

**THE ROLE OF NYAY PANCHAYAT IN THE JUSTICE DELIVERY
SYSTEM IN INDIA**

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Abstract

The concept of Nyay Panchayat is one of the Dispute Mechanism through local self-government will get justice in door steps and also without delay of justice. This can be more correct method of adoption India than any other country of the world. It was witnessed from the historic times regarding establishment of such local self-government in different village level and this concept was always there among the native to the Indian people. Municipal governments have always been the successful method in India from flourished in India olden times. But it was seen that such local government was always subjected to influence of casteism or rich people due to which it maximum time provides biased decision. Through this paper the researcher has brought for a effective mechanism and also adoption of proper procedure with involvement of people who are directly connected with the justice delivery system with proper knowledge and there should criteria setup for serving the local self-government such that no justice is provided with influence and injustice is done to the vulnerable section of people in society.

Keywords: *Khab Panchayat, Local self-government, Nyay Panchayat, Nyay Panchayat Bill 2009, Panchs, Panchayati Raj*

Introduction

The Justice Administration system of India is rich from the historical times. The concept of NYAY Panchayat existed during the time of Kautilya's Artha Shastra during the ancient times. NYAY Panchayat is a grass-root level of justice delivery system in India. In the contemporary justice administration system, NYAY Panchayat finds its place in the bottom strata of court system: the Supreme court being the highest court in the country, the High Courts in the states

are the highest of courts of appeals in the State level, which are above the lower judiciary, i.e., the courts of sessions, judicial magistrate's court. NYAY Panchayat fall in the lowest strata in this regard which are basically 'village courts. They are not headed by trained judicial magistrates. They are headed by elected representatives from among the villages. Generally, the Sarpanch heads the NYAY panchayat. In the ancient and medieval periods, the post of Sarpanch used to pass on a hereditary basis but today post is given to the elective representative. NYAY Panchayat is not a regular court, nut a village level justice delivery body where resolution of disputes happens in the presence of five elected representatives who are known as panchas (five). This body is headed by Sarpanch who is assisted by Sahayak Sarpanch. Generally, the dispute resolution mechanism follows alternative dispute resolution mechanisms including mediation, conciliation etc, but in a very informal way. There is no presence of lawyers in such NYAY Panchayats and these NYAY Panchayats may try only petty cases.

Origin, evolvement and constitutional validity Nyay Panchayat in India:

The concept of Panch Parmeshwar prevailed in India from the ancient times and it is deep-rooted in Indian History but after the advent of British rule in India the system has been stopped and not in practice. . After Independence, the framers of the Constitution of India incorporated Part IV Article 40 of the Constitution relating to Panchayati-Raj which states "that the state shall take steps to org-anise village panchayat and endow them with such power and authority as may be necessary to enable them to functions units of self government"¹. With it Article 39-A should also be read which states that providing free legal aid for securing justice. The concept of Panchas in the Criminal Justice Administration was a sound policy but it does not seem expedient to entrust judicial functions to the layman as they were completely ignorant about the intricacies of law and its procedure. Since independence in 1947, the government has taken steps to modernize NYAY panchayat system by introducing Panchayat Raj Act, 1947.

Composition of a Nyay Panchayat

(1) There shall be constituted a Nyay Panchayat for every Village Panchayat area or a group of Village Panchayat areas depending on the population and area, as may be notified by the State Government.

¹ *Criminology, Penology Victimology by Prof. N.V. Paranjape*

(2) Nyay Panchayat shall consist of five Panchas who shall be elected by the voters enrolled in the voter's list of that Village Panchayat as prescribed by the State Government and there shall be reservation of seats as nearly as may be fifty percent of the total number of seats reserved for Scheduled Castes and the Scheduled Tribes shall be reserved for women belonging to the Scheduled Castes and Scheduled Tribes.

(3) Nyay Panchayat shall continue for five years from the date appointed for its first meeting and no longer and as far as practicable, shall elections to the Nyay Panchayat be held along with the elections to the Village Panchayats concerned.

(4) No Panch shall participate in any meetings or proceedings of a Panchayat at the Village, Intermediate or District level.

(5) Every Panch shall hold the office of Nyay Panchayat Pramukh for a period of one year, by rotation, on the basis of seniority by age. The eldest shall be elected in the first meeting of the Nyay Panchayat as the first Nyay Panchayat Pramukh.

(6) The dispute brought shall be heard and determined by a bench of the Nyay Panchayat, consisting of the Nyay Panchayat Pramukh and two Panchas selected from amongst the Panchas of the Nyay Panchayat by rotation and two other persons from the disputed parties.

(7) Offences against women and disputes relating to custody and maintenance of children and dependents including divorced spouses, brought before the Nyay Panchayat shall be heard and determined by a bench of the Nyay Panchayat, consisting of the Nyay Panchayat Pramukh and two elected women Panchas and two other persons not otherwise disqualified from being elected as a Panch from amongst a panel of names suggested by the parties of the dispute.

Qualifications of Panchas:

Every person who is enrolled as voter in the Nyay Panchayat area, shall, unless disqualified under this Act or any other law for the time being in force and who has attained 25 years of age shall be qualified to be elected as a Panch.

Disqualifications of Panchas:

(1) a person shall be disqualified from being elected and from being a panch.

(a) he is so disqualified by or under any law for the time being in force for the purposes of election to the state legislatures;

(b) he has been convicted of an offence and awarded imprisonment for a term exceeding six months; (c) in an enquiry by the presiding authority he has been found at fault in the discharge of his duties by reason of misconduct, negligence or dereliction of duty or for refusing to perform any function expected of him in his capacity as a panch or Nyay panchayat pramukh.

(2) a disqualified panch shall be suspended immediately and shall not be eligible for reelection until the expiry of 5 years from the date of his disqualification.

(3) the decision of the presiding authority on disqualification shall be final and binding

Limitation:

This section strictly states that no Panch, Sarpanch or Sahayak Sarpanch shall take part in the trial of or inquiry in any case to which he or any relation, employer, employee debtor, creditor or partner of his is a party or in which any of this is personally interested. They are not eligible to pass penal sentences as we get to see in Penal Codes.

Function:

(1) The Nyay Panchayats shall follow persuasion, conciliation and mediation as means to resolve disputes.

(2) The Nyay Panchayat shall have powers to regulate its own procedure including the place at which it shall have its sittings. The Nyay Panchayat shall not be bound by the procedure laid down by the Code of Criminal Procedure or the Code of Civil Procedures, the Provincial Small Cause Courts Act, 1887 or any other law for the time being in force but shall be guided by the principles of natural justice.

(4) The Nyay Panchayat shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, while trying a suit, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath: Provided that no women shall be compelled to appear in person before the Nyay Panchayat, and she may be examined on commission in the manner prescribed;

(b) requiring the discovery and production of documents or other records;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions

(5) The Nyay Panchayat shall not inflict a sentence of imprisonment whether substantively or in default of payment of fine.

Powers and jurisdiction of Nyay Panchayat:

NYAY Panchayat can take up both criminal and civil matters but these must be of the nature of petty cases. They may use sanctions like

- social boycott,
- Fine,
- order to return of the stolen item etc

Jurisdiction:

This statute indicates that all criminal cases triable by a Nyay Panchayat shall be instituted before the Sarpanch of the Nyay Panchayat where the offence is committed. They also try cases which are civil in nature.

a) Civil jurisdiction: –

- claims relating to recovery of debts and contractual monies not exceeding rupees twenty five thousand, and all proceedings arising with respect thereto, provided that the parties may agree in writing to waive the bar on the maximum value of a suit;
- disputes relating to property and physical boundaries, except those involving issues of law or title to land or any other right or interest in any immovable property or mortgages;

- all suits of partition, except where a complicated question of law is involved;
- claims for compensation for wrongfully taking or damaging movable property, including those where separate criminal proceedings have been instituted;
- disputes relating to custody and maintenance of children and dependants, including divorced spouses;
- disputes relating to environmental pollution and public nuisance

b) Criminal Jurisdiction-

- Offences under section 140, 160, 172, 174, 179, 269, 277, 283, 285, 289, 290, 294, 324, 334, 341, 352, 357, 358, 374, 379, 403, 411 (where the value of the stolen or misappropriated property in cases under Sections 379, 403 and 411 does not exceed fifty rupees), 4276, 428, 430, 431, 447, 448, 504, 506, 509, and 510 of the Indian Penal Code, 1860;²
- Offence under sections 24 and 26 of the Cattle Trespass Act, 1871;
- Offence under Section 3, 4, 7 and 13 of the Public Gambling Act, 1867.
- Any other offence under aforesaid enactments or any other enactment as may, by notification in the official Gazette, be declared by the State Government to be cognizable by a NYAY Panchayat.³

Case under Nyay panchayat:

❖ **Gopi Malah and others v. Mt. Birni**

It was held in the case that Nyay panchayat have been established primarily for the apical settlement of all petty matters. If the gram cutchery did not first exhaust the chances for conciliation but proceeded to try the case the it would be acting without its jurisdiction⁴.

❖ **Venkatachala v. The Panchayat Board , Ethanu.**

² *The Rajasthan Panchayat Raj Act 1953*

³ *The Bihar Panchayati Raj Act 1947*

⁴ *AIR 1954 AT 195*

In this case Mr Justice Somasunderam of the High Court of Madras observed that Panchayat Courts ought not to be invested with the criminal jurisdiction because they seem to be carried away by the local politics and communal feelings that they happen to entertain against persons.⁵

❖ *Daulat Ram v. Panchayat Adalat*

It was discussed that if a panch is not personally interested in case or can use lawful means to know the truth they cannot make any secret inquiries into the truth of falsity of particular complaint and act on the result of such priority.⁶

❖ *Raghunath And Ors vs Mangi Lal And Ors*

In this case it was established by the Rajasthan High Court that a Nyay Panchayat can excess to the civil cases or the cases which comes under civil jurisdictions. It was submitted that such disputes are confined to three kind of disputes; (a) Right to purchase of property; (b) Use of common pasture; (c) Regulation and timing of taking water from irrigation channel.⁷

Drawbacks of Nyay Panchayat:

They act as justice delivering body but justice is provided by the Nyay panchayat is based on caste, community, personal or political consideration.

The laws are always ignored as the panch are usually not aware about laws due to which judgements are often given arbitrary and irrational towards the people.

The panch are often seen are influenceable person they always act partial and corrupted.

There is no proper representation of people from different sectors of people is the Nyay panchayat system.

The Mehta Committee did not give any enthusiastic response on the continuation and functioning of the Nyay panchayat⁸. It rather opposed the combination of judicial and executive

⁵ AIR 1958 Mad.388

⁶ AIR All .306

⁷ on 26 October, 2012

⁸ Mehta Committee 1983

functions in one body and also recommended qualified judges to preside over it being a experienced justice delivery so that there is no misrepresentation done.

Nyay Panchayat turning to Khab Panachayat:

It has seen that in modern times with gradual improvement in society the Nyay panchayat are turning to be khap panchayat as there is influence of politics, caste and religion. If we define khap panchayat in proper form Khap' panchayats are caste or community groups, present largely in rural areas ural areas of north India which at times act as quasi-judicial body . Lately they have emerged as quasi-judicial bodies that pronounce harsh punishments based on age-old customs and traditions, often bordering on regressive measures to modern problems. The term khap has been used in the geographical sense since it has covered areas and organizations in the north western Indian states such as Haryana, Rajasthan and Uttar Pradesh since ancient times. This political and social unit has been believed to be a group of 84 villages. Khap Panchayat enforces its summons through socials prohibitions and sanctions, imposes heavy fines or even kills the victims or makes them commit suicide. A lot of young couples are being killed because of flouting the khap rules.

The hard core reality of the khap can be seen in many of the forms which are being imposed on the people. These include:

- ❖ Killing of female child
- ❖ forced marriage
- ❖ honour killing
- ❖ Sexual Harassment
- ❖ Caste Discrimination
- ❖ Termination of marriage

A Dalit girl in Haryana committed suicide after she was allegedly gangraped by four youths. Instead of condemning the incident, the khap panchayat said girls should be married off early so that rapes can be avoided. The khap has had nothing to say about how it would discipline the perpetrators in rapes.

In Uttar Pradesh, khap panchayats in western parts of the state have ruled against women carrying or using mobile phones or wearing jeans or other western attire.

In Rajasthan a lady who was member of the panchayat was not allowed to sit in the chair as she belonged from the lower caste.

Conclusion

Nyay panchayat acts as quasi body which transports justice at very low cost or with a less time consuming procedure. It only deals with the cases which are petty in nature and always acts arbitrary to people who are politically weak or economically unstable. It has been observed that the India which we live in is covered up with almost 65% villages and it is the major reason that the justice delivering system which prevails in municipal court does not reach in a proper way to our villages due to which the Nyay panchayat are interim as an conciliation body is most of time is arbitrary in nature. The justice is only served in municipal courts. So, the judiciary with executive shall implement certain laws which are productive for the people living in villages who depend on the Nyay panchayat not only on judicial perspective but also regarding the overall development in health, public, social and economic welfare of the people. So that justice as well as overall development should be done. The proper Nyay panchayat system is the present need of hour as it seen that it creates burden in the courts due to which justice is served delayed if the Nyay panchayat has proper body with a bunch of skilled people than the pressure will be lessen o judiciary in compared to the petty offences which happen in day to day basis.

Suggestions

- ❖ The Nyay panchayat should give jurisdiction of cases which are petty in nature.
- ❖ The elected panch should be the persons who are selected from different sectors of the society and there shall be proper representation of people from both women as well as schedule caste and schedule tribe.
- ❖ There shall be administrative criteria training given to the elected members by the government and also they don't misuse their powers
- ❖ If there is misuse of power has been observed while giving decision by the panch then imposition of heavy fine and imprisonment shall be given to the members. So that they do not act arbitrary.

- ❖ In Criminal trial the Code of civil procedure to be applied not the evidence Act.
- ❖ There should be proper representation of both the parties of the case so that both the parties shall be heard properly
- ❖ The Nyay panchayat system should allow the presentation of lawyers during its trial.
- ❖ There shall be quick disposal of cases so that there is no load lies with the judiciary in regard of cases which are petty in nature.
- ❖ There should be no reason for political influence, influence of caste or religion while giving any decision to a case.



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WORDS SPEAK
