

NYAYA PANCHAYAT: THE MOST NEGLECTED ASPECT OF THE PANCHAYATI RAJ IMPLEMENTATION IN INDIA

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Abstract

Nyaya Panchayat is the most neglected aspect of the Panchayati Raj implementation in India. 73rd Amendment doesn't even have a passing reference to this ages-long indigenous dispute resolution forum. In the formal Indian legal system, due to British-style methods, procedures and practices of court, getting justice becomes an expensive, long-term and cumbersome process. It is only the institution of Nyaya Panchayat that can provide quick and cheap justice to the poor villagers at the doorstep and can create a situation where the geographical and mental distance between the institutions of justice and the villagers is reduced. A formal court of law far away from the village also leaves room for false evidence. It is only natural that the members sitting in the local Nyaya Panchayat who are familiar with the local customs, systems, customs, attitudes, values, and details, can compare the evidence realistically and fairly. Nyaya Panchayats as an institution has the potential to reshape our legal culture by making it more 'people-oriented'.

Keywords: Indian Legal System, Nyaya Panchayat, Indigenous, Decentralized

INTRODUCTION

With differing degrees of success, India's judicial system has seen numerous ups and downs in the 75 years since the country's independence. Over this time, many diagnoses and remedies for the challenges have been proposed. Some viewpoints contend that the primary problem is a backlog of cases and delays, which can only be cleared up by increasing the court's capacity. On the other hand, because the Indian legal system was created by the British colonial government, some people have criticized it for being "alien". This criticism goes on to say that the only way to resolve disputes is to return to "indigenous" methods rather than making superficial changes to the current legal system. Though similar ideas of "indigeneity" have occasionally influenced discussions about legal system reform, India's formal court system hasn't changed much since independence. The fact that concepts of "traditional," "indigenous," or conflict resolution have come up in various reform attempts attests to their continued appeal among India's legal policy establishment. Though there are plenty of examples, Nyaya Panchayats are perhaps the most well-known of these platforms.

Brief Historical Background of Nyaya Panchayat:

Village-level adjudication is not new in India. A panchayat is a meeting, council, or court consisting of five or more members of a caste or village who get together to resolve conflicts or set group guidelines. "The coming together of five persons" is the meaning of the word panchayat. The villagers trusted the members of this panchayat and were accustomed to blindly following their decisions. This panchayat was established by the locals themselves. They were intended to provide a decentralized, approachable, and somewhat individualized means of dispute resolution for those residing in rural areas.

Post-independence Decline of Nyaya Panchayats:

The popularity of Nyaya Panchayats began to wane under British rule. Several local panchayats lost their power, the legal profession emerged as a major force in the social and political upheavals of the late 19th and early 20th centuries, and the volume of court cases rose. Even though, following independence, several speakers in the Constituent Assembly—chief among them M.K. Gandhi—argued that the British Legal System should be abandoned in favor of a decentralized, unofficial framework based on "indigenous" principles, in the end, the Constituent Assembly supported preserving the current legal structure. A thorough hierarchy of courts, with the Supreme Court of India at the top and the district judiciary at the bottom, was eventually mandated by the Indian Constitution. Nyaya Panchayats were established by democratic governments in several states during the Indian independence era. However, by the late 1970s, these forums had virtually vanished from the majority of the states in which they had been established. The 73rd Constitution Amendment Act, 1993 did not include the provision of justice as a function of Panchayati Raj Institutions within the heads specified in the Eleventh Schedule of the Constitution. A few Indian states, namely Bihar, Himachal Pradesh, Punjab, Uttar Pradesh, and West Bengal amended their previous Panchayati Raj Acts or included

corresponding provisions for Nyaya Panchayats in their new Acts after the 73rd Constitutional Amendment Act. Although the states of Andhra Pradesh, Gujarat, Haryana, and Karnataka had such provisions prior to the 73rd Amendment, they did not include any provisions for Nyaya Panchayats in their Panchayati Raj Acts following the amendment. While several states have statutes mentioning Nyaya Panchayats, it appears that only Himachal Pradesh has continuous and operational Nyaya Panchayats in practice. The District and Taluka courts were for a long time the only avenues through which rural litigants could access state forums for the resolution of disputes.

Reasons for failure of Nyaya Panchayat:

Despite being an effective dispute-resolution forum for the people of rural India Nyaya Panchayat has certain inherent deficiencies that have also proved to be reasons for its failure in India.

- 1) Persons with resourcefulness or courage who can do the work of justice can perform as members of the Nyaya Panchayat but if they do not have knowledge of the principles and procedures of law, justice cannot be done.
- 2) Due to factions and dissensions in the villages, impartial justice cannot be delivered by elected Nyaya Panchayats.
- 3) Elected members of the Nyaya Panchayat are unwilling to displease the village elites.
- 4) The poor parties do not trust the elected Nyaya Panchayat due to the above reasons.

Revised Version of Nyaya Panchayat:

To overcome the above deficiencies of the then Nyaya Panchayats, the Jinabhai Darzi Committee constituted by the Government Gujarat in 1972, recommended the formation of a revised version of the Nyaya Panchayats as follows:

- 1) A Nyaya Panchayat should be constituted for each village.
- 2) The taluka-level judge sits as the chairman of this Nyaya Panchayat. (The Ashok Mehta Committee also made a similar recommendation in 1978.)
- 3) Two members, one representative elected by the Taluka Panchayat and one representative elected by the concerned Gram Panchayat, shall sit as public members.
- 4) The said representative of Taluka Panchayat should possess Matriculation (SSC) or its equivalent educational qualification. The gram panchayat representative should be at least a person who can read and write.
- 5) Among the above public representatives one person must be from SC/ST caste.
- 6) Statutory constitution of the conciliation commission.
- 7) To ensure that the matters referred by the Nyaya Panchayat to the Conciliation Commissions come under its purview.

Necessity and Utility of Nyaya Panchayat:

We are aware that getting access to the official legal system can be challenging due to several factors, including far-off places that need expensive travel, the challenge of hiring an attorney, and the time it takes to work through the system to obtain justice. Getting prompt, simple, and reasonably priced justice close to one's residence is crucial for common and impoverished people. This was met by India's pre-independence traditional legal institutions. Strong voices have consistently maintained, since Gandhi, that the British-inspired legal system, with its focus on adversarial litigation, is not appropriate for the Indian people's historical inclinations for straightforward, conciliation methods. The "village panchayat" is often cited as the best indigenous dispute resolution mechanism appropriate for Indian civilization. In Gujarat, the Jinabhai Darjee Committee had to suggest fundamental reforms in the Panchayati Raj system, so it also made a thorough study of the Nyaya Panchayats. This Committee unquestioningly accepted the necessity and usefulness of Nyaya Panchayat. The Jinabhai Darji Committee has explained this utility in the following words:

“The justice of the formal court of law in small matters is more costly to the village men than the cause of the dispute. Justice is also becoming delayed and long-term in terms of British-style methods, procedures and practices of courts. Courts usually have proceedings conducted by lawyers. Hence such justice becomes expensive and long-term. But the institution of Nyaya Panchayat can provide quick and cheap justice to the poor villagers at the doorstep and it can create a situation where the geographical and mental distance between the institutions of justice and the villagers is reduced. A court of law far away from the village leaves room for false evidence. It is only natural that the members sitting in the local Nyaya Panchayat who are familiar with the local customs, systems, customs, attitudes, values, and details, can compare the evidence realistically and fairly.¹”

¹ Jinabhai Darji Committee Report (Page No. 221) as cited in *Post-73rd Constitutional Amendment Panchayati Raj in India* by Ramesh M. Shah & Dr. Baldev Agja (Ahmedabad: University Granth Nirman Board)

One definitive way of conceiving Nyaya Panchayats is that they are local institutions, staffed by local community members, and answerable to local attitudes and locally defined needs. In September 1972, the Jinabhai Darji Committee submitted its report to the Government of Gujarat. Accepting some of the recommendations of this committee regarding Gram Panchayat, Taluka Panchayat and District Panchayat, the government took some organizational and administrative steps but did not even touch the recommendation regarding Nyaya Panchayat. Act, 1993 when passed through the Legislature abolished the institution of Nyaya Panchayat altogether.

"Disputes" in village societies also refer to something beyond simple court cases. In the past, ethnographers have placed disagreements within the larger social contexts of politics, kinship, and religion, uncovering deeper levels of significance than what first struck onlookers as disagreements between two parties. Thus, it is correctly said that a description of a dispute's entire social context, including its origin, subsequent attempts to manage it, and the parties' relationship thereafter, is necessary for an adequate account of the dispute. This relatively wider definition of scope also involves a shift in focus away from judge – (and judgment)- oriented accounts of the character and function of dispute settlement². An overly legalistic approach is detrimental to justice. In contrast to the British legal system, which consistently determines that one side is correct and the other is incorrect, an institution such as the Nyaya Panchayat allows for greater room for negotiation and compromise between the parties. Shri Rasiklal Parikh Committee on Democratic Decentralization of Gujarat has told the truth in paragraph 33 of its report:

“There is a fundamental difference between Nyaya Adalat and Nyaya Panchayat. The Court of Law has to give justice based on the information and evidence presented to the court after listening to both the parties, their witnesses, or lawyers. The parties, whether they have sufficient means or not, try to get justice in their favour, and are impoverished by spending on fees in the process. The judgment of the court is always in favor of one party and against the other party. This results in no settlement between the two parties. In some cases, more bitterness and sometimes venom between the parties is created and nurtured. The Nyaya Panchayat is not to rely on mere hearsay or presented information. However, due to access to the details of the merits and demerits of the dispute and the local information, it is more convenient for it to settle the dispute properly. The real significance of the Nyaya Panchayat lies in the fact that the important function of a Nyaya Panchayat is not merely to give judgment but to bring about a settlement between the two parties as far as possible. Moreover, Nyaya Panchayat is an excellent means of imparting education to the villagers. The value of creating awareness and knowledge among the villagers should not be underestimated. Also, the litigants and witnesses who are mostly agriculturists can conveniently attend the courts and thus there would be no interference with agricultural activities in the village.³

Revival of Interest in Strengthening Nyaya Panchayats:

Improvement of Access to and Administration of Justice to All Citizens of India is one of India's constitutional ideals and the mandate of the government of India. In the Constitution of India, we take pride in achieving the ideal of Justice for All Citizens of India. The Preamble to the Constitution of India speaks of the determination to ensure Justice for all the people of India. Justice is defined or elaborated as Social, Economic, and Political. Perhaps more important than any other fundamental principle is the principle of justice. Justice stands above all other fundamental principles of freedom, equality, and fraternal brotherhood. With the inclusion of Article 39a in the Constitution of India by the 42nd Amendment Act of 1976, many jurists and sociologists are now of the opinion that the government should take immediate action to activate Nyaya Panchayats, as it may not be possible to make access to justice easier and faster in rural areas. Article 39A deals with the principle of equal justice and provides free legal aid. It also provides free legal aid for the poor and weaker members of society. In particular, it shall provide free legal aid through appropriate legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen due to economic or other disabilities. It guarantees justice for all based on equal opportunity. In this regard, the Law Commission of India's 114th Report from 1986 makes the following observation, which is noteworthy: In particular, the State shall provide free legal aid by appropriate legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to anyone. Article 39A of the Indian Constitution directs the State to ensure that the operation of the legal system promotes justice, based on equal opportunity. Difficult access to law is the term used to describe the denial of justice due to financial and other forms of disability. We are now required by the Constitution to eliminate barriers to justice in a methodical way. Today, improving access to justice is a fundamental duty for all government agencies. In light of the new article 39A's mandate, Article 40, which instructs the State to establish village panchayats and grant them any necessary powers and authority to enable them to operate as units of self-government, must be viewed again.⁴

² Comaroff, John. and Simon Roberts. (1986). Rules and Processes: The Cultural Logic of Dispute in an African Context, University of Chicago Press, at p.13-14.

³ Rasiklal Parikh Committee Report (Para. 3-33) as cited in *Post-73rd Constitutional Amendment Panchayati Raj in India* by Ramesh M. Shah & Dr. Baldev Agja (Ahmedabad: University Granth Nirman Board)

⁴ See Chapter V, Para. 5.3 114th Report of the Law Commission of India, August 1986

Gram Nyayalayas Act, 2008 and Its Limitations:

Though they differ greatly from Nyaya Panchayats and have more in common with the formal court system than any vague notion of indigenous dispute resolution, Gram Nyayalayas is the Indian State's most recent attempt to give rural litigants access to village-level judicial institutions. The Act became operative on October 2, 2009. The Gram Nyayalayas Act, 2008, establishes Gram Nyayalayas as the nation's lowest court for rural areas, operating at the block level. The creation of Gram Nyayalayas was first suggested by the Law Commission of India in 1986 in its 114th Report. However, A close analysis of the Law Commission of India's 1986 report on Gram Nyayalayas alerts one to their stated desire to move away from the Nyaya Panchayat model. The Gram Nyayalaya did not have a democratic election component, in contrast to the Nyaya Panchayats. The Law Commission recommended a model of a rural court with a three-member panel led by a judicially trained officer and two lay judges, despite emphasizing the necessity for those resolving disputes to be aware of local conditions and culture. The District Magistrate and the District and Sessions Judge would serve on a panel that would select the lay judges, while the judicial officer would be chosen from the pool of judges that each State maintained. Nevertheless, the Law Commission seemed to be persuaded of the advantages of several indigenous aspects of Nyaya Panchayat. The Law Commission suggested doing away with the Indian Evidence Act and the Civil Procedure Code to create a more straightforward process for civil cases. The Criminal Procedure Code would still be in effect in criminal cases. Attorneys were not to be excluded. Notably, Gram Nyayalayas were intended to be mobile, meaning they would be dispatched to the locations of personal conflicts. This was supposed to be a fix for the evidence collection issue. Additionally, the majority of Nyaya Panchayat laws specifically prohibited the presence of attorneys since they were thought to encourage frivolous lawsuits and vexatious claims. The Gram Nyayalayas Act, in sharp contrast, does not attempt to prohibit the presence of legal counsel. Gram Nyayalayas' mandate includes adversarial adjudication in full. However, only 208 of the 5000 planned Gram Nyayalayas operate nationwide, indicating that the Act has not been properly enforced. The primary reasons for the non-enforcement are budgetary constraints and the reluctance of lawyers, law enforcement, and other government representatives. It's still unclear if the Gram Nyayalayas Act of 2008 is effective. The political will to create the required infrastructure will be a major factor in this Act's success. In addition, many people expressed their opposition to the Gram Nyayalaya Bill and support for returning to "traditional" practices. Giving the elected Gram Panchayat the authority to hear disputes was a widely supported proposal. Notably, these attempts were a failure.

CONCLUSION

The legislature understood from the beginning that Gram Nyayalayas represented a departure from traditional procedures rather than an attempt to bring them back. Therefore, easy access to justice institutions through village-level justice delivery should be a prerequisite if distributive justice is to become a reality for those who currently share stark deprivation and poverty. A low-cost, expeditious mediation and arbitration forum that adheres to the unwritten principles of natural justice—where justice, not law—is the operative word—is the only way to achieve this. The only solution to accomplish this ideal is to revive the time-tested, age-old, village-level dispute resolution forums of Nyaya Panchayats.