

Participatory Grassroot Justice Delivery System in India: A Case Study of Himachal Pradesh

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Abstract: *The study is to explore the strengths and weakness in the functioning of Nyaya (justice) Panchayat which has become part of Gram Panchayats since 1978 in Himachal Pradesh. The study focuses on issues such as involvement of Nyaya Panchayats on reduction of cases, Nyaya Panchayats held in year, mode of dispute settlement, time taken for dispute settlement, types of disputes. The study found that the people are in favour of separate Nyaya Panchayats as Gram Panchayats are overburden with development work. This system can ensure a participatory and people oriented system of justice which has greater scope for mediation, conciliation and compromise. It is also found that as it is closer to the people, they can save time, and expenses. At present the system is not working properly in Himachal Pradesh. Some bold intervention is needed by providing them proper infrastructure, adequate staff and functional clarity. There are good numbers of findings in the study to make the system work properly in the state of Himachal Pradesh.*

Keywords: Nyaya Panachayat, Disputes, Panchayat Infrastructure, Execution Power, Jurisdiction

1. Introduction

Present paper is an attempt to understand the grassroots Justice Delivery System through different grass root level justice delivery institutions engaged formally or informally in the task of dispute settlement. Traditionally, the panchayats in India were fully involved in this task and even many state acts have the provision as judicial powers. The present study is solely based on the project, functioning of Nyaya (Justice) Panchayats in Himachal Pradesh, India. Himachal region, before 1947, consisted of thirty small princely states, all independent of each other, not under the suzerainty of the British crown. Hence there was no single Act in operation till 1939, when Punjab village panchayat Act, 1939 was adopted. The entire Himachal region underwent a series of metamorphic changes, both political and administrative till 25 January 1971 when it became eighteenth state of Indian Union. The state of Himachal Pradesh enacted a new Panchayati Raj legislation, known as Himachal Pradesh Panchayati Raj Act, 1994. In the state of Himachal Pradesh sponsored by Ministry of Panchayati Raj, Government of India. Despite efforts have also been done to cover other institutions particularly in the state of Kerala, which is involved in the dispute settlement among fisherman. In conformity with the provision of the constitution (73rd Amendment) Act, 1992. The Nyayas panchayat in the state was separate entity up to 1978 after its judicial power vested to elect G.P's Himachal Pradesh has a population of 60.77 lakhs according to census 2001. About three-fourth of its geographical area is under forest cover (as per 1996-97) and the state is full of undulating terrain. At present, Himachal Pradesh has 3243 Gram Panchayats, which indicates that each GP on an average caters to less than 2000 persons. The rural population is above 90 percent.

The participation of citizens in the justice system is not a new concept. Even Aristotle in his book has mentioned the essential attributes of a citizen as one who takes part in the process of judgment and in the deliberations of the Assembly. In India in the earlier period, village community created their own Panchayats where there was no element of

election. Responsible members of the village community formed the Panchayat and the decisions were generally respected by the village community. The word 'Panchayat' means a group of village men who command respect from their community and the word 'Nyaya' means justice. Therefore, when a dispute is resolved by the village heads or elders who are respected and trusted by the parties to a dispute through a mutually acceptable settlement may be termed as a 'Nyaya Panchayat'. Much before the introduction of the judiciary in India by the British, people resolved their various disputes within the community itself. The process was usually headed by person of high status, experienced in everyday life of the village, someone who commanded respect, had integrity and honesty. Such a person was usually assisted by other people with equal qualifications, and was referred to as the "Panchayat" and the members of 'Panchayat' were termed as "Panch Parmeshwar" i.e. 'five men equal to god'. The disputes between the residents of the village were decided by the 'Panchayat' and the paramount consideration in such settlements was welfare of the disputants. Similarly, in cases of dispute arising between people from different villages the settlement was done by the mutually agreed people from both the villages. But in independent India the 'Panchayat' failed due to long neglect and step-motherly behavior towards them. However it is still in vogue in many rural parts of India. Although the institution of NPs does not attach legal sanctity as enjoyed by the 'State' established court of law however they have their own peculiar sanctions and sanctioning mechanisms, which have worked for generations and are still working effectively.

In Independent India, several reforms were introduced in the administrative and judicial roles of various bodies and in functioning of village Panchayats. The report of the study team on Nyaya Panchayats under the Chairmanship of "Mr. G.R. Rajagopal" clearly recommended that villages must be given free hand in electing members of the Nyaya Panchayats. It also suggested that the jurisdiction of Nyaya Panchayats should be exclusive and not be subject to voluntary submission of disputes for resolution. "Justice to all" is the paramount goal of the constitution of India. In a

sense the Indian Constitution is a monumental document of social engineering. The framers of the constitution have tried to realize this goal through the twin parts III and IV of the Constitution that deal with Fundamental Rights and the Directive Principles of State Policy. The present system of administration of justice has failed to achieve its desired goal, and the time has come to establish a forum where the grievances of the needy and poor can be speedily redressed. A common perception amongst the rural masses is that access to justice is both complex and difficult and as a result, they avoid seeking legal redress for their grievances through courts. Justice delayed is justice denied and at the same time justice hurried is justice buried. Therefore there is a need to create a medium which is balanced and which secures 'Justice' to the poor and needy. Nobody can deny the fact that democratization of the justice system should start at the grass root level through transforming and sensitizing existing dispute settlement mechanisms/structure to human right and constitutional values and linking them with the formal justice system. This will interface well with the process of democratic decentralization that is presently on in the country through the Panchayati Raj Institutions (PRISs). Justice is critical to any poverty reduction agenda, conditions for economic growth, and also as an aspect of state failure that is the key in any reform process.

The judicial function and powers of *Gram Panchayat* are covered in Chapter IV of Himachal Panchayati Raj Act, 1994. It deals with many details like offences cognizable by *Gram Panchayat*, penalties, and compensation to the accused; extend of jurisdiction etc. however there is need to study its applicability and in present study, efforts have been made to find out its present status. The *Gram Panchayats* have been empowered to conduct and decide cases relating to minor offences under I.P.C., Vaccination Act, 1880, Cattle Trespass Act, 1871, the H.P. Juveniles (Prevention of smoking Act.), 1952 and the Public Gambling Act, 1867 and also to hear and decide applications for maintenance under section 125 of the Cr. P.C. The GPs have been empowered to protect public property such as signboards, milestones on public walls, hand pumps, water supply schemes, public taps, community buildings, *mahila mandal* bhawans, school buildings, health institution buildings. In case of violation of orders of GPs in any matter, GPs can impose penalty till Rs. 1000/- and in case of recurring breach, further penalty up to Rs. 10/- per day with maximum limit Rs. 5000 can be imposed. However, the fact is that panchayats are protecting public property but not imposing any fines such. According to these panchayats, if any fine is imposed on people, it will create their poor image in them. They want that such information should be provided to them. Similarly in the state of Bihar, *gram Kachehry* is functioning and as per act separate *Gram Kachehri* member are selected through election. *Gram Kachehri* is solely responsible for settlement of dispute among the disputing parties. Decision taken by it has legal validity.

2. Objectives

As broader aim of the study to document the practice of functioning of *Nyaya Panchayats* (NPs) in the state of Himachal Pradesh., Followings are specific objectives of the study:-

- To study the functioning of NP's in reduction of cases in the court
- To Understand the type of dispute settled by N.P.
- To investigate legislative provisions enacted by state for the establishment of NP.
- To understand the supports structure and infrastructure conducting of the NP.
- To study the knowledge level of NP member on the Judicial power.
- To study the satisfaction level of people from the decision of NP's
- To suggest way and means for better function of NP's

3. Methodology

A total 30 *Gram Panchayats* were covered for in-depth primary study from three districts, one from The Panchayat Extension to Scheduled Areas (PESA) district and two from non-PESA districts. From each district, two blocks were selected and from each block five GPs were selected and from each GPs 5 gram sabha members comprising of males, females and SCs were selected for primary level study. In each *Gram Panchayat*, elected *Gram Panchayat* members, village elders, women's, and other members of the society were contacted and interviewed to fulfill the objectives of the study. Apart from it, secondary level information on judicial function of Panchayat were also collected from legal experts, advocate and retired legal and civil servants of the state.

4. Major Findings of the Study

Type of Disputes in Selected Panchayats

In selected 30 *Gram Panchayats* a total of 184 cases were reported i.e. on an average more than 6 cases in each panchayats. 48 percent of total cases were reported in district Kinnaur, 35 percent in Kullu and 17 percent cases in district of Solan. Out of total cases 57 percent were reported as family disputes, 11.41 percent were land dispute and 7.60 percent each on domestic violence against women & water and 16.30 percent cases were disputes related to fight with neighbours or any other villagers on some small issues.

People Perception: During the study 150 gram sabha member were interviewed and their opinion regarding dispute settlement by panchayat has been sought, they express followings

- Majority (90%) of gram sabha view that most of the *Pardhan* and other member's do not know the proper procedure as envisages in act therefore proper training to the members of the *Gram Panchayat* regarding judicial functions of the Panchayats as per the Panchayati Raj Acts should be provided.
- Majority (about 65%) of the respondents are in favour of the formation of Justice Committees in each Panchayat. At presently *Nyaya Panchayat* is not functional in the state and the judicial function is delegated to *Gram Panchayat*. Therefore, Justice Committee can be constituted like other standing committees of GPs in which *Pradhan* or *up-pradhan* can be of ex-officio members and 2-4 other nominated member. The decision of the committee can be

forwarded to the GP for the final decision. The benefit of this committee will be that members can devote sufficient time to hear both the parties. The role of the committee will be exclusively dealing the judicial function.

- Likewise more than two third of the respondents are in favour of fixing some minimum qualification for the members of *Nyaya* Panchayat.
- All respondents are in favour of enhancing the highest limit for imposing the fine on the guilty.
- 49% of the respondents are in favour of appointing only well experienced and capable persons as members of *Nyaya* Panchayats.
- 50% of the respondents agree that NGOs can play important role in providing guidance to GPs on some legal issues.

Processes and Procedures Adopted for Hearing of Appeals and Decision During the field survey

What processes and procedures are adopted when they deal with any dispute case was enquired from the selected Panchayats. Following were the responses of selected panchayats.

- Study of the disputed cases and put up for record or finding verbal solution depending on the nature of case
- Formation of judicial bench to deal with the case
- Issuing of summons to the parties
- Hearing of case
- Decision of case

Problems faced by the Panchayats in Solving Disputes

The Following problems are faced by the Panchayats while dealing with the dispute cases.

- Thirty percent of the selected Panchayats reported that the parties summoned don't appear before panchayats and rather they consult other influential people in their Panchayats. This problem is slightly less in PESA district.
- 47 percent of the Panchayats don't have enough/sufficient knowledge of judicial powers and how to execute them.
- 44 percent of the Panchayat reported that people/disputed parties don't have any fear of *Gram Panchayats* judicial powers.
- One of the selected Panchayats reported that fine imposed by *Gram Panchayat* to the guilty party is very less but majority of panchayats feel that fine is just a token of punishment.
- Only one Panchayat reported that the land and revenue cases are too complex to be handled by *Gram Panchayat*.
- 30 Percent of the selected Panchayats reported that *Gram Panchayats* have less time to devote to judicial functions and it is already overburdened by other development works, especially of MGNREGS. Hence separate *Nyaya* Panchayats is required to deal dispute cases.

Out of 30 selected Panchayats only 2 reported that it is very difficult to find witness, as a result *Gram Panchayat* face problems in reaching at a right decision.

Suggestions for Minimizing Disputes

Selected Panchayats were asked how to minimize and solve the dispute occurring in the villages and their suggestions are as following:-

- Spread of education among villagers
- Social harmony should be strength in the village
- Political intervention or factionalism should be minimized
- Sixty three percent of selected Panchayats suggested that Panchayat member should acquire deep knowledge about the case and then take the decision rather than taking it in a hurry.
- Sixty three percent of the selected Panchayats suggested that Panchayat members should give impartial decision and be capable of executing its decision to satisfy both the parties.

Types of Powers should be given to *Nyaya* Panchayats

Majority (90%) of selected panchayats express their opinion that there is a need of separate *Nyaya* panchayats as was the practice before 1978 for this they suggested following.

- Nearly 40 percent G.P's member suggested that Judicial powers and jurisdiction should be increased.
- Amount of fine imposed is very meager, it should be increased appropriately. This is stated by 60 percent of selected GPs.
- Financial powers should be raised in case of financial dispute and its limit should be enhanced from the present level of Rs. 2000/-.
- Police should provide assistance when needed in complicated cases/disputes.
- Honorarium should also be provided to *Nyaya* Panchayat members. This was stated by 70 percent Panchayats of PESA as well as Non-PESA districts.
- Eighty percent Panchayats of PESA district and 70 percent Panchayats of Non-PESA districts suggested that sufficient staff should be provided to the newly established *Nyaya* Panchayats.
- Free legal experts should be made available for consultation. This was stated by 70 percent Panchayats of PESA district and 80 percent by GPs of Non-PESA districts.

Benefits of *Nyaya* Panchayats

According to the *Gram Panchayats* following benefit will be occurred to the society if a separate *Nyaya* panchayats to be constituted:-

- Sixty percent of selected Panchayats of each PESA and Non-PESA districts stated that *Nyaya* Panchayats will focus only on judicial matters; it will have considerable time at its disposal to settle the disputes.
- Three –fourth Panchayats of reported that *Nyaya* panchayats will be cost effective and speedy especially for the disadvantaged section of the society.
- *Nyaya* Panchayat members would be easily available and approachable as stated by 75 percent of selected Panchayats.
- No harassment at court and police station. This was stated by majority of G.P's.
- No need to hire lawyers by the parties. Hence it will be more convenient and cost effective.
- Self-representation by the concerned parties.

- *Nyaya* Panchayat will reduce burden of courts which has already more dependency and as well as of elected *Gram Panchayats* at village level which is already overburden with development and other work assigned to them.

Types of Infrastructure Required for *Nyaya* Panchayats

All the selected Panchayats reported following infrastructure required for functioning of *Nyaya* Panchayats.

- Sufficient man powers.
- Computer and legal expert.
- Post of *Nyaya Sahayak/Secretary*.
- *Nyaya* Panchayat building.

Procedure to constitute *Nyaya* Panchayats

While 53 percent of the panchayats reported that *Nyaya* Panchayats should be constituted through elections, the remaining 47 percent of the panchayats are of the opinion that *Nyaya* Panchayat members should come through nominations. In PESA district 70 percent of the selected GPs are in favour of constitution of *Nyaya* Panchayat through nomination.

Community Panchayat (Biradari, Khangri) Working in *Gram Panchayats* Area

Ninety percent selected panchayat reported that community panchayats are working in their *Gram Panchayats* area. All the panchayats of district Kullu and Kinnaur reported working of such panchayats in their *Gram Panchayats* area which are mainly settling the dispute of their own community; Like Khap Panchayats in Haryana.

Reasons for Low registration of the Cases

During the discussions and interview with the panchayats it was found that panchayat handle many dispute cases but their records show very less number of cases. The reasons for not recording the case were asked from each panchayats. Following were the responses:-

- 1) Panchayats don't want to register the case in order to maintain dignity and harmony among the parties, because most of the people don't want that their case come in the panchayat records. This is stated by 40 percent GPs of PESA districts and only one GP of Solan district.
- 2) In many cases both the parties are interested in solving the dispute verbally, because it is hassle free and no written formalities are required. This is stated by the all the selected Panchayats in the state of Himachal Pradesh.
- 3) In order to avoid various hassles of judicial proceeding and written work, *Gram Panchayats* prefer not to register the case. This is stated by majority of Panchayats.
- 4) Due to better influence of some members of the panchayat on the people, they prefer solving the case on the spot rather than registering them in panchayat record.
- 5) Sixty percent of the Panchayats reported that people prefer family disputes should not appear in written records of the panchayats.

Reasons for Compromises in Many Cases

During discussion with panchayats and other members of the civil society, it is observed that panchayats focus is always on the compromises, rather than advising parties to do some

other action. Followings were the reasons reported by panchayats for this:-

- 1) People have faith and trust in the panchayats.
- 2) Most of the time both the parties are satisfied from the decision of *Gram Panchayats*.
- 3) People know that there are so many hassles in approaching court, lawyers and police station.
- 4) Parties/people do not wish to take their cases above the level of *Gram Panchayats* as they have to maintain their self-respect in the society.
- 5) There is some kind of social pressure on the parties which forces them to do compromise at the Panchayat level.

Most of the cases are of minor nature, for which compromise is the best solution. This system of delivery Justice is questioned by the civil society organization, particularly in the cases of crime against women. According to them, in such cases women get decision but not Justice. Sometime they are pressurized to do the compromise in the name of family honor.

5. Recommendations

Enhancement of execution powers and jurisdictions

- 1) Extremely restricted jurisdiction in revenue matters. Petty revenue jurisdiction (especially as to mutations, boundary disputes, correction of records) needs also to be granted to the NPs so that villagers do not have to travel too far to settle such matters.
- 2) It is suggested that a Revenue Officer be deputed to sit along with the bench whenever there is a having revenue matters as it requires looking into records and such case are somewhat technical in nature.
- 3) In case of any difficulty in execution the Panchayat can send the decree to the Sub-Judge who shall execute the decree as if it were a decree passed by him.
- 4) A simple and effective mode of execution of the order of NPs is necessary. The nature of execution would depend on the relief granted by the decision. To give teeth to the provision it should be made obligatory on the revenue and the police department to provide all assistance to the NP in furtherance of the execution. Any non-cooperation on the part of the authorities should be considered as dereliction of duty under service rules.
- 5) The issue of jurisdiction should be linked to the pecuniary value of the matter. Ridiculously low pecuniary limits deprived the NP of any relevant role in the village society eroding the very respectability and legitimacy of the institution. Though recent amendments have enhanced pecuniary jurisdiction considerably it is still quite low as compared with the purchasing power of the rupee.
- 6) Amount of fine are very meager, it should be increased appropriately.
- 7) According to H.P Panchayati Raj Act, NPs can impose fine only up to Rs.100/-. At present such amount seems very meager which affect the value of the decisions of NPs. Therefore it is recommended that fine should be increased appropriately.
- 8) Provision of Honorarium should be provided if separate *Nyaya* Panchayat is to be constituted members.

- 9) Free legal experts should be made available for consultation.
- 10) Infrastructure like NPs building with furniture, computer and communication facilities, sufficient manpower like *Nyaya Sahayak*, *chowkidar* and peon should be provided while constituting the NP as a separate body independent from present GP.
- 11) Some educational criteria are to be fixed for becoming the members of *Nyaya* Panchayats.
- 12) At present there is no prescribed educational qualification required to become a member of *Gram Panchayat*. In a democratic set up where education and literacy levels varying to a great extent throughout the country it would perhaps be difficult to set any minimum qualification level as a prerequisite to be a member of NP. However at the same time it needs to be emphasized that the ability of a member to read and write in their regional language would be a great asset. This will not only help in upgrading the whole system but also gain respect for the institution in the eyes of the villagers. Education will help members to conduct affairs more confidently and independently.

Training program for NPs

Though selected GPs had received basic training on judicial functions of NPs, but there is a need of rigorous and detailed training on the following contents:

- Judicial functions and Powers
- Proceedings and Jurisdiction in civil and criminal matters.
- Constitution structure and process
- Execution of decisions.
- Constitution of judicial bench to deal cases.
- Knowledge of IPC, Legal Term, Law Policies, difference between civil and criminal cases.
- Registration and recording of the proceedings of the case decided by NPs be made mandatory.
- Need for reservation of seats for women, SCs and STs in the constitution of bench.

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