

***Panchayats* and Dispute Resolution**

A Report

Study Sponsored by



Ministry of Panchayati Raj

Commissioned to



Indian Institute of Public Administration

New Delhi-110 002

April 2023

PANCHAYATS AND DISPUTE RESOLUTION

A Report

by

V.N. Alok

With research inputs from:

Gurkaran Singh
Anubhav Gupta
Madhulika Jatoliya
Anchal Gautam
Ashutosh Kumar
Sanjana Narang
Pushkar Pandey

April 2023

**Indian Institute of Public Administration
New Delhi- 110002**

PANCHAYATS AND DISPUTE RESOLUTION

Executive Summary

The achievement of the aim of ensuring justice for all citizens has a special place in the Indian Constitution. The Preamble emphasises the need for social, economic, and political justice for all Indian citizens. The highest court in the land has also made it very apparent via a string of rulings that social justice is a constitutional concern, with the goal of ensuring equity for all social groups by removing the obstacles and disadvantages that keep the poor down and preserving their human dignity.¹ Social and economic justice must be made readily available in order for the socialist social structure envisioned by the founding fathers to flourish and take root and for the next generation to have easy access to social and economic justice.² But still the current judicial system² is facing great challenges in providing justice to the common masses of the land. Some of the key challenges our judicial system is confronted with include but are not limited to:

1. High pendency of cases
2. Towering litigation expenses
3. Complex legal System
4. Use of english language as compared to the local language

Hence, to achieve justice in its true sense a robust justice delivery system is paramount. Against this background, attempts are made to provide accessible and affordable justice delivery system through various institutions such as regular courts, *lok adalats*, village courts, *gram nyayalayas*, *nagar nyayalayas*, and most importantly *nyaya panchayats*.

A *nyaya panchayat* (Justice System) is a system of dispute resolution at the village level in India. Article 39A of the Indian constitution envisages the concept of dispute resolution with active participation of the common people. Many of the eminent jurists and social scientists have also taken a stand that it is imperative for the government to take immediate steps to make the system of *nyaya panchayats* functional throughout the country. The institution of *nyaya panchayats* provides the common villager a cost and time effective dispute resolution mechanism right next at his doorstep. The institution of *nyaya panchayats* is guided by local

¹ Consumer Education and Research Centre v. Union of India AIR 1995 SC 922

² G.B. Pant University v. State of Uttar Pradesh, AIR 2000 SC 2695

traditions, culture and behavioural patterns and installs confidence of the common villager in the administration of justice.

Nyaya panchayat law was first attempted as part of a panchayat reform plan in the 1980s, but it was shelved to coincide with a more comprehensive judicial system reform that was never implemented. In 2004, when the National Advisory Council had urged the government to do so, efforts were made to bring about formal law once more. The Ministry of Law and Justice has expressed concerns about the constitutionality of the draught legislation that the drafting committee, under the direction of famous jurist Dr. Upendra Baxi, had produced.

Against this backdrop Ministry of Panchayati Raj awarded the study on “*Panchayats and Dispute Resolution*” to Indian Institute of Public Administration with the following objectives:

- To study the requirement of institution of *nyaya panchayats* with the intent to providing justice to the common man in a cost effective manner and impartial manner, maintaining the social harmony, creation of litigation free *panchayats*, settling disputes through conciliation and mediation hereby reducing the burden on regular courts of the land.
- To study various facets of the three types of justice delivery system presently prevailing in the States namely *panchayat* with judicial Powers (Himachal Pradesh), separate courts working with *panchayats* (Bihar) and *panchayats* without judicial powers (Karnataka and Kerela).
- To study judicial provisions in the Act, territorial jurisdictions, legal jurisdictions, bench for hearing, appeal, role of police, execution, records and documents, time taken for adjudication, conciliation, role of community and the problems faced by *panchayats*.
- To study the linkage with formal dispute resolution in PESA Act.
- To suggest ways to strengthen the system for justice in *panchayats*.

The study team of IIPA adopted a five-stage methodology to carry out the study. The stages involved desk research, sampling, field surveys, data analysis, and report submission. The study was conducted in positivist frame. The study team used mixed methodology including qualitative as well as quantitative methods.

A comprehensive desk research helped to analyse the requirement of the institution of *nyaya panchayat* and help the team to identify the critical gaps in the current functioning. Desk

research included review of academic papers, law journals, various Law Commission reports, books, official documents, government websites etc. The desk research also included a comprehensive study of High Court and Supreme Court judgments, Constitutional provisions, Panchayati Raj Acts of various States with a special focus on the judicial provisions in these Acts, various rules and procedures of different states etc. Apart from secondary data, primary data was also collected. In-depth interviews were held with the officials working on ground in various *panchayats* to understand the nuances of the judicial functioning of the *panchayats* and the challenges associated with it. Focus group discussions were held with the elected *panchas* and ward members in the *panchayats* to understand the mechanism followed by the *panchayats* while performing the judicial functions. Field survey was carried out through structured and semi-structured questionnaires (Annex 2, 3 and 4) consisting of open-ended questions for the comments and suggestions from stakeholders including the officials of Ministry of Law and Justice, Government of India.

The study team captured the data and information with regard judicial and territorial jurisdiction, bench for hearing, appeal, role of police, execution of decisions, maintenance of records, time taken for adjudication, role of conciliation and mediation, role of community, the problems faced by panchayats, the linkage of formal dispute resolution mechanisms with PESA provisions etc. so as to gather the relevant information regarding the current functioning of the village panchayats in the country. The study team during the study also found that provisions in relation to judicial functions to the *panchayats* have been provided in the respective *panchayat* acts of six states and one union territory but they are functioning with judicial functions in only two states. A detailed table in this regard has been provided below:

Table 1: Status of Nyaya Panchayat in the States

Source: Author

Sl. No.	States	Actual Nyaya Panchayat existing (Yes/No)	Provisions of Nyaya Panchayat in Panchayat Raj Act (Yes/No)
1.	Andhra Pradesh	No	Andhra Pradesh Panchayat Raj Act, 1994 has no provision for Nyaya Panchayat
2.	Bihar	Yes	Yes, Chapter VI - Establishment, Powers, Duties and Procedure of Gram Katchahry And Benches thereof in The Bihar Panchayat Raj Act, 2006
3.	Telangana	No	Telangana Panchayat Raj Act, 2018 has no provision for Nyaya Panchayat
4.	Gujarat	No	Gujarat Panchayati Raj Act-1993 has no provision for Nyaya Panchayat
5.	Goa	No	Goa Panchayati Raj Act-1994 has no provisions for Nyaya Panchayat
6.	Haryana	No	Haryana State Panchayati Raj Act 1994 has no provision for Nyaya Panchayat
7.	Jharkhand	No	Jharkhand State Panchayati Raj Act,2001 has no provision for Nyaya Panchayat
8.	Karnataka	No	Karnataka Panchayat Raj Act, 1993 has no provision for Nyaya Panchayat
9.	Kerala	No	Kerala Panchayat Raj Act, 1994 has no provision for Nyaya Panchayat
10.	Odisha	No	The Orissa Grama Panchayats Act, 1964 and The Orissa Panchayat Samiti Act, 1959 have no provision for Nyaya Panchayats
11.	Rajasthan	No	Rajasthan State Panchayati Raj Act and Rules.1994 has no provision for Nyaya Panchayat
12.	Madhya Pradesh	No	The Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993.has no provision for Nyaya Panchayats
13.	Telangana	No	The Telangana Panchayat Raj Act, 2018, has no provisions for Nyaya Panchayats
14.	Uttar Pradesh	No	Yes. Uttar Pradesh has Chapter VI Nyaya Panchayat in The U.P. Panchayat Raj Act, 1947
15.	Punjab	No	Yes. Punjab has Chapter IV- Judicial Functions Of Gram Panchayats In The Punjab Panchayat Raj Act, 1994
16.	Tamil Nadu	No	Tamil Nadu Panchayats Act, 1994 has no provision for Nyaya Panchayat.
17.	West Bengal	No	Yes. West Bengal has Chapter VII Nyaya Panchayat in The West Bengal Panchayat Act, 1973
18.	Maharashtra	No	Maharashtra Zilla Parishads and Panchayat Samiti Act,1961 has no provision for Nyaya Panchayat.

19.	Chhattisgarh	No	Chhattisgarh Panchayat Raj Adhiniyam, 1993 has no provision for Nyaya Panchayat.
NE and Hilly States			
20.	Assam	No	Assam State Panchayati Raj Act, 1994 has no provision for Nyaya Panchayat.
21.	Uttarakhand	No	Yes. Uttarakhand has Chapter VI- Nyaya Panchayat in The U.P. Panchayat Raj Act, 1947
22.	Arunachal Pradesh	No	Arunachal Pradesh Panchayati Raj Act, 1997 has no provision for Nyaya Panchayat.
23.	Himachal Pradesh	Yes	Yes, Himachal Pradesh has Chapter IV Judicial Functions And Powers Of Gram Panchayat in The Himachal Pradesh Panchayati Raj Act, 1994
24.	Sikkim	No	Sikkim Panchayat Act 1993 Sikkim Panchayat Act 1993
25.	Nagaland	No	Nagaland Village and Area Councils Act, 1978 has no provision for Nyaya Panchayat.
26.	Manipur	No	Manipur Panchayati Raj Act, 1994 has no provision for Nyaya Panchayat.
27.	Mizoram	No	Mizoram Lushai Hills District Amendment Act, 2006 has no provision for Nyaya Panchayat
28.	Tripura	No	Tripura State Panchayati Raj Act 1993 has no provision for Nyaya Panchayat.
Union Territories			
29.	Andaman and Nicobar Islands	No	No, Andaman & Nicobar Islands (Panchayats) Regulation, 1994 has no provision for Nyaya Panchayats
30.	Dadra and Nagar Haveli and Daman and Diu	No	No, The Dadra and Nagar Haveli and Daman and Diu Panchayat Regulation, 2012 has no provision for Nyaya Panchayats
31.	Jammu & Kashmir	No	Yes. Jammu and Kashmir has Chapter XIII Constitution of Panchayati Adalat in Jammu and Kashmir Panchayati Raj Act, 1989
32.	Lakshadweep	No	The Lakshadweep Panchayats Regulation, 1994 has no provision for Nyaya Panchayat
33.	Puducherry	No	Yes. Puducherry has Chapter IX, Civil and Criminal Justice in The Pondicherry Village and Commune Panchayats Act, 1973

As per the Terms of reference, the study team had to cover the three models of justice delivery system prevailing in the *panchayats*. These models were spread over *panchayats* in four States namely, Himachal Pradesh, Bihar, Karnataka and Kerala. In the state of Himachal Pradesh the *gram panchayats* only are performing the judicial functions but in the state of Bihar the *gram katchahry* functions independently of the *gram panchayat*

In the States of Bihar and Himachal Pradesh the *panchayats* have been empowered through their respective *panchayat* acts to perform judicial functions, but the States of Karnataka and Kerala have not empowered the *panchayats* through their *panchayat* acts. Yet the *panchayats* in these States are performing the judicial functions informally and quite efficiently. The key observations from these States are as follows:

Himachal Pradesh

- Efforts should be made to revive the old system of *nyaya panchayats* which are independent of *gram panchayats*. It is a common observation that members of the *gram panchayats* have very limited time to perform the judicial functions and they have very limited knowledge about the judicial functions. Similarly, the functioning of the *gram panchayats* is dependent on the interests of the sarpanch. *Gram panchayats* need the services of some legal expert to guide them about the legal powers and procedures to be adopted for hearing the cases and delivering the judgments.
- Although the State government provides training to panchayat functionaries and elected representatives of panchayats at the Himachal Institute of Public Administration (HIPA) and two other institutes, one of which is located at Baijnath and the other at Mashobra, it was found that most of these individuals have only a very limited understanding of judicial functions. They are therefore incapable of carrying out judicial duties.
- The Act provides for the *gram panchayats* to adjudicate on the issues under its jurisdiction but the reality on the field is that the *gram panchayats*, in most of the cases, try to resolve the disputes through the mechanism of mediation, conciliation and try to bring about an amicable compromise between the parties.

- The presence of a women member is not compulsory while constituting a bench of the *gram panchayats* but an informal arrangement is made by the *sarpanchs*³ of some *panchayats* to ensure the presence of a women member especially in disputes in relation to women and children.
- The *gram panchayats* have the power to impose a fine of a maximum of Rs.100 as a punishment and the *gram panchayats* do not enjoy the power to send the culprit to imprisonment.

Bihar

- The success of *gram katchahry* can be measured by their stability, the extent of their use by local communities, and their ability to dispense justice with sensitivity to local social conditions. They have been remarkably effective in delivering their mandate by providing justice in a cost effective manner.
- The village population in some of the districts are quite satisfied by resolving their disputes by the village *katcharis* as compared to going to the courts. Since a genuine attempt has been made to resolve the disputes through mediation and persuasion, in most cases, therefore, the need for adjudication does not arise.
- One of the biggest challenges so far has been to provide *gram katchahry* with an official address due to the lack of their own buildings. In some instances, the *gram katchahry* conduct their proceedings in the house of a powerful *panchayat* member.
- The study team of IIPA observed that the concept of appointment of *Nyaya Mitra* is a step in the right direction as their appointment is helping the bench of the *gram katchahry* in their functioning and giving them legal advice.
- Regular training provided through Chanakya National Law University is helping the functionaries and they are much more confident while performing their duties.

³ Head of the village *panchayat*.

Kerala

- The panchayats are not directly vested with any judicial power according to the concerned Panchayat Raj Act but some indirect inferences can be drawn through Sections 238 and 239 of the Panchayat Raj Act.
- The study team during its visit also observed that the panchayats in Kerala were functioning at all three levels but the major dispute resolution work is undertaken at the village panchayat level only.
- The state of Kerala has taken some key initiatives to help the panchayats in performing their judicial functions efficiently. Some of these include the formation of the Jagratha Samithi which is in charge of helping victims of violence and works at the panchayat level. Another key initiative is the working of the Legal Aid Clinics (LAC) in the panchayats. They are being run by the panchayats and Kerala State Legal Authority (KSLA). An Advocate appointed by KSLA visits these LACs twice every month. The disputants can directly approach these LACs as well to resolve these disputes.
- The study team observed that in many panchayat areas child protection committees are established to discuss about the problems faced by the children and give them proper training, advice and counselling.
- In cases where the panchayats have indirect judicial power, the complaint regarding land encroachment and nuisance dispute is filed in the panchayat office and notice is issued to both the parties to appear before the panchayat or the ward member as the case may be. External assistance is also sought from the other authorities to help the ward member or panchayat to collect relevant information regarding the dispute. After fully knowing the nitty-gritty of the dispute, an endeavour is made to reach at an amicable settlement. If any of the party to the dispute doesn't appear then ex-parte decisions can also be awarded. If all the parties agree to the settlement then signatures are affixed on the settlement document. The dispute may be adjudicated if the parties are unable to come to an amicable agreement.
- The dispute resolution where panchayats informally look to resolve the disputes is initiated by the ward member when he files the complaints and tries to resolve them on its own. If he is unable to find a solution then the matter is transferred to the panchayat. If the panchayat also fails to determine then the matter is transferred to the LAC or the

Jagrata Samithi. If the LAC also fails to settle the dispute, then the matter is transferred to KSLA.

Karnataka

- The State *Panchayati* Raj Act in Karnataka does not empower the *panchayats* to perform any judicial functions yet the *panchayats* are performing the judicial functions informally. The *panchayat* system of redressal is based on resolving disputes on the basis of cultures, customs, beliefs and habits.
- The *panchayat* bodies do not perform any adjudication function and they resort to mediation and persuasion to resolve their disputes. The proceedings in regard to the property and civil disputes are held in public while disputes in relation to women and children are held in private only.
- Cognizance of matter is taken both on oral as well as written complaint but in some specific matters the parties are asked to file a written complaint only. The presence of a women member is compulsory when disputes in relation to women and children are brought in front of the *panchayats*. No legal training is provided to the members of the *panchayats*, only some sort of administrative training is provided.
- The ward members try to resolve the dispute on their own. If the efforts of the ward members go futile then the ward member refers the matters to the *gram panchayat*. The disputing parties can directly approach the *panchayats* with their disputes. The *panchayat* members try that a written complaint is given to them. In rare instance, the *panchayats* also take oral complaints. The complainants can also file their complaint through emails and the *panchayat* office takes cognizance of such emails as well. In cases of written complaint, a written settlement is being preferred only. The *panchayat* members were of the opinion that educational criteria should be made compulsory so that the ward members and the *panchayat* members are in a better position to resolve the disputes. The ward members and the members of the *panchayat* were of the opinion that a legal assistant should be hired in the *panchayat* office so that they can be guided about the legal rules and procedures.

A formal study on *nyaya panchayats* is the need of the hour because of the following considerations:

1. The institution of *nyaya panchayats* would help in resolving the high pendency of cases and would reduce the burden of courts.
2. *Nyaya panchayats* would help in resolving a large number of cases through mediation and peaceful conciliation.
3. The rural population would have better access to justice as their litigation expenses would be curtailed.
4. An institution nearer and easily accessible to people holds greater opportunity for mutual settlement among the parties and it would not leave a bitter taste of hatred and animosity among the parties.
5. *Nyaya panchayats* who are acquainted with the local customs and parlances are in better position to resolve the local disputes as compared to the regular courts.
6. *Panchas* being drawn from the common folklore strive at decisions which are fair and at the same time consistent with the peculiar needs of the parties.
7. People in the villages live in close vicinity so there are very less chances of the parties to the dispute to conceal or produce any false evidence to support his/her claim and those who still do that face the threat of being boycotted by the whole village.

During the field visits, the study team came across certain shortcomings in the current working of *nyaya panchayats* which are as follows:

1. Limited knowledge about judicial functions - Despite the State government's efforts to provide training to panchayat functionaries and elected representatives, their comprehension of judicial functions remains inadequate.
2. Limited powers - *Nyaya panchayats* have very limited powers. Extremely low pecuniary limits deprive them of any relevant role in the village society, eroding the very respectability and legitimacy of the institution. The maximum fine which the *nyaya panchayats* can impose is so low that it hardly has any effect on the guilty.
3. Disposal of certain cases is problematic - Limited jurisdiction of *nyaya panchayats*, extremely low pecuniary limits which do not instil fear of *nyaya panchayat* in the minds of the guilty, interference by the influential persons into its functioning, noncompliance

of nyaya panchayats orders by certain persons, difficulty in finding reliable witnesses, limited knowledge of law and judicial functions on the part of members of *nyaya panchayats*, lack of time for judicial functions, etc. make the disposal of certain cases very difficult.

Some of the key recommendations to strengthen the system for justice in *panchayats* from the study team are as follows:

1. The members of the nyaya panchayats could be vested with the power of mediation on disputes and not the adjudicatory powers. They can act as a mediator between the parties helping them to iron out the differences between them and trying to bring about an amicable settlement among them. The nyaya panchayats members also enjoy a certain amount of clout amongst the villagers and with the help of elders of the villages they are in a position to convince the parties to reach an amicable settlement.
2. The members of the nyaya panchayats should at least be literate. Each nyaya panchayat should have members who are able to read, write and understand the local language fairly and fluently. Some relaxation in this regard may have to be made in respect of nyaya panchayats in the backward and particularly tribal areas.
3. As for the jurisdiction for nyaya panchayats they can be conferred with the powers to settle the civil disputes especially in relation to neighbours, family disputes, property disputes and the civil disputes enumerated in the landmark judgment delivered in the Afcons case.
4. Nyaya panchayats should not be bound by the technical complexities of CPC and CrPC and should be allowed to settle the disputes based on the principles of natural justice only. Similarly they could be allowed to function in their local language only and should not be burdened with the usage of English language.
5. While there are divergent views on whether the members of nyaya panchayat should be elected or nominated by the concerned authorities, the team is of the opinion that that members of the nyaya panchayat should be directly elected.

Conclusion

From the present study, it is quite clear that it is easier for the aggrieved person to approach a *nyaya panchayat* than a Court. They help in cutting costs as they eliminate the complainant's need to spend exorbitant amounts of money to attain justice. *Nyaya Panchayats* reduce the burden on the civil courts. The disposal rate of cases at *nyaya panchayat* is higher than the usual courts as it includes no tardy procedures of the court. It is a hybrid representation of the *panchayat* system and the judiciary. In a country like India, where most of the population resides in rural areas, it is imperative for an effective judicial system to be easily available as not every citizen can afford to approach the courts. The *nyaya panchayat* system of redressal is based on resolving disputes on the basis of cultures, customs, beliefs and habits. The effective resolution of the disputes is considered very important for achieving the ends of justice.