

Institute of Social Sciences
New Delhi

**Decentralisation of Administration of Justice
- Nyaya Panchayats**

S N Mathur

A Note for Discussion

on

Wednesday, 22 February 1995

at

Council for Social Development

53 Lodi Estate

New Delhi 110 003



Decentralisation of Administration of Justice — Nyaya Panchayats

by S.N. Mathur

Nyaya Panchayats are institutions for the dispensation of speedy and informal justice at the grass roots level. Such institutions have been in existence, as part of the rural polity of our country in one form or other since times immemorial. Nyaya Panchayats were set up in a number of states in the country under the state legislations following the revitalisation of the Panchayati Raj Institutions in the 50's and 60's. However, they did not meet with much success. Some states, even after making legal provisions for Nyaya Panchayats, did not enforce them. Apart from inadequate resources, elections to these bodies were not held regularly. Elections were put off on one pretext or the other. In some states terms of these institutions were indefinitely extended while in some others the institutions were superseded with little justification. There is reason to believe that there was a deliberate effort by bureaucracy, local vested interests and their elected representatives in the legislatures to cripple the Panchayati Raj fearing its ascendancy.

The appointment of **Ashok Mehta Committee** of 1977 marked a turning point in the concept and practice of Panchayati Raj. This Committee in its report seeks to make Panchayats an organic and integral part of our democratic process. **Ashok Mehta Committee** made the first official recommendation for including Panchayati Raj in the Constitution, in keeping with its approach that panchayats should be regarded as political rather than mere developmental institutions. This Committee also favoured participation of political parties in panchayat elections. By the end of 1988 a sub-committee of the **Consultative Committee of Parliament** under the Chairmanship of Shri P.K. Thungan made some recommendations for strengthening the Panchayati Raj System. *Inter alia* it recommended that the Panchayati Raj Institutions should be constitutionally recognised.

It was against this background that *Constitution (64th Amendment) Bill* was introduced in Parliament in 1989. There was serious opposition to it on various grounds and for its political overtones. Eventually, after passing through several vicissitudes, a constitutional measure in the form of *Constitution (73rd Amendment) Act* came into existence on 24th April, 1993. The salient features of this Amendment are given in **Annexure I**. Though serious doubts have been expressed in certain quarters about the wisdom of a constitutional amendment for making Panchayati Raj Institutions functional and effective but it is felt that constitutional amendment was a *sine qua non* for creating vibrant Panchayati Raj Institutions in the country. However, a major lacuna in the amendment is the contradictory and inconsistent approach to the idea that Panchayats as institutions of self-government. In defining the functions of the self-government it narrowed them down to developmental

functions only, without any reference to decentralisation of the administration of justice including the police. All States passed their Acts in conformity with the 73rd Amendment. Experts feel that in many states these Acts have not lived up to the expectations of the people in giving adequate power to the three tiers of the Panchayat, particularly omitting the decentralisation of administration of justice.

The disappointing situation of the legal and judicial system in the rural areas was eloquently brought out by **Justice Bhagwati Committee** on Judicare which gave its report in 1977 but it is equally valid today. The following observation of this Committee are relevant.

“The poor who constitute the vast majority of the people of India are concerned in cases of litigation primarily and almost exclusively with lower courts. They cannot dream of going to the higher courts because of the nature of their claims or disputes as also because of the forbidding cost of appeal. Their contact is in the circumstances limited only to the lower courts even on these occasions in which they can gather sufficient means and courage to engage in litigation or they are compulsorily brought before the courts by their opponents. If, therefore, we really want to help the poor in the rural areas, it is time that we cure ourselves of the occupational diseases and devote more thought and attention to the lower courts and bring their organisation and working under rational and scientific analysis. It is in this context, the question of setting up Nyaya Panchayats as the lowest courts, easily accessible to the rural population and providing cheap and expeditious justice to them in cases arising out of their daily lives, requires to be seriously considered.”

The **Law Commission** in its 14th Report observed that Panchayat courts were capable of doing a good deal of useful work by relieving the regular courts of petty civil and criminal litigation. As a follow up the Central Government set up a **Study Team** under the Chairmanship of Shri Rajagopaul, then a member of the **Law Commission**, to go into the whole question.

The report that followed, vindicated the validity of organising Nyaya Panchayats in the country. The **Gujarat Committee Report on Legal Aid** also endorsed the concept of Nyaya Panchayats. The Report of the **Legal Aid Committee** under the Chairmanship of Mr. Justice V.R. Krishna Iyer made some concrete proposals relating to Nyaya Panchayats in May 1973, so did the **National Police Commission** in 1979.

As was to be expected, the various Commission and Committee Reports were not unanimous on composition, responsibilities and modalities of functioning of Nyaya Panchayats. However, they were of the view that the institution of Nyaya Panchayats would not only be in conformity with the ideal of democratic

decentralisation and ensure public participation in the administration of justice at the lowest level but it would also help in delivering justice to the poor and backward, in rural areas without any delay and practically at no cost. It would save them from inconveniences and expenses to which they would necessarily be subjected if they have to approach the regular court situated at the Taluk, Tehsil, Sub-divisional level or sometimes at the District Headquarters. If they have to go to a regular court of Law, they would be required to travel long distances and engage lawyers and waste considerable time in going from their village to the courts whenever any date is fixed by court. There are frequent adjournments. This would involve considerable waste of time and money which the poor can ill afford. The delay in disposal of litigation may be ruinous, because they have little staying power and with their back broken by poverty and suffering they cannot wait for justice. It must be given to them promptly and speedily.

The Institution of Nyaya Panchayats would indeed a great boon because it would bring justice to their door steps and make it cheap, easily and expeditiously available to them. The Nyaya Panchayats would also inspire confidence in the poor because they would be informal, their proceedings would be in a language they can understand and would not be encumbered by intricate and sophisticated rules of procedure.

The Nyaya Panchayat would be able to remove many of the lacunae of the British System of administration. Since they would be manned by people who would have knowledge of local customs and habits, attitudes and values and who would be familiar with the ways of thought and living of the parties before them. Furthermore, Nyaya Panchayats would be able to discover the truth much more easily than the ordinary courts. The possibility of perjury is largely reduced if the venue of inquiry is near the place of occurrence and in the presence of fellow citizens. The attempt to conceal the truth often springs from the difficulty in detection and distant trial in both time and place and is inhibited by an on the spot and instant hearing by men who know the thought process and the mores of the village folk. In the ordinary courts the parties join issues and the fight becomes fiercer at the end of litigation. However, in the Nyaya Panchayats the whole emphasis is on conciliation and better relations.

The overwhelming public opinion and the recommendations of numerous Governmental and non-Governmental Committee and Commissions have expressed a categorical view that Nyaya Panchayats should be established at the grass-root level for administering justice to the rural areas. In this seminar it is intended to bring into focus some of the important issues relating to the establishment of the Nyaya Panchayats for an indepth consideration so that some worthwhile guidelines may emerge, though no universal model is intended. The following seem to be the crucial points for consideration:

- (i) Whether the Nyaya Panchayats should be manned by regular members of the state judiciary or by lay judges (panchs). In the alternative, whether the Panchayats should be presided by trained full time judges, assisted by lay judges.

We are not inclined to have a legally trained judge presiding over the Nyaya Panchayat. First, it would involve considerable expenditure. The presence of a trained judge would place the accent on formal procedures and technical and legalistic side of justice administration rather than an expeditious resolution of disputes in a simple and informal manner.

- (ii) There is a suggestion that election of the members of the Nyaya Panchayats should be made out of a panel of non-political, well informed and social service oriented persons by a committee comprising the District Judge and the District Magistrate. We think that the system of selection does not provide people's participation in justice. The selected persons are not accountable to the community. Thus the social content in the administration of justice would be missing. We are in favour of Nyaya Panchayat members being elected by the Gram Panchayat members. It ensures proper representation as well as a saving in the time and expenditure involved in separate elections for Nyaya Panchayats.

- (iii) Laying emphasis on educational qualifications, some experts feel that lay judges of Gram Panchayats should be graduates or at least have high school certificate. The prescription of a formal degree would deprive vast masses of people from any sense of participation in the administration of justice. Many people from the higher strata of the community have access to higher education. In case higher education is made obligatory, the Nyaya Panchayats would be completely dominated by the people from higher sections of the society.

In our view the members of the Nyaya Panchayats should be able to read and write, should be men of integrity, possessing objectivity, maturity and enjoy acceptability of all sections of the population. These qualities of character are not necessarily imparted by a formal education. No formal education may be insisted upon for becoming a member of the Nyaya Panchayat. Otherwise, there is also a danger of the scheduled caste/scheduled tribes, backward communities and women being kept out of these organisations.

- (iv) What should be the age group from which the members of the Nyaya Panchayats are elected? Elderly people do command greater respect in village communities because of the maturity, experience, knowledge of local customs and traditions. The age eligibility qualification should start from 40 with no upper limit. In case of women and scheduled caste/scheduled tribe the higher age qualification should be dispensed with.
- (v) Should the elite, wealthy person and big farmers be kept out of the process of election? In view of the fact that appointment by way of elections is recommended, it is difficult to keep out any of the above mentioned categories. However, persons who have been convicted of any offence should be barred from seeking elections.
- (vi) What kind of training should be imparted to the elected members of the Nyaya Panchayats? It is universally agreed upon, that the persons administering justice should be given some formal training and refresher courses thereafter to enable them to understand the law. However, the method of training should be different from what is imparted to the people in the legal and judicial professions. The object of this training should be the expeditious delivery of justice, easy accessibility to the common man and objectivity and impartiality in disposal of proceedings.
- (vii) What should be the territorial jurisdiction of the Nyaya Panchayats—Tehsil, Taluk or village? If justice has to be accessible to the rural poor and weaker sections of the society on terms they can afford, the justice administering institutions must be constituted at least at the Panchayat level if not at the village level. Justice should be available without any cost and loss of time to the aggrieved party.
- (viii) It is generally agreed that apart from the civil and criminal jurisdiction, disputes relating to revenue matters, labour disputes and family matters should also be given to the Nyaya Panchayats. In respect of the criminal matters, to start with, Gram Panchayats should be entrusted with cases which do not involve the award of imprisonment. Non-cognizable cases or cases where the maximum limit of fine would not exceed Rs. 500/- may come under their purview. If in a case, the Gram Panchayat feels that the person found guilty deserves a more serious punishment, it should remit the case to the Chief Judicial Magistrate of the district, for further action.

- (ix) Gram Panchayats should not be bound by procedural codes or laws of evidence. These proceedings should be in the nature of an inquisitional inquiry which would mean that the Nyaya Panchayat would itself take positive role in the inquiry to ascertain the facts regarding the involvement or otherwise, of the person concerned, instead of, merely functioning as an adjudicating body to give its views on the two versions put before it. Nyaya Panchayats would be free to make field enquiries to ascertain the availability of evidence and witnesses.
- (x) The overwhelming opinion is that, parties to the proceedings before the Gram Panchayats should not be allowed to be represented by lawyers. It is for consideration, whether non-professionals should be allowed to assist or represent the litigants.
- (xi) Should there be an appeal against the judgement of the Gram Panchayat? It is also for consideration whether there should be a provision for the revision of, only the points of law.
- (xii) While there should be provision to enable a Nyaya Panchayat to issue processes to compel the appearance of parties before it, when necessary, it is for consideration whether the Nyaya Panchayat should be empowered to execute its own decree, realisation of fine and enforcement of punishment. If not, how should decrees/orders should be executed?

This list is not intended to be exhaustive and a detailed discussion may throw up several other important issues. Ms. Alice Jacob, Member of the Law Commission, has prepared a very illuminating paper on the subject of Nyaya Panchayats as agents of grass-root justice. A copy of this paper is enclosed herewith (refer **Annexure II**). It will be of considerable help in discussing the issues raised above.

Finally a thought may be given to the exploitation of certain other fora for providing redressal to ordinary citizens. The redressal of the grievances suffered by a citizen at the hands of a Government department or a Government functionary, constitutes an important aspect of the administration of justice. The **Administrative Reforms Commission** under the Chairmanship of Shri Morarji Desai, had recommended the establishment of a Lokpal at the Centre and Lokayukatas in the States for redressing the citizen's grievances about administrative acts and omissions. The public servant responsible for the impugned act or omission may be a minister or a petty official. It was intended to cover the entire executive machinery. No Lokpal has so far been appointed by the Centre but a number of states have appointed Lokayukatas. Our lawmakers added the task of inquiring

into complaints of corruption against the ministers and high officials to the responsibilities of the Lokayuktas. Lokayuktas were invested with the power of the civil courts. These organisations were adequate for looking into the ordinary complaints of mal-administration but for investigating the complaints of corruption more exhaustive powers were necessary. The states of Karnataka and Madhya Pradesh placed the entire vigilance machinery at the disposal of the Lokayuktas.

It is for consideration, whether the corruption cases may be taken out of the purview of the Lokayuktas and left to the Vigilance Establishments of the various states. Since the institution of the Lokayukta has not been effective to deal with such cases, whereas, considerable success has been achieved in regard to redressal of the complaints of mal-administration or mis-governance. It is suggested that not only the Lokayuktas be established in all states but their potential should be fully utilised by giving their reports sufficient publicity. In Pakistan, the law provides that the reports of *Ombudsman* may be released simultaneously when sending them to the President and published for the information of the general public for a reasonable price. If this procedure is adopted in India, the number of complaints that Lokayuktas could resolve, would increase manifold. It is also suggested that the recommendations of the Lokayuktas should be binding, and the failure to comply, made punishable.

On the subject of grievance disposal, valuable service is being rendered by **Consumer Courts**. At present, 31 State Commissions and 455 district forums are functional all over the country, besides, the **National Consumer Disputes Redressal Forum**. In 1993, exhaustive amendments were made to the **Consumer Protection Act 1986**, to make it more purposeful and effective. It would be useful, to make an appraisal of the functioning of these courts and to what extent they have succeeded, in expeditiously disposing the complaints referred to it. Is a further expansion of this machinery called for?

The **Institute of Social Sciences**, looks forward to a scintillating interaction, on the subject of decentralisation of justice and exploring avenues, for the redressal of grievances of common citizenry.

Annexure I

The main features of the *Constitution (Seventy-third Amendment) Act* are:

1. Panchayats will be institutions of self-government.
2. There will be a gram sabha for each village or group of villages comprising all the adult members registered as voters in the panchayat area.
3. There shall be a three-tier system of panchayats at village, intermediate block/taluk and district levels. Smaller states with population below 20 lakhs will have the option not to have an intermediate level panchayat.
4. Seats in panchayats at all the three levels shall be filled by direct election. In addition, chairpersons of village panchayats can be made members of the panchayats at intermediate level and chairpersons of panchayats at intermediate level can be members of panchayats at the district level.
5. Members of Parliament, M.L.As and M.L.Cs could also be members of panchayats at the intermediate or the district level.
6. In all the panchayats, seats would be reserved for S.Cs and S.Ts in proportion to their population. Offices of the chairpersons of the panchayats at all levels shall be reserved in favour of S.Cs and S.Ts in proportion to their population in the state.
7. One-third of the total number of seats will be reserved for women. One-third of the seats reserved for S.Cs and S.Ts will also be reserved for women. One-third offices of chairpersons of panchayats at all levels shall also be reserved for women.
8. State legislatures have the liberty to provide reservation of seats and offices of chairpersons in panchayats in favour of backward classes.
9. Every panchayat shall have a uniform five year term and elections to constitute new bodies shall be completed before the expiry of the term. In the event of dissolution, elections will be compulsorily held within six months. The reconstituted panchayat will serve for the remaining period of the five-year term.
10. It will not be possible to dissolve the existing panchayats by amending any act before the expiry of its duration.

11. A person who is disqualified under any law for election to the legislature of the state or under any law of the state will not be entitled to become a member of panchayat.
12. An independent Election Commission will be established in the state for superintendence, direction and control of the electoral process and preparation of electoral roll.
13. Specific responsibilities will be entrusted to the panchayats to prepare plans for economic development and social justice in respect of 29 subjects listed in the **Eleventh Schedule**. The *74th Amendment* provides for a **District Planning Committee** to consolidate the plans prepared by the panchayats and municipalities.
14. The panchayats will receive adequate funds for carrying out their functions. Grants from state governments will constitute an important source of funding but state governments are also expected to assign the revenue of certain taxes to the panchayat. In some cases, the panchayat will also be permitted to collect and retain the revenue it raises.
15. In each state a Finance Commission will be established to determine the principles on the basis of which adequate financial resources would be ensured for panchayats.