

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 6

2024

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Nyaya Panchayats in India

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ABSTRACT

In spite of the assurances of the Indian Constitution, the real-time picture of rural justice administration suggests otherwise. Nyaya Panchayat, which was centred on the Panchayat ideal of participatory grass-root justice, was widely used in India during the early years of independence. As we progressed through the 1970s and 1980s, the effectiveness of indigenous justice instruments decreased. The Parliament ultimately approved the Gram Nyayalayas Act, 2008, in aim to reestablish the indigenous form of dispute settlement system by learning from past failures. A look at the current Gram Nyayalaya System reveals that justice delivery in rural India has not changed much in the 11 years since its adoption, save from a dramatic shift from the Panchayat worldview. Thus, this paper focuses on the function of Nyaya Panchayats in the rural judicial system and compares pre-independence and post-independence settings. The study also examines the current Gram Nyayalayas in light of the 2008 enactment, focusing on their long-term viability in opposition to the Panchayat ideology. As a result of their investigation, the writers have now come up with appropriate recommendations in this area.

Keywords: Rural, Panchayat Ideology, Gram Nyayalaya, Nyaya Panchayat, Autonymity.

I. INTRODUCTION

The greatest way to deal with local issues and make important decisions is to use local solutions. Mahatma Gandhi's effect on India's post-independence period led to a transformation in the country's local governance structure, which was mostly influenced by traditional traditions of local governance. Amendments made it essential for each state to have rural and urban local governments and to have local elections every five years, once the 73rd and 74th amendments were passed. When this new three-tier system for local governance was established, it ensured that rural and urban municipalities had constitutional status, guaranteeing that their structure and operation were consistent across the country. Many of the provisions of these two amendments are similar in many aspects, but they differ largely in that the former relates to rural local government (also known as Panchayati Raj institutions or PRIs), while the latter applies to urban local governments. Tribal and forest areas in 10 Indian states are covered by

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the Panchayat Extension to Scheduled Areas Act, 1996, which extends the 73rd Amendment (with some modifications and exceptions) to these areas, excluding tribal areas in the states of Assam, Meghalaya and Tripura, which are governed by District or Regional Councils. Customary law, social and religious customs, and traditional management practises of communal resources are protected by these laws. This concept note will be dealing on how effective this particular system is by focusing on the present constitutional and legal framework. Also, another Question that though political decentralization has been successfully achieved through the establishment of local government bodies, the actual transfer of functions, finances, and functionaries to these institutions whether remains incomplete or not?

II. CONSTITUTIONAL STATUS OF NYAYA PANCHAYAT IN INDIA

Article 40 of the Constitution of India's Directive Principles includes the inclusion of panchayats. The soul of a republic is shattered if decentralisation and devolution are neglected by the Executive even after elections to the administrative bodies' floor-level are held, as is the case in Article 40. Thus, in order to achieve the goal of democracy, the States have been given the authority to create Panchayati Raj Institutions. The Constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities, and the other local authorities for the purpose of local self-government or village administration are contained in No. 5 in the State List of the Seventh Schedule. Laws governing Panchayati Raj are in place in a number of states. Despite this, these Panchayats were unable to perform to their full potential because of inconsistent and unreliable voting. Part IX of the Constitution was added by the Constitution Amendment Act, 1992, better known as the Panchayats Raj Amendment Act, in order to revitalise the Panchayati Raj institutions. Also, after 42nd Amendment Act of 1976, Article 39A was added to the Indian Constitution Article 39A specifies that each Indian state must ensure that the legal system promotes justice, based on equal opportunity, and that free legal aid is provided. The free legal assistance must be provided through suitable legislations, programmes, or any other means so that no citizen is denied the opportunity to achieve justice owing to economic or other disadvantages. Because no one should be denied justice for whatever reason, the States are obligated to ensure that in accordance with this Article. As the second most populous country in the world, India is impossible to secure justice for all citizens by relying on a few legal bodies. In order to offer justice at the district and village level, the Nyaya Panchayats and Lok Adalats have been set up to reach these areas. Further, Constitutional status has been bestowed upon village panchayats by the seventy-third amendment act of 1992. The panchayat system's judicial components are known as Nyaya Panchayats, and they are located at the very bottom of our judicial ladder. For the administration

of justice at the municipal or rural level, they have been developed.⁴

III. THE NYAYA PANCHAYATS' CONSTITUTION

Nyaya Panchayats are headed by a Sarpanch and a few panchai, each of whom has a certain role (generally it varies between 10 to 30). Individuals who are members of the Nyaya panchayat must be iterative and at least 30 years old in order to participate. Nomination and election are the foundations for this post.⁵

- *Nyaya panchayats have jurisdiction over local government*

It serves as a judge in both the civil and criminal arenas. A fine can be imposed on an accused for minor offences such wrongful restraint, theft, etc. Justice can be sought in civil actions, such as those involving the exchange of money or property. Such situations have a very low financial ceiling.⁶

- *Observance of nyaya panchayat procedure*

Avoiding delays and technological challenges is a primary goal of the trial procedure given out. As a result, Nyaya panchayats follow a highly casual and straightforward procedure. While the civil and criminal process statutes and the Indian Evidence Act do not apply to Nyaya panchayats, they have the authority to call witnesses and parties to testify or provide relevant documents or facts as part of their evidence. Instead of relying on courts to determine the truth, they might conduct their own investigations and impose penalties for anyone found guilty of violating the truth. All proceedings of the Nyaya panchayat are off limits to lawyers.⁷

IV. REASONS FOR THE FORMATION OF NYAYA PANCHAYAT⁸

Prior to this time, Nyaya Panchayats were unable to carry out their duties due to a lack of financial support, ambivalence toward providing even the minimum facilities for performing adjudicatory tasks, poor training of the lay judges, extremely limited jurisdiction [including petty criminal and pecuniary limited civil], which was concurrent with that of the regular court system; a lack of adequate sentence and enforcement powers; long delays in reaching decisions; social and political inequality. Therefore, following are the reasons for the formation of Nyaya

⁴ 1, R.S.RAJPUT, THE CONCEPT OF VILLAGE REPUBLICS AND SPRIT OF ARTICLE 40 54 (Permanent Black 1984).

⁵ MATHUR S.N., NYAYA PANCHAYATS AS INSTRUMENTS OF JUSTICE 44 (Institute of Social Science 1997).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ UPENDRA BAXI AND MARC GALANTER, PANCHAYAT JUSTICE: AN INDIAN EXPERIMENT IN LEGAL ACCESS , 343 , (Access to Justice 1979).

Panchayat:

1. Decentralization of power, or democracy
2. Easy access to the courts
3. Swift case resolution
4. It's an affordable court system.
5. Traditional village life is returning to its roots,
6. Local self-government and the judicial system
7. Reduced burden on civil courts.

(A) Advantages Of Using The Regular Courts Over The Nyaya Panchayats⁹

(i) For the courts, they are a relief since they take some of their responsibilities off of their shoulders. When it comes to dealing with the rising backlogs in court proceedings, they appear to have found a solution.

(ii) Villagers can get justice at their doorsteps thanks to these vigilantes.

(iii) They safeguard the traditions and customs of the area.

(iv) For the villagers, the Panchayat System has a tremendous educational benefit.

(B) Nyaya Panchayats Drawbacks¹⁰

(1) They are institutions rife with factions, run by laypeople. Caste, community, personal or political concerns play a role in the justice they give out. As a result, it is impossible to overlook the possibility of injustice.

(2) It has been observed that panchas are frequently corrupt, biased, and nasty.

(3) Because they are not lawyers, they are prone to making unreasonable and arbitrary conclusions.

(4) Rural India's caste system and social stratification cannot be ignored, and their impact on the administration of justice cannot be underestimated. It is a retrograde step to revert to the pre-existing manner of administering justice by entrusting conflicts to a group of ordinary laymen who are uninformed of the complexity of life and unfamiliar with legal principles and procedures, according to the 77th Law Commission report.

(5) A majority of the Nyaya Panchayat's members were unenthusiastic about the idea of the

⁹ *Ibid.*

¹⁰ *Ibid.*

Nyaya Panchayat continuing. On the other hand, it advocated for the appointment of independent judges to rule over the Nyaya panchayat, arguing against the consolidation of judicial and executive powers in one entity

(6) The state government has the authority to delegate functions to local governments. To put it another way, for a variety of reasons, states don't delegate enough functions to local governments, which has a negative impact on efficiency and effectiveness. States have been known to set up their own mechanisms to implement programmes in agriculture, health, and education, which undermines the constitutional responsibility of local governments. In addition, many local governments lack the essential support structures to carry out their duties. According to the 74th amendment, a District Planning Committee must be established in each district to combine and integrate all panchayat and urban local body development plans. However, in nine states, District Planning Committees are ineffective, and in 15 states, they have failed to produce integrated plans.

(7) Local governments' secretariats are woefully understaffed and undertrained, making it impossible for them to offer the necessary assistance to elected officials. They need to be bolstered by the training of current workers and the hiring of new employees. Even while local governments have the authority to hire employees, they are unable to do so because of inadequate funds.

V. SUGGESTED APPROACHES¹¹

114th Report of the Law Commission declared that "with the safeguards meant to ensure efficient functioning and improvement of the Nyaya panchayats." These courts have the ability to play a vital role in the country's justice system."¹² According to the model, this is how it works:

- (i) There should be one judge and two lay judges in a panchayat of the Nyaya school. Legally trained judges should be appointed to serve as panchayat judges in these cases, which have been established for this purpose.
- (ii) With this in mind, the state will establish the Panchayati raj cadre of judges to choose legally trained Nyaya panchayat judges.
- (iii) There should be no election of lay judges. The Gram Nyayala would have jurisdiction over the villages of a Taluka/Tehsil.

¹¹ Balwantrai Mehta Report (1957), Asoka Mehta Committee (1978), the 14th Law Commission report (1959), Rajagopaul Study Team (1962).

¹²Law Commission of India: 14(2) Report (1958), p. 874.

- (iv) It would have no limit on the amount of money it could handle. When it comes to criminal cases, the criminal justice system should be comparable to that of a first-class magistrate. It would be simple for the Nyaya panchayat to dispose of the instances. Indian Evidence Act, 1872 is not to be used in its procedure. The Code of Civil Procedure of 1908. There should be no use of the Indian Evidence Act, 1872 in criminal proceedings, according to the Code of Criminal Procedure, 1973. Nyaya panchayats should have the option of hearing legal arguments from the public.
- (v) The decisions of the Nyaya panchayats will not be appealed in civil disputes. To address legal flaws that may have affected the Nyaya panchayats' decisions to district courts, there may be the possibility of a revision petition.
- (vi) Nyaya panchayats' decisions on substantive sentences of imprisonment would be appealable to the sessions courts in criminal cases.
- (vii) There should be a casting vote for Sarpanch or Presiding Officer of Panchayat Court for each party, according to Civil Justice Committee's recommendation.
- (viii) If two people from the same village can't come to an agreement, a third option is to bring their issue before the Panchas from another community.
- (ix) Nyaya Panchayats can be formed by a group of villages that are all located within a short distance of each other. When it comes to the case or the conflict, the Panchas from another village will be able to deliver justice.
- (x) Even though the Nyaya Panchayat is regularly inspected by the Tehsildar/Sub Divisional Officer or the District Munsif himself, the proceedings of the Nyaya Panchayat shall be free of caste/faction concern. An appeal to the Munsif should be available if any party is dissatisfied with the ruling. In order to keep an eye on the Panchayats' operations, such a provision should exist.
- (xi) Having the power to transfer a case from a Panchayat to the District Munsif ensures impartiality. Legal action could be taken by an individual who feels that he or she is being denied due process in his or her local Panchayat case. Nyaya Panchayats will benefit from this provision, which will serve as a good check on their operations and performance.
- (xii) To strengthen the 2009 NYAYA PANCHAYAT BILL, here are some specific recommendations for amendments. In 2009, it was demonstrated that the Nyaya Panchayats have all of the basic characteristics stated. In conformity with its letter,

spirit, and mandate, the Bill implements all provisions of the Constitution. The Indian Constitution. In its current form, the Bill is a solid piece of legislation. As a result of this, an effort is made to identify particular examples in a distinct section proposals for Nyaya incorporation provisions and revisions. Strengthen the Panchayat Bill by passing the Panchayat Bill, 2009. These are the suggested changes. *“A No-Confidence motion against the Nyaya has been added to the amendments Proposals aimed at strengthening provisions in circumstances where Nyaya Panchas may occur in Panchayats remain absent from any discussion of matters pertaining to the Nyaya Panchayat; 'Preventive Jurisdiction'; Provision underlining the necessity of Disciplinary action against Nyaya Panchayat members who defy their orders; Intensifying Mechanisms for Dispute Resolution within the Panchayat; and In order to train Pramukh and Panchas, the government has made provisions for this.”*

Mostly, the recommendations so suggested in the 114th Report of the Law Commission of India was attempted to transform into reality by way of enacting the **Gram Nyayalayas Act, 2008**. Where on one hand, the proposals regarding mobility and frequent site visits were included in this Act, the concept of ‘participatory justice’ was completely excluded from the purview of the Act. Therefore, a quick analysis of the Gram Nyayalayas Act clearly evinces not only the departure from the erstwhile Nyaya Panchayat system but also the Recommendations moved forward by the 114th Law Commission Report of 1986.

VI. ANALYSIS AND CONCLUSION

It is likely that Panchayats have been administering justice in villages for as long as the villages themselves. It is possible to rehabilitate rural areas through changing the mindset of rural people, particularly those who have been marginalised. If they don't think of themselves as the foundation of the system, they'll be missing out on a lot. To do this, they must become active participants in decentralised government and planning as well as knowledgeable of the rules that govern their lives. While there is great potential for growth at a grassroots level, a lack of understanding and manipulation of the masses by local elites are preventing the most needy rural people from reaping the advantages of this progress. Government in India today has the problem of making public decision-making more democratized in order to mobilize and employ public resources for the benefit of the general people. In practice, the problem for 'governance' in India is to shift to new standards. An entire culture shift is required in Indian government from a system of one-way accountability to the state to a system of mutual accountability to

citizens. To relocate 'government to where people matter in India,' such a shift, however difficult and unpopular, must be made. Regardless of the degree of decentralization of government, effective rules or regulations are required. There must be a better organization of the main institutions that make, interpret, and enforce laws in order for decentralization to work. The court system may be the best place to begin. Democracy, which allows citizens to replace their representatives on a regular basis and readily, will be more effective if the court operates smoothly and independently.

Working together, the law and democracy are necessary for accountability. The many benefits of the Nyaya Panchayats system, are numerous, and such a system would considerably enhance access to justice for everyone, including those hitherto denied effective access. Justice would be administered in accordance with the Nyaya Panchayats system, which would ensure public participation. Instilling confidence and alleviating apprehensions about the judicial systems, the Nyaya Panchayats' informal atmosphere, conciliatory approach, use of local languages, and lack of procedural and evidentiary technicalities, as well as their adherence to local custom and tradition, would alleviate many of the British judicial system's shortcomings. The rationalization for the Nyaya Panchayats system must be taken into account when making this recommendation. First, the Nyaya Panchayat as a revival of traditional village life must be abandoned. For one thing, Indian society is extremely skewed and culturally diverse. A nationwide plan imposed on the villages that is not designed and structured by each village in accordance with its own unique traditions and needs will fail to achieve its goal of reconstructing traditional village life. If only ordinary courts were extended to village level, without a simplification of procedure and an inquisition-like judicial approach, it would not be sufficient. Due to costs, anxieties, etc., many individuals would still be denied access to justice even if the caseloads of higher courts were reduced by a certain percentage. The only motivation for implementing a Panchayati system of justice is to ensure that all inhabitants of India have equal access to justice. Nyaya Panchayats across India could be better served by creating and implementing an all-India plan for justice based on the particular model of justice (using either nominated or elected lay judges) with simplified procedures and the use of a non-adversarial, inquisitorial judicial approach, exclusive and sufficient jurisdiction, and adequate funding. Nyaya Panchayats must, however, be protected against the influence of the land-owning elites. Women, scheduled tribes, and lower castes would have priority in running for office if the elective were to be implemented. No criminal records or communal or casteist backgrounds would be required, nor would there be any income or property constraints. Similarly, if the nominative technique is employed, then nomination eligibility requirements should be

established. There would be less problems than there were with the previous, ineffectual system of Nyaya Panchayats if it were implemented in this manner.

VII. REFERENCES

- The Tamil Nadu Village Courts Act, 1888, No. 1, Acts of Tamil Nadu State Legislature, 1889.
- Law Commission of India, 14th Report: Reform of the Judicial Administration, Ministry Of Law, Government Of India, 3, p. 874 (1958), <https://lawcommissionofindia.nic.in/1-50/Report14Vol2.pdf>.
- The Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).
- The Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908 (India).
- The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
- Ministry of Law and Justice, Central Assistance towards Recurring and non-recurring expenditure for establishing and operationalizing 42 Gram Nyayalayas in the State of Andhra Pradesh-regarding, Government Of India (Jan. 21, 2021), <https://doj.gov.in/sites/default/files/GN%20Sanction%20Andhra%20Pradesh.pdf>.
- Ministry of Law and Justice, Establishing Gram Nyayalayas by the State Governments- General guidelines for central assistance to be provide to the States, Government Of India (Dec. 16, 2009), https://doj.gov.in/sites/default/files/gmn_1.pdf.
- Ministry of Law and Justice, Continuation of the Scheme for Establishing and Operationalising Gram Nyayalayas from 01.04.2017 to 31.03.2020-Regarding, Government Of India (Oct. 27, 2017), <https://doj.gov.in/sites/default/files/GN%20cont.%20order.pdf>
- Ministry of Law, Report of the Study Team of Nyaya Panchayats, Government Of India (Apr., 1962), <https://indianculture.gov.in/report-study-team-nyaya-panchayats-1962>.
- C.S. Meschievitz, M. Galanter, In Search of Nyaya Panchayats: The Politics of a Moribund Institution, 2 *The Politics of Informal Justice* 47, 61 (1982). 22 Id. at 57, 70.
- Law Commission of India, 114th Report: Gram Nyayalaya, Government Of India (Aug. 12, 1986) <https://lawcommissionofindia.nic.in/101-169/Report114.pdf>.
