he

incorporates within it all those fora in which people participate directly and manage their own affairs. Since the stress is almost exclusively on people's participation, participation even in caste panchayats, along with voluntary associations and Non-Governmental Organisations (NGOs) of all hues and colours are regarded as agencies of civil society and strengthening democracy. What brings these diverse institutions together is the fact that they stand outside the state, offering an alternative to state-sponsored and state managed organisations; in fact they open alternate political spaces outside the usual arenas of party and government. (Kothari, 1988a: 30; Mahajan, 1999: 1193)

Participation is intended to energise communities; however, western theorists assume that these new forms of community which have emerged are not based on the principle of hierarchy and exclusion, with the breakdown of religious hegemony and older forms of communities based on ascriptive identities in the west. But in countries like India where ascriptive community identities and institutions are politically recognized, and religion plays an important role in the lives of the people, emphasis only on direct participation in non-state associations, rather than the presence of collectives that function on the principle of equal rights of citizens, justifies a communitarian ethic that leaves the structures of intra-group inequalities intact. (Mahajan, 1999: 1194) Merely creating venues to enhance people's participation, by incorporating multiplicity of institutions (in this case the CVCs), will not serve the purpose for which these institutions have been sanctioned in democracy. Although participation of the people is desirable.

Likewise, the CVCs being civil society organizations retaining caste and other local identities, and a highly communitarian philosophy, do very little to support and empower the rural populace. The field study conducted shows that the caste panchayats that were studied had very little to do with the people's role in PRIs.

The Paniv case is a little different as the CVCs there do, in times of crisis, interact with the PRIs, when the matter involves a greater issue of the village, but they do not suggest enhanced people's participation in village governance. Caste associations, on the other hand, behave like pressure groups to fetch more developmental activities and funds to the people of their community. And this clamour for a greater share for the community arguably leads to increased inequalities. To secure individual liberty along with social equality, neither increased participation nor diversity of intermediary bodies is enough. Both remain inadequate in protecting the individual against abuse of power and each of them can be appropriated to sanction the majority practices and unequal structures of power. (Mahajan, 1999:1196) In the west, traditional institutions were displaced by democracy. A new society based on democratic participative bodies came up. Rejuvenating the participative democracy that has been not clearly defined, can further curtail the rights of the people, which is exactly what has been happening in the name of participation, when traditional associations are renewed. (Hirst and Steward, 1996: 1194)

Regarding CVCs, the dilemma that the state faced was articulated by the Panchayati Raj Minister for the Indian Union, Mr. Mani Shankar Aiyar who said that informal pronouncements by caste panchayats were 'not in conformity with the Constitutional provisions or based on the objectivity of free of caste and creed consideration'. (The Hindu, 20<sup>th</sup> October 2004)

As such reviving the traditional institutions like the CVCs on the pretext of improving people's participation at local levels will only lead to an increase in inequalities and further exploitation of the disadvantaged sections of society. The most recent incident of CVCs engaging in caste strife in the country was that of the Gujjars who are categorized under the Other Backward Class (OBC), now crave Scheduled Tribes (ST) status. The Meenas (another community) had

already been given this status at the time of Indian independence. The Gujjars who are now demanding the same, are spread across the states of Rajasthan and Jammu and Kashmir, Haryana, Uttaranchal and others but in many of these states they are a majority Hindus and in the state of Jammu and Kashmir they are a Muslim majority community. The same castes are found across the country, with different names and in different categories, so people with the same surname also need not necessarily belong to the same caste.

The caste panchayat of the Gujjars, in one of its edicts, asked the people of the community to go on a rampage in the state of Rajasthan to get their community an ST status. One sociologist in Rajasthan has revealed that the composition of the caste panchayats were changing and in place of the elders the youth, especially the unemployed, have taken over its leadership; (The Hindu, Rajasthan, June) making these bodies hyperactive, violent and less tolerant. People participated in large numbers and flowed into the streets, but how welcome will this participation be is questionable.

In the northern states of India, increasing numbers of cases are being reported of atrocities and of the involvement of the new generation in pronouncing verdicts. This trend is seen to be in contrast with the CVCs in the state of Maharashtra where most of the castes have turned away from their caste panchayats, which are in decline with the young and more educated members of the community keeping their distance from these.

In Maharashtra, the presence of the CVCs is today restricted to the nomadic communities that comprise the lower orders in the caste hierarchy. It is believed that people who were higher in the caste order in villages having CVCs had more respect and commanded it from the rest of the population, but as one goes down the line of the caste hierarchy the respect and power diminishes

correspondingly. The rest of the local communities did not look upon the nomads favorably. They were considered a criminal caste, and this was especially true of the Ramoshis and Phasepardhis. This would mean that from generations these castes have been following their occupation of committing theft and crime. This discrimination, disregard and negligence towards them was seen and carried on by the British.

T. V Stephen (as cited in Mane 1997) who studied Maharashtra society, concluded that Indian caste and occupations were aligned. A Cobbler's son would always a cobbler and a potter's a potter. The nomads were seen as the criminals, and since the caste system was hereditary in nature, the son of a criminal would also become a criminal. Being born in a Pardhi/a Ramoshi ('criminal' tribes) is equivalent to committing a crime. Moreover, even today this section of society is totally bereft of many facilities that they would otherwise enjoy. Because of their low educational qualifications, they do not get good jobs, and being disillusioned often take up some anti-social activities which would be temporarily more rewarding, like theft, drug trafficking and peddling, trading in alcohol across the state borders, and without state permit. This propensity to take to such activities has made them more prone to societal disrepute which is then associated with their caste.

The justification for the CVCs is that justice within the village is cheaper, swifter, and more effective. The local elders either have direct power over the disputants themselves or have influence with those who have such power. This is why disputes tend to be referred to local patrons even across caste lines. The power wielded by local patrons is considerable, and even outsiders seek their intervention. (Srinivas, 1959:9) There is a feeling that it is better to settle a dispute within the village rather than taking it to a formal legal court. If they are taken to a government court or to elders living outside the village, it means that the



matter is beyond the local patrons. (Srinivas, 1959:15) A person who takes a dispute that does not refer to caste matters outside the village is guilty of slighting the local patrons. His action is, in effect, a declaration of "no confidence" in the village panchayat, and he will soon be made to realize that he/she has incurred their wrath. (Srinivas, 1959:10)

A perverse phenomenon, not very uncommon these days, is that decisions of the panchayat are taken under the influence of liquor and money, by which the real perpetrator of the crime obviously goes unpunished and free. It happens in cases of divorce, where the woman is portrayed as having relations outside the marriage as a fond for nullifying the marriage and obtaining permission to remarry. Also if one was held guilty, the compensation given to the victim of the unlawful act cannot be justified. The CVCs would go only for a fine which would be a part of the amount collected at the time of security, or at times charged with an extra fine, either ways does not rightly compensate the victim. The more serious punishments such as imposing a heavy fine, temporary boycott and outcasting also have ethical implications. (Srinivas, 1959:15) A situation was traced in the case of the Kaikadi caste panchayat, for bigger and persistent crime, while the perpetrator was charged with smaller fines, the objective of this type of punishment is to effect social isolation and keeps a constant watch on the perpetrator's activities. This means that the individual is under constant vigil by his caste members.

Local bodies are oriented towards establishing civil society based on democratic processes, public accountability, transparent governance, and people's participation, in carrying out the functions devolved on them. A person's participation in gram panchayat activities is determined by that person's social and economic attributes. (Krishna and Sjoblom, 2000) This study indicates that

certain groups, especially women and nomadic tribes, have very limited participation in governance.

**Women of the Nomadic Community:**

The place of women (belonging to the nomadic communities) in their caste, community and family was high, which was not the case with the women of the other Hindu castes. The nomads were basically mother goddess worshipers, and as such their main deities and festivals revolve around these goddesses. Some deities that were mentioned are Sitaasra, Meriaayi, Sakhai, Yellamma, Kalubai, Lakshmi. Practices like Sati or 'Keshavpan' (shaving off of the head, in case of death of the husband) was never a part of their custom. Widow marriages and remarriages were not barred. Women also enjoyed the freedom of going out to earn their livelihood, they had the right to decide in the division and inheritance of property, enjoyed equal rights in case of spousal relations, which was hardly imaginable by the then higher castes of Hindu society. The women in these communities could not be forced into any relationship which was not acceptable to them, though the situation has changed ever since.

The daughter had full rights over her mother's property, and the mother had considerable say in her daughter's wedding. In case the panchayat was unable to decide or give a solution in case of an impasse, the honour of deciding the case was given to the oldest woman, in the community. There are two systems of give and take during marriages, one called the dahej, which is the 'bride price', the groom has to pay to the bride, and 'hunda', the price that the bride's family has to pay to the groom. Most among these communities did not practice 'hunda' which was a late introduction their system. In case of a divorce (ghatasphot/kadimod) the women is not supposed to repay the 'bride price' that she was given during marriage. Only when it came to her remarriage, the new groom who came to marry her would have to repay the bride price given by the

earlier groom in the previous marriage. In cases of widow marriages, which were always permitted, the widow would be permitted another alliance three days after the rituals of the husband's death, and purification, and would be welcomed into her new life by her mother, with the gift of new clothes and ornaments.

But slowly and gradually these practices, which gave women a good place in their community, have changed under the influence of other caste customs and norms which crept in over the years. The practice of isolating their community from the British system of laws placed a lot of restrictions on women and the freedom they enjoyed. Today women have no role at all in the caste panchayats, and no say in the process of deciding the marriages of their daughters. (Moore, 1994) Not only that, they have hardly any right to inheritance from their parents or husbands as the case may be. Today, as these nomadic castes are undergoing processes of settlement, they have settled in places that are convenient for their livelihoods and, resource availability and have also started mixing and mingling with the people of other castes. They have slowly started getting influenced by the other Hindu castes and community systems which are not gender-sensitive. Some of the educated men among these nomads today demand for 'hunda' (price demanded by the groom in marriage from the bride) and women's position has consequently deteriorated.

The women in these communities are largely illiterate. Most of them go from selling small articles from door to door and while others collect stale food and left-overs. In the case of women of the Kaikadi, Pardhi, Vadar, Ramoshi castes, they are independent of their men folk when it comes to managing the day-to-day family affairs. Women of the Kaikadi caste make cane baskets for their living and go out to sell them. The 'denotified' and the nomadic tribes are most traditional, matriarchal communities, offering social sacrifices during festivals.

Over the years, men in these communities have changed their style of dressing<sup>26</sup> and language, but their women have still remained the same<sup>27</sup>. They still cling on to the old traditions and customary way of dressing and decorating themselves and their speech. They do not change automatically but if exposed to education could change.

Culture and patriarchy are important determinants in influencing women's participation in politics. (Conway, 2001: 231-33) The CVCs have hampered women's participation in the Gram Panchayats by acting as gatekeepers to them. The effect of the campaigns against 'crimes of honour' in highlighting the illegality of caste panchayats and in pointing out the way the caste system prevents and punishes marriages of choice, provides a specific critique of Indian patriarchies. The campaigns against 'crimes of honour' move away from benign descriptions of legal pluralism to grapple with how, for women, pluralistic legal systems may be seen as 'fields of overlapping and intersecting forms of subjection'. (Chirayath, Leila et al, July 2005)

#### **Provision of Civic Amenities to the Nomadic Communities:**

Since these communities are nomads and follow a nomadic pattern of living, civic amenities can hardly be consistently available to them. These include access to clean drinking water, electrification, housing, sanitation, roads, parks, primary school, dispensary, kindergartens, gutters for the dirty water drainage etc and other such facilities and services. In cases where they lead a more settled life-style, they live on the village outskirts or on the fringe of the villages, but in cities they live in slum settlements or as squatters. In towns and villages, they find place on cleared grounds outside the villages with a make-shift arrangements of tents and huts. In such cases, they can access the benefits given by the local state administration, but this is only for the settled communities. Those who still carry on with their nomadic life-style are clearly not in a position to avail of such basic

amenities. The huts that were visited had no proper source of drinking water, no electricity, they were cramped and could hardly hold all the members of the household. They had no proper roof to protect them from the harsh weather, the men stayed outside, while the women would cook outside their tents. Sanitation facilities were nil, and people went into the thickets to relieve themselves. Successive Governments and the administration have done nothing to improve their living condition. Perhaps they are not part of any vote bank politics, as they move from one place to another and never had any bargaining power.

For these nomads who are scattered all over the state, nothing promising has come from the side of the state administration regarding resettlement, education, employment etc. They have been utterly sidelined and made invisible. Administration seems to be miles away from them. They are robbed of their basic rights as citizens where ever they go.

#### **The Current Situation of the Nomads:**

These nomadic communities still live in much the same way as they lived some decades ago. There is nothing positive that can distinguish their past from their present, and they do not see any positive developments coming their way in the near future either. They continue to live in absolute and stark poverty. Making both ends meet itself occupies most of their time, their desire to sustain a living. Educating their children is a far idea for them for want of resources and their unsettled life-style. Yet in the name of rituals and caste they find ways to spend what little they might have earned throughout the year, in caste unions and ceremonies.

These nomads do not enter into fights with the local people no matter where they go, perhaps because of their economic dependence on the villagers. The villagers by now also know them well, and are aware of their way of living so in case of

small cases like petty theft, they do not mind it too often. This is surprising, because inspite of their relationship with the villages year after year, for most part of a year, they live in villages other than their own home village, for which do not have any dispute resolution bodies when it comes to a conflict between them and the villagers. If at all they are in any dispute with the villager, who clearly has an upper hand, the nomads have to accept the majority decision in the village, or if in a position to collect sufficient support could try defending themselves in the disputes. One of the panch leaders who was interviewed held that in today's situation if feuds were inevitable between the different castes, the only resort was the formal courts since they had no other mechanisms to resolve inter-caste conflicts.

#### **Comparing Earlier Studies on CVCs to the Field Findings:**

The studies conducted by Kripa AnanthPur in Karnataka, and Anirudh Krishna in Rajasthan seperately, presents an interesting contrast while bringing out quite an interesting mix of societal complex networks. The structures and composition of the CVCs in their studies were almost comparable. AnanthPur does not find the CVCs and the GP as completely distinct and disjoint as they interact and interface with each other at many points. She mentions five areas of interface between the CVCs and GP. They are

- a) customary psanchayats control nominations for elections to Gram Panchayats.
- b) There is an overlap in leadership personnel between the two.
- c) They sometimes cooperate in the implementation of development projects.
- d) customary panchayats play an important role in the selection of beneficiaries for anti-poverty programmes which are implemented through Gram Panchayats.
- e) At times customary panchayats are involved in resource mobilisation at the village level, either raising matching funds for development projects being initiated through Gram Panchayats or taking up development projects at the village level on their own.

Anirudh Krishna clearly segregates between the CVCs and GP, for his studies do not talk of any kind of interaction between the two, nor were there any overlaps in the leadership in these two bodies. In Karnataka, AnanthPur's study on CVCs and GP instantiates a few areas of intersection, as in the case of leadership which overlapped in the two structures, bringing out the interface between the CVCs and GP due to interventions by one on the other.

From the field study in Maharashtra, it was evident that CVCs among the nomads had absolutely nothing to do with enhancing the agency of the people's participation in the PRIs. Rather, since the PRIs were not being able to deliver, they became more alien to these people, as participating in them did not help them and their families. There was a minor difference in Paniv where, though they had a functional Gram panchayat, an election to this body never took place. It was generally and still continues to be under the overlordship of the Patils, who decide who would be nominated to the PRIs. Since in this round the position of the President was reserved for a reserved category women, the Patils again choose from among the villagers a candidate who fitted the requirement in their eyes (probably a their 'yes' woman). In the case of caste associations, which are more like registered associations, our pilot study conducted in Sindhudurg district, showed that these did manage to still maintain caste bonds especially among the lower castes. These associations were more concerned with keeping the caste identities strong, and dealing in some dispute resolution among the caste members, also engaging in some social and educational activities for members of their caste. Whoever was a member of the caste would get a share towards their development without disturbing current inequalities. It was seen that in these dispute-resolving arenas, the dominant and the influentials could easily manage to give justice to their side irrespective of the deed.

The khaps have a milder socio-legal responses to violent practices such as 'honour crimes', the barbaric practice of 'honour killings' that is, killing of young women by their relatives or caste or community members for bringing dishonour to the family or caste or community by marrying or wanting to marry a man of another caste. In fact such 'honour killings', far from being honourable are nothing but pre-meditated murder. The khap panchayats were believed to have been invested with a 'divine right' to adjudicate marriages of choice that transgressed caste normativity.

The largest number of 'edicts' against women are issued by caste panchayats that pose a challenge both to the parliamentary processes and judicial structures. These have no legal standing, yet they function with impunity, backed by the narrow caste identity politics practiced by bourgeois landlord parties. Given their utter failure to solve the basic issues of the people, for them a caste means a vote bank; this is why an elected representative of the dominant parties in the affected areas has ever protested in a single case of honour killing. (Chakravarti 2005)

To be a citizen is to be a member of a political community and to enjoy the privileges and protections as well as the incumbent obligations associated with community membership. (Walzer, 1989; World Development Report 2007:160) Citizenship can be both passive and active. Simply by being community members, receiving rights - right to education, right to legal identity and fair trial, right to vote and to associate with others. They also pay taxes and to serve the military if required. On the other hand, being active would imply that individuals hold public officials accountable for their actions, demand justice, tolerate people who are different in faith, culture and feel solidarity with fellow citizens and human beings. (World Development Report, 2007: 160) The



day when a nomadic person, or an individual belonging to denotified tribes in Maharashtra can fulfill the conditions of active citizenship seems very remote.

Many argue in favour of the continuance of such structures. However, it may be argued that just because we cannot immediately improve the current inefficiency of the state legal system, that mostly pushes and drives people towards the CVCs, in this country that does not mean that, in the name of consensus, people should be forced to go in for such traditional law, and respecting their customs, which is often detrimental to the interests of certain sub-sections of the same society, especially people with less influence and women.

Should these non-state traditional structures, which actually entrench more deeply the caste identities already deeply ingrained in the Indian rural societies, be done away with? We need to have a better alternative institutional design, which can meet the requirements of justice, while factoring in regional variations and the project of decentralization and enhancing people's participation in local governance. The more attractive aspects of these traditional structures of accessibility, quick justice, and economically more viable options can be incorporated in the mainstream structures.

#### **CVCs in Other Countries:**

The plurality of structures at the lower rungs of governance is not unique to India, but is also seen in many other countries of the world today. The co-existence of formal and informal institutions, are found across nations whether developed, developing or less developed. F. W Riggs deploys the concept of 'Prismatic Society'<sup>28</sup>, in which one can see traditional structures coexisting along with the modern institutions. Though a prismatic society is primarily seen in developing societies, which have not completely emerged out of tradition, but are also not fully set into the ways of modernity, it is characteristically wound

the traditional and modern institutions making heterogeneous societies. The erstwhile colonies are good examples of such heterogeneous institutions, because before the Europeans colonizers came, these societies had their own traditional systems functioning, into which were added the western systems were introduced. We see the overlapping of governance of polities and communities, as the courts and the police are in an uneasy relationship, expressing the tense relations between tradition and modernity as these existing in society in areas where the CVCs are very vibrant.

Community based adjudicatory systems such as caste panchayats have existed since medieval times in South Asia. Moog suggests that 'while there may no longer be any truly 'traditional' panchayats left today which are unaffected by the formal legal system, there are tribunals of a traditional type in many areas.' (BaxiP, Rai Shirin M and Ali Shaheen Sardar, 2006)

Governance of communities by caste panchayats and jirgahs has allowed the development of non-state parallel systems of adjudication in Pakistan. These include not only resolving disputes between members of the community but also passing pronouncements on matters deemed to be relevant to the 'honour' of the caste and ensuring the execution of such pronouncements. (Baxi, Rai, and Ali, 2006)

Like in India's case, Pakistan also has similar three prisms through which the CVCs can be seen viz. decentralisation, poor access to justice and legal plurality. 'Justicing' under the auspices of jirgahs in Pakistan is a marker of the increasing tension between the governance of communities and the governance of polities through an attempt to regulate decentralised local governance. In the case of Pakistan too, the CVCs find their place in society due to the inefficient formal legal courts. In Pakistan, due to the backlog, and system's inability to handle the

load, it takes civil cases 10-20 years to be resolved, and 5 years or more for criminal cases. (Zahid, 2002)

Bangladesh, which was a part of British India, also had the same traditional structures, as seen in Pakistan too. The panchayats were a body of elders responsible for village affairs and dispute settlement. *Shalish* (mediation) was the main instrument of dispute resolution. *Shalishs*, the CVCs in Bangladesh, are non-state traditional dispute resolving bodies more popular among the NGO's. The failure of the state judiciary to reach out to the people, corruption, lack of access and delays in getting justice turns people to resort to other modes of resolution in Bangladesh. Traditional *shalish* has been the most available and prompt system in responding to the crime of domestic violence. However, the traditional *shalish* with some degree of state-sponsored authority perform better than the completely informal *shalish*. (Jahan, 2006) Other modes of resolving disputes flourish in poor countries, since they lack in infrastructure, skilled personnel, and rampant corruption in the formal legal system, coupled with the lack of access to justice. (Wahhab, 2006).

#### **Indonesia:**

Indonesia has a pluralistic legal system that mixes modern, post-independence legal codes and legislation with former Dutch colonial law, Islamic law and customary (*adat*) law. The formal legal system in Indonesia has been used as a last resort for defending the interests of people in cases where their existing village institutions had failed, though both the formal and informal systems have equally failed to deliver justice in Indonesia.

Informal justice institutions, such as local custom (*adat*) and village government, are constrained by village hierarchies and local power imbalances. Formal justice

institutions such as the police, prosecutors and courts are biased and remote. As a result, many choose to bury their grievances instead of seeking redress.

Indonesia's transition is taking place along several fronts. One of these is the administrative. The decentralization laws of 1999 devolved power over most functions of government to district governments, including the power to re-establish traditional village forms and pass district-specific adat-related legislation. The laws also contain provisions for village governance that are intended to make villages more democratic but give wide leeway to district legislatures to determine how this takes place.

Village communities have preferred to use informal village institutions to resolve problems, perceiving informal dispute-resolution to be quicker, cheaper and easier than using the formal justice system. Although village institutions have succeeded in resolving a few corruption cases, as a whole they failed to do so successfully, mainly because (a) there were large power imbalances between villagers and the perpetrators of corruption, or (b) the perpetrators did not fear the threat of legal sanction. In cases where village institutions could not succeed, village communities expressed a willingness to use the legal system as a last resort for representing themselves.

The legal system in Indonesia is best described by a villager of being like a spider's web: if it's a little insect that flies past it will be caught, but if it's a bird that comes along, it will just break the web.

The decentralization laws passed in 1999 contained provisions for village governance that were aimed at making villages more democratic. The main arm of village government is still the office of the village head, which remains

responsible for helping to ensure that village disputes are resolved (World Bank Report 2004).

**South Africa:**

Africa presents a good example of pluralism, especially the eastern and southern parts of the continent. The traditional 'inkosi' and 'indunas' of South Africa are traditionally involved in dispensing justice to people belonging to particular clan.

South Africa's pre-colonial customary systems has also, adapted heavily through interaction with the state, which remain the primary form of dispute resolution in rural areas till date. Colonial recognition of customary law in South Africa varied considerably between the British-administered Cape Colony and the Boer-held regions to the East. In the Cape, local chiefs were replaced with white colonial magistrates.

Since 1994, South Africa has worked toward bringing traditional systems into the state framework. Traditional institutions and laws are all officially recognized in the 1996 constitution. After a long political process, the national Traditional Leadership and Governance Framework Act was promulgated in 2004, setting out the roles and responsibilities of different levels of traditional leaders and institutions, and their relationships to the different levels of government.

The examples above show how deeply entwined customary legal systems are in local cultures and history, which are constituent elements of the very social fabric. The uniqueness and idiosyncrasy of each context means that attempts by external agents to introduce new, uniform procedures are inherently destined to struggle. (World Bank Report, February 2004)

**Ecuador:**

Ecuador's recent history has been characterized by political instability and poverty. Since the return to democracy in 1979, oil price volatility, extreme fluctuations in capital flow, and natural disasters have combined with macroeconomic imbalances and resulted in negative growth and uneven social development. The instability resulting from the economic crises and increased social conflict has led to a progressive loss of public support for representative democracy. (Ecuador, The World Bank, 2004)

In areas affected by violence, government supports the integration of indigenous customary law and national ADR (Alternative Dispute Resolution) initiatives, and creates a program to support institutional working groups to study and develop a national public defender's service network. Accessibility is determined by the time and money required to utilize a justice system, as well as the transparency of the procedures which guide its operation. (Ecuador, The World Bank, 2004).

However, frustration with the judiciary's inefficiency, coupled with a perception that corrupt practices adversely affect the outcome of lawsuits, and this has encouraged litigants to rely upon negotiation and settlement as the primary means to resolve disputes. There is a tendency to avoid litigation, even if that means renouncing certain rights or accepting a disadvantageous settlement. The poor seldom use the judicial system, except in limited numbers, to solve family issues.

Further, customary justice differs depending on the locality and local traditions, as well as the political history of a particular country or region. In many of these countries, systems of justice seem to operate almost completely independently of the official state system. However, that in countries where customary systems are

formally recognised, in practice these systems generally continue to operate independently of the state system (and/or in uneasy tensions with prevailing religious legal traditions).

Probably the most significant critique of customary systems is that they are seen, in some cases for good reason, as incompatible with economic, social and civil rights, and dominant notions of 'justice' attributed to the western notions of law. Many forms of traditional law are seen to discriminate against marginalized groups and perpetuate entrenched and discriminatory power structures within the local community. For example, in much of sub-Saharan Africa, traditional systems are patriarchal in nature and often systematically deny women's rights to assets or opportunities. Women are unable to own, control, or inherit land, and are only able to access land through a man (generally either their father or husband)

#### **Tanzania:**

The Chagga, is a part of the chiefdom on the slopes of Mt. Kilimajaro. In their customary courts, disputes were being negotiated with the help of party representatives, and were adjudicated and decided by community leaders. The Arbitration Tribunals placed under the control of local administrative officials were called Ward Tribunals. The Ward Tribunals remain the state's sole outlet for promoting dispute settlement at a grassroots level. Even the formation of Ward Tribunals with a specific mandate reflecting elements of traditional dispute management did little to change perceptions of the national court system among the Chagga. Moore argues that this system did not capture the nature of Chagga dispute resolution, given their institutionalized processes and the fact that they had to adhere to a written code. Despite legal and economic theorizing to the contrary, Moore argues that the so-called rigid customs of many societies in Africa were grossly misread, (Moore, 1992) in the post-colonial period these

models of reforms were fundamentally unsuited to the inner dynamics of Chagga society. Moore in some sense tries to defend the customary practices among the Chagga. People's Courts have emerged more recently in urban settings for similar reasons in Tanzania's sungusungu groups, a form of CVC due to rising crime levels coupled with poor access to justice and law enforcement, lack of confidence in the formal justice system, and a desire on the part of communities to gain some level of control over local governance. (World Bank Report, February 2004)

#### **Rwanda:**

The centralized nature of the Rwandan state precluded the development of informal mechanisms that prevailed in other societies in East-central Africa. The kingdom of Rwanda covered much of its current terrain and comprised eighty administrative districts, divided further into the hills of central Rwanda, justice was a function of the highly-regimented state. Those who appeared without the support of authorities were found in contempt of court and could be sentenced to death. While they pushed for centralized control and modernization, they relied heavily on local leaders to maintain control. The transition to independence arguably left Rwanda with no clear or legitimate system of governance outside of a history of centralized control. Within this void, Rwandan social norms underwent a breakdown. The violence was a result of increasing lawlessness, a systematic shifting of the norms that underpinned the law. Following the genocide during the Tutsi dominated formal judicial courts, the Hutu who were the majority people were not comfortable. By the 1990s, anti-Tutsi propaganda stressed of the Hutu majority to fight a just war against minority oppressors.

The lethargic and arbitrary enforcement procedure of the formal system denied justice to the victims in the genocide. (Bolocan, 2004) Some argue that the



participatory process by which the courts were established and the involvement of communities in the reparations process has an impact beyond the individual victims. The government had introduced the Gacaca jurisdictional courts which are a combination of the formal and informal justices in the villages. Reports of the effects of Gacaca courts<sup>29</sup> are mixed.

The case with all legally plural societies is a disharmony in the application of the western court system to their indigenous traditions of law. The sense of alienation from the new set of laws in dispute resolution pushed them all in the direction of reviving the traditional legal forms, or in cases where they still existed to pursue them more seriously.

Invariably the inefficiency and failure of the formal legal systems to deliver justice - for various reasons including technical difficulty, accessibility problem, cost involved and the time consumed in the litigation process , and finally the backlog in the courts - have made it simpler to appeal to these informal courts. These courts are not equipped to handle the cases of today's complexities, though they might have handled cases in the past. The situation has changed, and it might be wiser to incorporate the good parts of the traditional into the formal systems, not because the formal legal systems are all pervasive, but rather improving on them for a better system of justice.

## CHAPTER-5

### CONCLUSION

The ideal of citizenship at various times and at various places has emphasized equal participation in and obedience to the community, advocated participation in social life, and described a zone of private life that the state ought not to violate. (World Development Report 2007: 161) The case of the nomadic communities who live at the fringes of the citizenship shows that they are not able to avail of the rights available to Indian citizens.

Voting in local bodies is not always the most complete or satisfactory measure of political participation, but frequently the result of political campaigning and the pressures from contesting candidates, as also the ability of the candidates to mobilize the people. This has been the case with the democratic participation of the nomadic communities in local governance institutions. However, if participation leads to reproduction of power relationships and perpetuates the dependency relationships between haves and have-nots, it cannot be construed as real participation. (Narayanan, 2003: 2484) This was exactly what was seen in the field. In places where the reservation norms were fulfilled, and the presence of civil society as caste associations existed, they hardly came forward to do away with the caste hierarchies, but were more inclined towards maintaining the status quo in the society. Alienation from the political process seems to prevail and that is why reservations have not helped to make the marginalized more vocal. (Lele, 2001: 4703) Further, reform processes themselves may be captured if attention is not given to building a civic constituency that can demand a certain level of equity, performance and accountability. (Moore, 1997)

Reforms that fail to address the problems of equitable justice may affect the social and economic conditions and reinforce the existing inequalities. Most of

the successful initiatives have focused on building rights based approach rather than focusing on specific institutional reforms. The demand for one's rights can arguably raise legal literacy and awareness. (Moore, 1992)

The real question of participation arises in the attendance of the gram sabha meetings, where the budgets, finances, and taxes to be levied are discussed and also in deciding on the use of the village resources for the development of the village, voting in the elections, attending political rallies, actively campaigning, making contacts and meeting public representatives and putting forth their demands, trying to act as some sort of pressure group to ensure that the benefits of the economy reach the people. While political, economic and social rights for disadvantaged people may be introduced with legal reforms, real change is unlikely to occur without attention to broader social dynamics. Dreze and Sen (2002: 360) rightly argue that the practice of local democracy is also a wider form of political education. People are learning to organize and question the established traditional patrons of authority, to demand their rights.

As is well known, the defining characteristic of the modern state is that it enjoys the monopoly over force in a society. The state cannot accommodate competing third parties that would use power for enforcement. (Barzel, 2002: 104) Vigilante organizations like the caste panchayats sometimes use force for certain types of enforcement. As a rule, they are not "criminals", but neither are they fully endorsed by the legitimate state. These too delineate rights and forcefully enforce them. (Barzel, 2002: 228)

Non-state organizations like the caste associations, *gavkis*, and the caste panchayats seem to rank clients differently than the state does allowing the two to exist side by side. The informal institutions challenge the conventional orthodoxy of state sovereignty.

The presence of other organizations such as self-evolved traditional village councils and externally introduced agencies compete with these local self-governance structures. The presence of these parallel structures appears to have no impact on the more broad based social or political inclusiveness of the panchayat. (Krishna, 2004:25b) Unlike the Gram Panchayats, these CVCs have not been established with an intention of improving village participation or for people's mobilization. They were evolved for rather more limited purposes and objectives. They cannot replicate the broad based participation in the statutory panchayats. (Krishna, 2004: 26a) The CVCs and the GPs work on two quite different levels. Participating in the CVCs does not in any way enhance, or change the role or mode of participation in the GPs.

#### **Limitations of the Study:**

This study has its own limitations. Firstly, the caste panchayats were specific to certain places and could be found only among the nomadic communities. Though this study has tried to depict what the researcher has seen in the field, these were purely the researcher's field experiences based on the information received from the interviewees belonging to the various castes. No doubt, there are contending studies that have come from other scholars, especially from other parts of the country, which are equally true to their field experiences, but instantiate a different social reality. These views have been examined by this researcher, who has chosen to go into the field to test their validity. Clearly, variations and differences are characteristic of Indian society. The experiences in the field did not come as a surprise, which revealed yet another face of these CVCs and that is what the researcher has tried to convey through this work.

The village councils that were studied were basically of nomadic communities who have little by way of territorial affiliations, as they keep wandering in search of livelihood. The law which is an ingredient of the territorial state, found it

difficult to reach these people, as they carry their own laws with them, in the form of caste panchayats. (Fuchs, 1943) People in various countries try to solve their disputes and manage their affairs without undermining the formal institutions, and relying on informal structures, though this might not always be in all societies. These informal structures try to establish a link between themselves and the formal structures at various levels to get some state recognition and the state in turn tries to be popular by extending its arm to the common man. But state legal authority does not acknowledge the jurisdictions and judgements of the caste panchayat; it ignores its decisions and often decides against it since the CVCs' bent of mind is more parochial than progressive. On the other hand, the caste panchayat does not cooperate with the state authority. (Fuchs, 1943: 88)

The state legal system had to free judicial procedures from the moral tyranny of village and caste, and to provide avenues of justice for the individual. This formal system too has bred its own inequities: the difficulty of access, of finding one's way through the system. For those who are poor and illiterate, the state system of justice is hopelessly overburdened so that a villager can come daily to the courts for years together waiting for his/her case to be heard. While the substance of this account is correct, the achievement of formal justice through modern law and its judicial institutions still remains an ideal in contemporary society.

Every society has a number of mediating institutions that link individuals to each other and negotiate between the citizens and the state. (Beteille, 1996, Mahajan, 1999) Here mediators would be the parallel structures, including all the state and non-state structures that were in existence even before the PRIs were formally launched, and the new structures that are coming up because of further specialization. With the continuance of these parallel structures - whether state

sponsored or non-state - one doubts how effective the PRIs can be in effectively reaching out to the millions in the villages of India in the future. An organization is said to be parallel if it works directly with the beneficiaries at the grass root level, which is not accountable to a PRI and whose funds are not channeled through a PRI. (Venkatesan, 2002: 167)

The growth of such parallel organizations in rural areas has led to further segmentation of development. Supporters of these parallel bodies are of the view that these bodies would further encourage people's participation in the society. Some of these state-sponsored parallel structures are the Van panchayats, Water boards, Joint Forest Management, Nyaya Panchayats etc. which are effectively in contestation with the resources and energies of the PRIs which get diverted and duplicated, digressing the very purpose for which these new statutory bodies had been formed.

Earlier efforts to establish Nyaya Panchayats (NPs) were inspired by the idea that they could be useful, but such parallel institutions have only brought down the effectiveness of the elected gram panchayats, which were already suffering from scarcity of funds resources and skilled human wealth. Looking to these traditional institutions to enhance the people participation in today's world would be suicidal, since they come along with a whole baggage of class and caste identities.

In spite of all the justifications put forward by the supporters of the participatory approach, there are others who hold another view. Jayaprakash Narayan, a well-known advocate of electoral reform, argues that leaving the dispensation of justice to the nominated judges in rural areas will not serve the purpose of dispensing justice, due to the skepticism that has cropped up in the participatory legal system, for the growing politicisation in the villages in terms of the

participatory mechanisms by influentials and elite capture in addition to the ascriptive identities of the caste.

The fieldwork for this study made salient some of the most neglected sections of society in Maharashtra, the nomads and de-notified tribes, the only people who still had their caste panchayats, and had to take recourse to these caste panchayats to get themselves easy and cheap justice, though the particular concept of justice here may be contested on grounds of the underlying principles of equity, rule of law and fairness. Their participation in formal local governing structures was non-existent, with no representation or reservation in the gram panchayat. Being a floating population, getting them the reservations based on the proportion to the village population, was obviously not possible. There is a need for devising some way to incorporate them into the mainstream. Their participation many a times is just restricted to casting their votes in the local bodies without even realizing how these bodies can be of help to them. They do not enjoy the amenities that any citizen of India is entitled to. The nomads are completely unconcerned on the political front, as to who comes to power. This is because of their typical style of living; regardless of who is elected, their lives remain unchanged. Whether it was the colonial rulers in the pre-independence era, or any political party after independence, they do not perceive any of these as having changed their lives over all these years.

As nomads, these groups avoid the established formal state structure, retaining the force of caste and community authority. Skilled influential individuals are spokespersons for the disputants though evidence is provided and decisions are reached through the participation and consensus of the entire caste community. They have the best of justifications for CVCs and adduce reasons why it is not desirable to follow the Western model of law, in which an adversarial model of dispute settlement prevails: one must win and one must lose. This in their view,

would spoil the tranquility and harmony in the village. CVCs are a political forum, in which history and context plays a critical role: the issues debated concern not only the immediate disputants but also invoke the actions of their forefathers and have implications for the caste as a whole. The need for the caste to remain a cohesive body means that disputes must be settled through compromise and consensus.

This work shows that once any of the nomadic castes which were the focus of the empirical study take to a more settled pattern of living, they rely very little on the occasional meetings of their caste panchayat and more on the courts of law. It is arguable that the level of social consciousness of the people in Maharashtra is higher as compared to some other states in India, and thus Customary Village Councils manifest a diminishing trend. In the case of the Caste Panchayats, it is only the elderly in the community who know about these or are more positive about them; generally, the new generations want to stay away from these traditional bodies. The concept of '*Gavkis*' and '*Bhavkis*' (kinship collectives) are taking a backseat due to many whistle blowers who bring to the notice of the state authorities the unjust and unlawful decisions taken by them in the informal role they have arrogated to themselves, of being at the helm of the village affairs.

There are certain threads that run parallel across the various castes studied. These people never benefit from the programmes offered by the government. This manifests a certain notion of citizenship in which certain sections exercise their citizenship rights only in terms of casting votes which may not be a conscious decision all the time. The caste panchayats in Maharashtra thrive on the fact that they provide access to some sort of dispute redressal, given their lack of access to formal courts of law. Moreover, they do not resort to inhuman punishments like stripping, physical assault or honour killings that have given a



brutal image to caste panchayats in states like Haryana, Gujarat, Uttar Pradesh and Tamil Nadu.

Another point of conflict between the two types of panchayat is the scramble for the resources. The panchayat can lease land and in turn can collect money for the development of the village, but when it comes to conflict with the CVCs, the lobbies seeking profits approach these CVC leaders and bypass the GP, thus causing a loss of income to the panchayat. Another striking case described by Lele, is that of the '*gavki*' deciding to auction the sand from the river bed using the money earned from this as a contribution to its funds inspite of objection raised by the GP. (Lele, 2001: 4703)

The jurisdiction of the caste panchayat and gram panchayat are different from the panchayats of the nomads. In the case of the nomads' caste panchayats, the question of jurisdiction is completely disjointed i.e., geographically the CVCs of the nomads do not share anything in common with the GPs, whether in terms of their territorial extent or the functions performed by them. In the case of other customary councils (*gavki*) and caste associations, there is an overlapping jurisdiction at the level of local governance, i.e. CVCs might comprise of the caste people of the same villages as the GPs, and moreover have interactions between the two kinds of institutions. In either case - whether jurisdictions are totally separate or overlapping, there is reason for concern regarding the effective functioning of the democratic local governance institutions. Thus the CVCs of the nomadic communities, have shown that caste panchayat do not play any significant role in the democratic participation in the local self governing bodies. Rather both these institutions are independent of the other, with hardly any sort of interactions. Thus the CVCs and PRIs functioned in exclusive domains. Nevertheless, these traditional institutions have no role whatever in

strengthening the democratic fabric at the local level. On the contrary, they only hamper the democratic processes and thwart the agency of the people.

Handling the formal legal systems effectively, curbing malpractices, deploying more professionals and skilled personnel to remove the backlog, and making the system more user-friendly would contribute to improving the conditions of the formal legal system. A study of the litigations shows how the litigants used the courts not so much for settling disputes as much to harass their opponents, to maintain local political dominance and to satisfy lost pride. (Cohn, 1965:105; AnanthPur and Krishna, 2006) The courts further lose when it comes to manipulative and instrumental tactics depleting the court's legitimacy and discrediting it further. (AnanthPur and Krishna, 2006)

Reform in this field would be meaningful only if the coexistence of these institutions is taken into account and a new hybrid solution is attempted at. Bringing legislation to destroy all these informal institutions would only create further turmoil in an already fuzzy scenario. Policy-makers should address these issues with utmost care keeping in view the cultural milieu of the nation and the historical legacy of social institutions.

Doing away with these informal institutions, presently existing along with the formal legal institutions, would only invite instability and anarchy into these villages. Though India has to a certain extent devolved the administrative arm to the grass roots with varying degrees, it still needs to work more and better and the judiciary has a long way to go in attending to this situation.

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## END NOTES:

1 I am using the term CVC as there are many other forms of caste related and self styled local bodies which, completely do not fall within the category of 'caste-Panchayats', which is just one among the many other customary institutions. There are some other informal village associations like the 'gavkis' and 'bhavkis', discussed later in the chapter which are clubbed with the CVCs. I have taken this term from Kripa Ananth Pur, who works on CVCs and uses it in her works on the State of Karnataka, which I found to be justifiable.

2 Countries like Indonesia, Bangladesh, Pakistan in Asia, South Africa, Tanzania, and some tribal communities in Africa, Peru, Ecuador in South America also have such customary practices.

3 In the formal courts of law the principles of equality, fairness and due process of law have been invoked and given the highest regard, on paper and explicit, however this is not the case with the CVCs whose decisions may defy all the existing standards of fairness.

4 The backlog of cases pending in the lower courts is to the tune of twenty million and thirty four thousand in the case of High Courts, and twenty one thousand six hundred in the Supreme Courts as on July 2000.

5 The concept of Gram Nyayalayas has been under discussion. They are the formal legal mechanisms at the Block/intermediary (Samiti) level. The proposal is to integrate these into the existing PRIs, though not at the cost of diluting the quality of justice. This plan would involve additional 2000 courts and 4000 judicial men to be recruitment as judges and 2.5 lakh lawyers. Legal aid lawyers were to be paid to assist these courts. This law was based on the 114<sup>th</sup> Law Commission Report of 1986, which was headed by Justice D.A Desai. Recently it was introduced as a bill on Gram Nyayalayas in the Rajya Sabha on 15th May 2007.

6 The Ministry of Panchayati Raj in June 2006, constituted an expert committee under Prof Upendra Baxi, which was given the task of framing a draft proposal, draft explanation about the bill and model rules and guidelines. The bill contains NPs to be constituted by elections with reservations to Women, SC and ST. The act also provides for a Nayak Sahayak, who would provide legal information to NP, submit report to the Zilla Parishad, which in turn reports to the State Government. Thus an account of the NP resolution of disputes is maintained. Participation of people in dispute resolution in the villages would simultaneously function with the Gram Panchayats. The other members of the expert committee were D. Bandhopadhyay, B.S Chimni, Sanjay Singh, Suneeta Ahmad, Vasuda Digambar, and Gagan Sethi.

7 The CVCs as an institution of empowerment was discussed by Kripa Ananth Pur in her works on the CVCs in Karnataka. These CVCs were instrumental in enhancing people's participation in the local levels of governance, by informing their respective caste/community people of the various programmes started by the government and also helping them avail those facilities. She defines the areas of interfaces where the CVCs and the GP. Her work has been discussed in greater details in Chapter Two (literature review of this dissertation).

8 This incident took place on the 29th September 2006, against a dalit family of Bhotmange, residing in a panchayat of majority Kunbis-Maratha sections. Trouble in the form of some casteist

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mob came upon this particular family resulting in the killing of all four members of the family except for the father who was not present at the time of the brutal carnage.

9 She was beaten up and abused by the seven upper caste men and two women, and finally stripped and paraded in her own village. One of the accused was the sarpanch of the village. It was believed that she visited the Sholapur town for her ongoing divorce proceedings, but the culprits thought that she was there to lodge complaints against them, so there was a threat to her life as well.

10 These are the de-notified tribes in Maharashtra.

11 The study of Kripa AnanthPur on Karnataka, reveals that the CVCs were quite effective in building up the participation of people in the local self governing structures. She defines the areas of interfaces where the CVCs and the GP. Her work has been discussed in greater details in Chapter two literature review of this dissertation.

12 Today Jejuri is a fast growing town. It has urban and rural sections; the urban areas come under the Jejuri Nagar Palika. The nomads were living in the urban section, near the bus station. Their settlements were not far from the Khandoba temple which can be viewed from their settlements.

13 These nomads have a fixed route when they wander from place to place. When they arrive at the village they report to the village headman of their arrival. After they exhaust the resources like the canes from the surrounding areas which was used for making cane baskets and articles from the village, they resume their journey to some other destination.

14 In Telugu which is the mother tongue of the nomadic community, the word *nya:yam* is used instead of panchayats, other wise used in general all over the country for local bodies involved in dispute resolving, though known by different names. *nya:yam* is also a Sanskrit word meaning law, justice, equity.

15 'gotra' is an exogamous clan whose members share patrilineal descent from a common ancestor.

16 Social boycott in these regions could mean literally cutting off relationship with the family who has been charged of supporting the actions otherwise not sanctioned by the CVCs, which would include denial of essential goods and articles including food and, not allowed to avail the services of a doctor, teacher and schooling.

17 Sex ratio in Haryana is 861/1000, where as the national average is 933/1000. Due to various reasons but obvious, i.e. selective female foeticide in this region, is the highest.

18 Nandiwallas in Marathi would mean people who go around with bulls.

19 Hayden refers the nomads as service nomads, because they live in the villages and provide services to the villagers.

20 Then the panchayat sits in a cleared place of packed ground called *caudi*, to decide the cases.

21 The caste guru would be a person from the Brahmin caste, he would be at the panchayat meetings of the nandiwallas, though his presence is needed, but could be made dispensable these

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days. This was a hereditary institution, which is dying down because the guru's succeeding generations were not in this field any longer.

22 Faced with a conflict they either exit or 'lump it' (accepting the actions of their opponents) unless they can garner some support of the villagers to their side, their economic adaptation does not permit them to engage in open disputes with sedentary people (Hayden, 1999: 132).

23 The Shah Bano Case came as turning point in getting justice to women caught up against the male domination in personal laws, in which the women had filed for the petition to receive alimony from her husband under Section 125 of Criminal Procedure Code. Though the case verdict was in her favour, the legislations that followed it reverted the case in favour of the personal laws.

24 Registered Medical Practitioner, i.e. a doctor without a professional degree in Medicine, but still holding license to treat with expertise that one commands in treating health related problems.

25 'Tamasha' is a folk art performance of Maharashtra.

26 Men in the nomadic community usually wear a waistcloth, a pair of drawers, a shirt called 'bandi' and a Maratha turban into modern trousers and shirts.

27 Women of the nomadic community generally wear a robes from the waist till the ankle, and a bodice, which is not permitted in the Vadar caste, they braid their hair and leave it at the back, Vadar women ties a knot at the back of the head.

28 A society that have its structures and institutions neither completely submerged in traditions or fused, nor completely modern with highly differentiated structures also known as diffracted, in Riggs formulation.

29 A form of ADR in Rwanda, which has restorative components of justice. It is a community based informal and ad hoc dispute resolving body, whose origin was pre-colonial times. Its revived version has been in use in the post genocide Rwanda. Its aim is restoring peace and social harmony. (Bolocan, 2004).

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Appendix I:

SURVEY QUESTIONNAIRE

- 1) Name & Profession:
- 2) Age of the respondent & Gender:
- 3) Educational status of the respondent:
- 4) Economic status of the respondent ('s family):
- 5) To which caste does (s) he belongs:
- 6) Where is the caste in the village hierarchy:
  - a) low b) middle c) high
- 7) Does his/her caste have any organization/ community?  
Y/ N
- 8) Does (s) he subscribe to any of the caste or community organizations,  
If yes which:
- 9) Does (s) he attend the Gram Sabha meetings:  
Y/ N
- 10) Does (s) he attend the Caste Panchayat meetings?
- 11) What is the level of participation in either of the panchayat?
- 12) Do they benefit him/her, if so to what extent?

- 
- 13) Does he know if the two panchayats are different /is there a difference in these two?
- 14) How often do these bodies meet and who all participate:
- 15) Which of the two is able to reach and deliver to the people in general?
- 16) What are the important functions of both of these local bodies?
- 17) Opinion of the respondent of the informal caste organizations:
- 18) Participation and periodicity of respondent in his caste meetings:
- 19) Benefits/Problems accrued being a member of caste organization:
- 20) Dispute resolving powers of these caste bodies, and obedience towards its decisions taken in such meetings:
- 21) In case of Non-Compliance and punishment of the C.P verdict:
- 22) Caste status of the leaders identified by the respondents in locality /caste community:
- 23) Does caste competition exist?  
a) Yes b) No
- 24) Voting trends in the locality to the Gram Panchayats:
- 25) How were the inter-caste relations in the village:

APPENDIX II



Map of India from, [www.mapsofindia.com](http://www.mapsofindia.com)

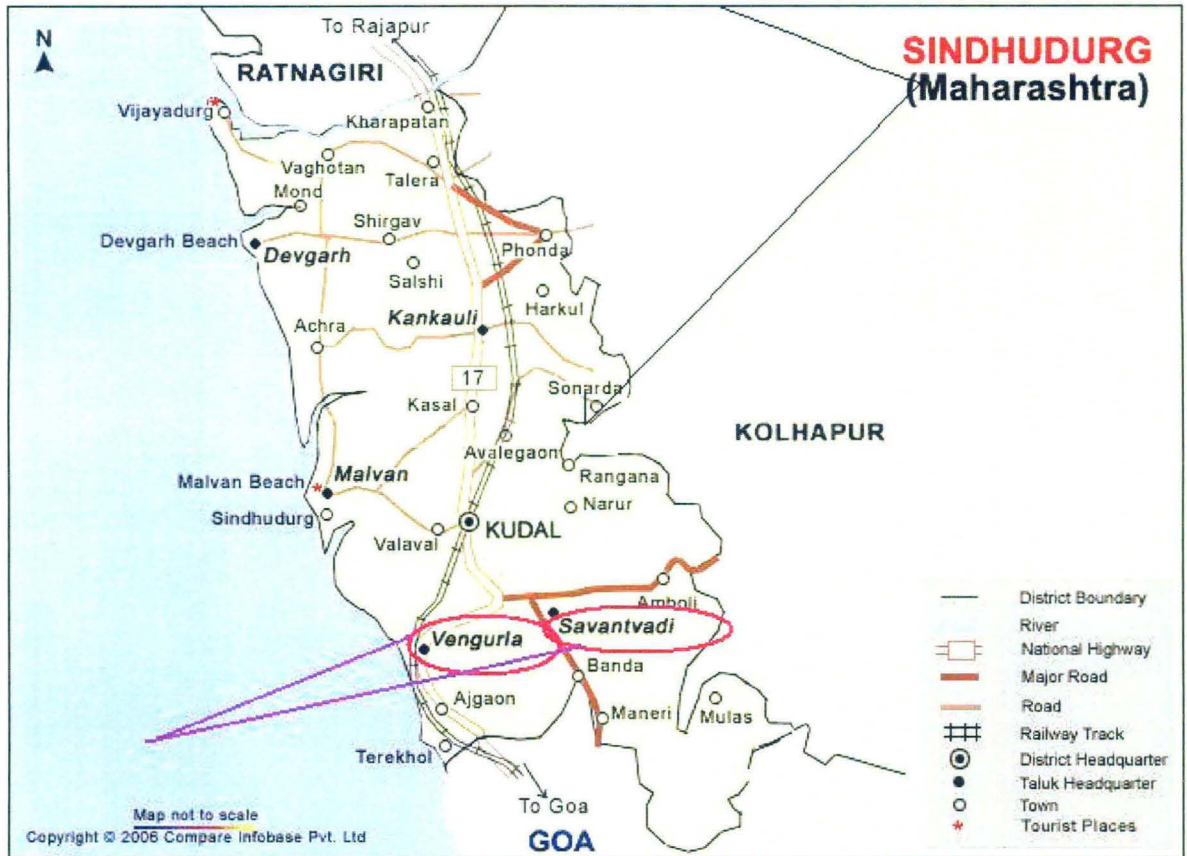


Map of the state of Maharashtra, [www.mapsofindia.com](http://www.mapsofindia.com)

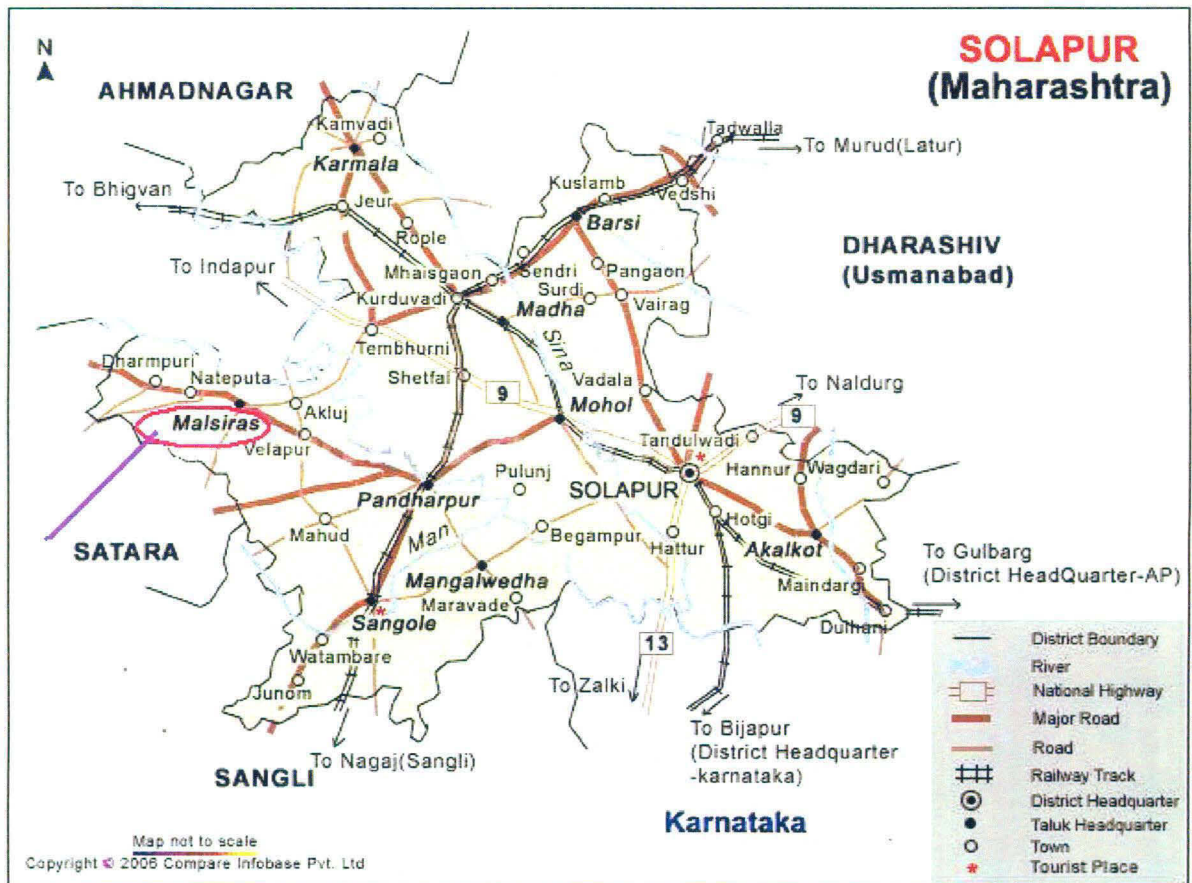




Map of Pune District, [www.mapsofindia.com](http://www.mapsofindia.com)



Map of Sindhudurg District, [www.mapsofindia.com](http://www.mapsofindia.com)



Map of Sholapur/Solapur, [www.mapsofindia.com](http://www.mapsofindia.com)