



# **NYAYA PANCHAYAT: INDIGENOUS, DECENTRALISED, ACCESSIBLE, & PARTICULARISTIC MODE OF DISPUTE RESOLUTION**

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## ***Abstract***

*Nyaya Panchayat is the most neglected aspect of the Panchayati Raj implementation in India. 73<sup>rd</sup> 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**

Over the past 75 years since India gained its independence, the country's judicial system has had many ups and downs with varying degrees of success. Numerous diagnoses and solutions for the issues have been put forth over this time. According to certain perspectives, the main issue is a backlog of cases and delays, which can only be resolved by expanding the court's capacity. While some opinions have criticized the Indian legal system for being "alien" because it was established by the British colonial government. This criticism goes on to say that a return to "indigenous" methods of resolving disputes is the only remedy, not some superficial changes to the current legal system. Even though India's formal court system hasn't changed much since independence, discussions about legal system reform have occasionally been influenced by similar notions of "indigeneity." The fact that numerous attempts at reform have brought up ideas of "traditional," "indigenous," or conflict resolution in one way or another is evidence of their enduring popularity among India's legal policy establishment. While there are many instances of this, Nyaya Panchayats are arguably the most well-known of these forums.

### **Brief Historical Background of Nyaya Panchayat:**

In India, village-level adjudication has a long history. A panchayat is a gathering, council, or court made up of five or more people of a village or caste who convene to settle disputes or establish group policy. The word panchayat literally means the "coming together of five persons." The people who made up this panchayat were people the villagers trusted and whose choices they were used to following blindly. The locals had formed this panchayat themselves. They were designed to give people living in rural areas a decentralized, accessible, and somewhat particularistic method of resolving disputes.

### **Post-independence Decline of Nyaya Panchayats:**

During the British administration, Nyaya Panchayats started to decline. The legal profession became a key player in the social and political upheavals of the late nineteenth and early twentieth century, many local panchayats lost their authority, and courtroom litigation increased. However, after independence, a number of voices in the Constituent Assembly, most notably M.K. Gandhi, argued for doing away with the British Legal System in favor of a decentralized, informal system built along "indigenous" lines. The Indian Constitution required the creation of a comprehensive hierarchy of courts, with the district judiciary at the bottom and the Supreme Court of India at the top. In the end, the Constituent Assembly supported preserving the current legal structure. During the period

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of Indian independence, democratic governments instituted Nyaya Panchayats in several states; however, by the late 1970s, these forums had almost disappeared from the majority of the states where they had been implemented. The provision of justice as a function of Panchayati Raj Institutions within the heads specified in the Eleventh Schedule of the Constitution was not included in the 73rd Constitution Amendment Act, 1993. A few states in India, including Bihar, Himachal Pradesh, Punjab, Uttar Pradesh, and West Bengal, included provisions for Nyaya Panchayats in their new Panchayati Raj Acts or in confirmatory amendments to their previous Acts following the 73rd Constitutional Amendment Act. Though they had such provisions prior to the 73rd Amendment, the states of Andhra Pradesh, Gujarat, Haryana, and Karnataka did not include any provisions for Nyaya Panchayats in their Panchayati Raj Acts after the amendment. Although Nyaya Panchayats are mentioned by statute in several states, only Himachal Pradesh appears to have continuous and functional Nyaya Panchayats in practice. For a long time, rural litigants' only access to state forums for dispute resolution was through the District and Taluka courts.

#### **Reasons for failure of Nyaya Panchayat:**

- 1) Persons with resourcefulness or courage who can do the work of justice come 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 Committee 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 a number of 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.<sup>2</sup>” One definitive way of conceiving Nyaya Panchayats is that they are local institutions, staffed by local community members, and

<sup>2</sup> 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)



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 settlement<sup>3</sup>. 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 literally 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 own 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.<sup>4</sup>

### **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 on the basis of 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, on the basis of 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.<sup>5</sup>

<sup>3</sup> 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.

<sup>4</sup> 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)

<sup>5</sup> 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, in fact, 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 a number of 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, makes no attempt to prohibit the presence of legal counsel. Gram Nyayalayas' mandate includes adversarial adjudication in full.

Nevertheless, the Act has not been properly enforced, as there are currently only 208 operational Gram Nyayalayas nationwide as opposed to the intended 5000. Financial limitations and the unwillingness of law enforcement, attorneys, and other government officials are the main causes of the non-enforcement. The effectiveness of the Gram Nyayalayas Act 2008 is still up in the air. The success of this Act will largely depend on the political will to establish the necessary infrastructure. Furthermore, a lot of people spoke out against the Gram Nyayalaya Bill and in favor of going back to "traditional" procedures. Giving the elected Gram Panchayat the authority to hear disputes was a widely supported proposal. Notably, these attempts were a failure. 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. The only way to accomplish this is to have an appropriate forum for mediation and arbitration that is low-cost, fast, and follows only the informal rules of natural justice, where justice, not law, is the operative word. Nyaya Panchayats at the village level is the only answer<sup>6</sup>.

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<sup>6</sup> Report of the Justice PN Bhagwati Committee on Judicare, Government of India, 1977