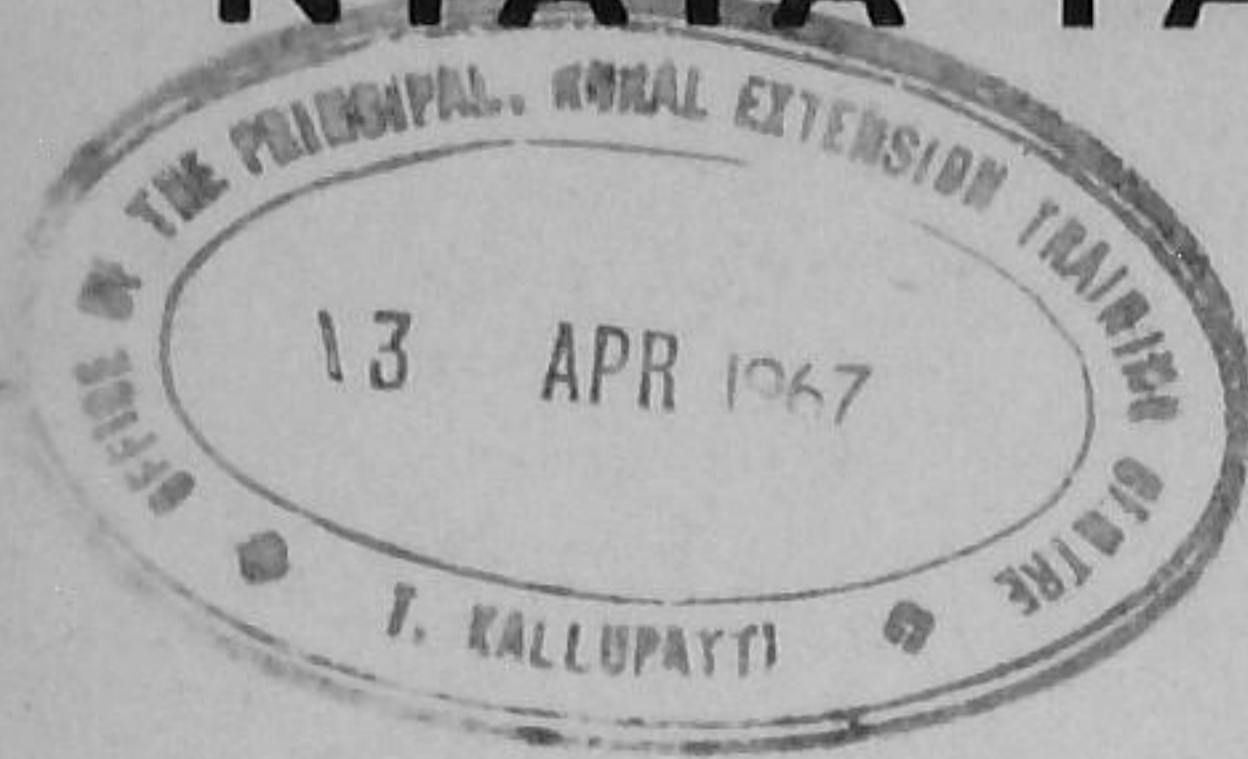


# NYAYA PANCHAYATS



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CHAPTER I

PT 48/2

THE BACKGROUND

Justice is the birth right of all. As such, it should be within the means and easy reach of the common man. It was so in ancient India. As the units of administration and centres of social life were the villages and the bulk of the population lived in them, justice was within the easy reach of the people. Corporate institutions like panchayats managed the affairs of the villages.

The village assembly wielded supreme authority in the village : "In ancient India, the king was the head of the State, but not of the society. He had a place in the social hierarchy, but it was not the highest place. As the symbol of the State he appeared to the people like a remote abstraction with no direct touch with their daily life which was governed by social organisations. The points of contact between the State and the ordinary interests of the daily life of the people were indeed very few."

Even though the British rule started the break up of the village institutions, many an authority has paid tributes to the vitality of these institutions. Sir George Birdwood said, "India has undergone more religious and political revolutions than any other country in the world, but the village communities remain in full municipal vigour all over the peninsula. Scythian, Greek, Saracen, Afghan and Mongol have come down from its mountains and Portuguese, Dutch, English, French and Dane up out of its seas, and set up their successive dominations in the land; but the trades-union villages have remained as little affected by their coming and going as a rock by the rising and falling of the tide."

*Old Village Assemblies*

One of the important functions of the old village assemblies was the administration of justice. *Smritis* and other scriptures



contain numerous references to institutions such as *kula*, *shreni* and *puga* for administering justice. The procedure in these is described by Brihaspati, who says, "These are the four parts of the judicial proceedings : the plaint is called the first part, the answer is the second part, the trial is the third part and the judgment the fourth". Justice was based on the principle enunciated in the *Sukra Niti*, "They are the best judges of the merits of a case who live in the place where the subject-matter of the dispute arises." This enunciation admirably underlines the key note of quick justice; that is in cases of dispute the best men of the locality concerned can alone be the proper judges. It is therefore mentioned in scriptures that, "Foresters are to be tried with the help of foresters, merchants by merchants, soldiers by soldiers and in the village by persons who live with both parties." About the constitution of these tribunals it was laid down that members should be pure, self-controlled, well born, mature, noble and not covetous.

The decisions of these bodies were supported not only by the moral sanction of the community but also by the legal sanction of punishment inflicted by the king.

### *Decline of Village Institutions*

However, the rural institutions underwent a radical change with the establishment of colonial rule. The introduction of their own courts and officers by the British brought about a sharp decline in the importance of village institutions. Administration became more centralised and the dispensation of criminal justice became one of the functions of the executive authority for the maintenance of law and order. Moreover the village lost its importance as the primary unit for the administration of justice. As a result, courts of justice became remote from the life of the common man, and there no longer remained intimate touch between the dispensers of law and the seekers of justice. Dilatory and complicated legal procedure made litigation very expensive. The villagers with their deep rooted traditions have been complaining against the system of administration of justice by regular courts.



*Justice in the Villages*

The villagers had not forgotten the old system of dispensation of justice by the panchayats. In fact, in some places panchayats continued to exercise limited judicial powers. Gandhiji realised how the administration of justice harassed the people instead of helping them and remarked : "Our judicial system must be simple and effective. . . . The law's delay and expense and complicity should be avoided".

In rebuilding rural India after independence and reorienting administrative and judicial systems, it was therefore natural that we should have turned to the experience and traditions of our village institutions, which have stood the test of the time. One of the Directive Principles of our Constitution laid down that the "State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of Self-Government." In pursuance of this directive, Panchayati Raj, a system of democratic decentralisation, has been introduced, which has given panchayats the place which is their due in the life of the village and in their administrative and judicial systems.



## CHAPTER II

### PANCHAYATI RAJ

The Community Development programme was introduced in India in 1952 with a view to transforming the social and economic life of the villages through the active participation and initiative of the village community. The ultimate object of the programme is not so much the achievement of physical targets but the building up of the community itself so as to enable it to contribute effectively towards national progress.

With the experience gained under the community development programme it was realised that for all round development of the rural areas, the responsibility for their development should rest entirely with the villagers. The Balwantray Mehta Committee, set up by the Government of India in 1957 to assess the impact of the community development programme upon the people, suggested a process of democratic decentralisation. The Government accepted the recommendation and so far thirteen States have introduced a three-tier system of rural administration—at the village, block and district levels. This system has come to be known as the Panchayati Raj. The Panchayat constitutes the base of this system. It is the cabinet of village elders elected by the adult citizens of the village and is called the Gram Sabha. This is the chief executive authority in charge of village affairs. The Panchayat Samiti (Block Council) at the block level is responsible for administering development works within the block and assists panchayats in the formation and execution of plans. It generally consists of the Presidents of the panchayats in a block and some other co-opted members. The Panchayat Samiti is linked with the next higher body at the district level known as the Zila Parishad. The latter guides Panchayat Samitis in technical and administrative matters and performs such other functions as only a district organisation can discharge effectively.



Panchayati Raj thus seeks to bring millions in the rural areas into the functioning of democracy. It is a system of grassroots democracy linking the individual family in the remotest village with the Central Government. The people in rural areas are left free to handle matters within specified spheres without interference from the Government. It is hoped that this freedom to think, plan and work will draw out the latent initiative and ability in every individual for the growth and welfare of the family and the community.

### *Case for Nyaya Panchayats*

The revitalisation of Nyaya Panchayats is a part of the process of democratic decentralisation. Even though there was a swing towards centralisation during the British days, it was realised by the rulers that because of the deep-rooted sentiments attached to the panchayat institutions the pendulum should swing back in the direction of decentralisation. There was a clear evidence of an effective functioning of nyaya panchayats in rural areas. The Madras administration report of 1956 observed: "The Government are glad to know that an increasingly large number of citizens are taking recourse to the cheap and summary methods of settling petty disputes in civil and criminal causes." Again in Bihar, the Gram Cutcherries are said to have worked well on the whole. During 1955-57, they had amicably settled 70 to 75 per cent of the cases and that too without any delay. This conciliatory approach had helped in restoring good feelings between the parties and in creating a healthy atmosphere in the villages. In Uttar Pradesh, a committee appointed to study the working of nyaya panchayats observed that adalti panchayats had established a unique record by disposing of nine lakh cases, of which only in 2 per cent revisions were allowed.

About the present working of nyaya panchayats the report of the study team appointed by the Government of India observed that on the basis of the evidence collected by them they could say that there was not one villager in the whole of India who wanted the institution to be scrapped. Some of the reasons advanced for the continued functioning of the nyaya panchayats



are : (i) local courts, acquainted with the customs of the neighbourhood and nuances of the local idiom, are better able to understand why certain things are said or done, (ii) the law courts at the tehsil or district headquarters are procedure-ridden and expensive and the villager prefers an institution nearer at hand, (iii) an institution nearer to the people holds out greater opportunities for settlement and a decision taken by it does not leave behind that trail of bitterness which generally follows in the wake of litigation in ordinary courts, (iv) there are better chances of conciliatory method of approach in nyaya panchayats; (v) people in a village are so closely known to each other that the parties to a dispute would not be able to conceal truth or produce false evidence easily and those who tell lies before the nyaya panchayat face the risk of being looked down upon and even boycotted by others; (vi) panchas being drawn from among the simple village folk strive to arrive at decisions which are fair and at the same time consistent with the peculiar conditions of the parties.

The faith of the villagers in this institution is further borne out by the fact that there have been very few applications for revision of the decisions of the nyaya panchayats and the number of successful revision applications has been fewer still.

As a result of the community development programme and panchayati raj there has already been a general awakening among the villagers. These programmes have brought about a change in the pattern of their life. With schemes of water supply, irrigation, education, sanitation, road building, storage godowns, panchayat ghars for the transaction of the village affairs, the villages are no longer the neglected 'dung heaps' of the past. The villagers are aware of a widening horizon and are getting out of old ruts. They are engaged in rebuilding their future in consonance with their traditions and culture and in the light of modern developments. The constitution of nyaya panchayats is thus a step in the right direction, bringing administration of justice in line with the genius of the people. It is an effective safeguard against denial of justice which results from delays or expenses generally associated with the usual methods of litigation.



## CHAPTER III

### CONSTITUTION OF NYAYA PANCHAYATS AND TRAINING OF THE PANCHAS

That both the judicial and executive powers should not vest in the same hands is an accepted principle. Members of the Gram Panchayats wield executive powers and as such there are chances that justice may suffer if judicial powers are also passed on to them. Considerations of executive functions may come to influence judicial duties and the scales of justice may not be kept even. Also, if the judicial and executive powers are vested in the same person, he may attach more importance to one of the functions to the detriment of the other. Therefore most of the States set up separate nyaya panchayats. Though the purpose of such panchayats remains the same everywhere, the system differs in different States. However, in no State the same person is allowed to serve both on the gram panchayat and the nyaya panchayat.

#### *Grouping of villages*

For the constitution of a nyaya panchayat a few villages are grouped together. This ensures sufficient work for the nyaya panchayats and also a degree of detachment among its members. However, in no case a villager needs to travel more than four to five miles to reach his nyaya panchayat. The grouping of villages for constituting a nyaya panchayat is such as to ensure the maximum advantage and facility to the people.

#### *Elections*

Democracy has taken roots in our country. The method, therefore, being followed in the constitution of nyaya panchayats is that of a system of elections which allows the innate genius of the simple village folk to flower in a free atmosphere.

Elections to nyaya panchayats are indirect. Members of Gram Panchayats form the body which elects the members of the nyaya panchayats. Most of the States follow this system which avoids bitterness and strife. The persons so elected are



likely to take a dispassionate and impartial attitude to questions coming before them.

The Chairman of the nyaya panchayat is elected by the members from among themselves. This ensures for the presiding officer the necessary co-operation and backing of his colleagues.

Rajasthan follows a system of staggering the time of retirement from the office of the nyaya panchas. This ensures continuity of trained panchas and at the same time leaves the door open for fresh blood.

### *Reservation of seats*

Very often cases which concern women and children come up before the nyaya panchayats. In such cases women would be inclined to speak more freely before a woman nyaya pancha. It is, therefore, felt that in those nyaya panchayats which do not have a woman as an elected member, a woman may be co-opted. At present, such a provision exists only in Andhra Pradesh.

### *Qualifications*

It is necessary for the nyaya panchas to possess some educational qualifications. This enables them to pick up quickly the rules to be followed in the conduct of proceedings. This is also desirable if the panchas are to avoid making constant references to the panchayat secretary and thus provoke his intervention every now and then. Further, recognition of a minimum educational qualification indirectly promotes literacy drive in the villages. Therefore, even while recognising the experience and worldly wisdom of the village people, it is desirable that a person eligible to serve as a nyaya pancha should be able to read and write the regional language fairly fluently. Gujarat, Orissa and Rajasthan have made provision for educational qualifications. Orissa and Rajasthan have also prescribed minimum age qualifications, 25 in the case of the former and 30 in the latter.

Some of the State legislations have prescribed insolvency, physical or mental incapacity and convictions involving moral turpitude as disqualifications for election to nyaya panchayats.



## *Training*

The panchas have to observe caution and a certain degree of humility in discharging their functions is necessary. At the same time, they must be fearless. They must bear in mind that all are equal before the law and that the law is no respecter of individuals. They must conform to the principles of natural justice and not only avoid bias and ill-will but should also appear to do so. Though the worldly wisdom of the villagers certainly stands them in good stead in all those respects, some training in the proper conduct of their function is desirable. The provisions of law which the panchas have to apply and the procedures they have to follow must be explained to them. They have to learn to maintain records. Panchas should also know the nature of their relationship with Government agencies such as the police and also with other panchayati raj institutions.

Training must emphasise, among other things, that the panchas should strive to bring about reconciliation between contending parties and pave the way for better understanding between them.

A simple manual of the rules and procedures of the nyaya panchayat has been prepared and published recently. This will certainly be of great help to the panchas in their work.



## CHAPTER IV

### JURISDICTION

Nyaya Panchayats have been given jurisdiction both over civil and criminal matters in almost all the States. The extent of such jurisdiction is defined in the legislations of the respective States. Regarding revenue matters, however, no jurisdiction has been given to nyaya panchayats excepting in two States, namely, Bihar and Assam. Some States fear that the transfer might lead to dislocation in the maintenance and custody of revenue records. The Study Team on nyaya panchayats appointed by the Government of India was also of the view that as there already exists a well established organisation for dealing with such matters, the transfer may lead to dislocations.

#### *Civil Cases*

Almost all the State Acts provide that the nyaya panchayats can entertain the following civil suits :

- (i) suits for money due on contract, other than contracts in respect of immovable property;
- (ii) suits for the recovery of movable property or the value of such property;
- (iii) suits for compensation for wrongfully taking or injuring movable property;
- (iv) suits for compensation for damage to property caused by trespass of cattle.

These suits are regarded as simple in character, the truth or falsehood of which can easily be ascertained. Again, such suits are likely to be of common occurrence in the village and the decision would be based on a simple determination of facts. They would not normally give rise to complicated questions of law. In addition to this category of suits some other suits also are allowed to be entertained by nyaya panchayats in certain States.



Provisions for conferring on the nyaya panchayats some small jurisdiction in respect of immovable property have been made in the State legislations. The upper monetary limit for such suits varies from State to State. It is as low as Rs. 25 in Orissa though the Act has provided for enhancing the limit. In Bihar, Rajasthan and Uttar Pradesh the maximum is as high as Rs. 500. The Acts also generally provide for a higher pecuniary jurisdiction if the parties agree to abide by the decisions of nyaya panchayats. In some States, there is no pecuniary limit at all if the parties agree to have the matter decided by nyaya panchayats. The Study Team has, in its report, recommended that the pecuniary limits regarding civil suits should be fixed at Rs. 250. The report however adds that there should be no objection to a provision that by the consent of parties the limit of civil suits may be raised up to Rs. 500.

While specifying the civil jurisdiction, most of the State Acts have also enumerated the exceptions which cannot be tried by nyaya panchayats. These generally relate to balance of partnership account, suits by or against the Government or a servant of the Government in his official capacity, suits against a gram panchayat, a sarpanch or a panch, suits by or against persons of unsound mind or minors.

Most of the States have made exclusive the jurisdiction of nyaya panchayat in relation to suits within their cognizance. It is a right step and the Law Commission has pointed out: "If the plaintiff takes advantage of the village court with its cheap and expeditious procedure, the defendant will, in order to obstruct the plaintiff and delay the litigation, move for a transfer of his case to the regular court. If our purpose is to make these courts efficient, we can do so only by investing them with complete responsibility in the exercise of such jurisdiction as they possess and give them opportunities to acquire knowledge and experience. It is unfair to criticise these courts as inefficient and at the same time deny them exclusive jurisdiction which step alone can lead to their improvement and satisfactory working."

### *Criminal cases*

Nyaya panchayats are a special machinery, set up in the village by the villagers themselves, primarily for the amicable



settlement of all petty matters which, if left to simmer, would tend to disturb the harmony of village life. The task of adjudicating should only be secondary. And it is felt that if the nyaya panchayats are required to exercise criminal jurisdiction in respect of petty matters the decisions honestly given by them on the basis of intimate knowledge of the parties concerned would prove to be an adequate corrective. Therefore provision should be made only in respect of those offences which are petty in character and are likely to be of common occurrence in the village, the trial of which by a nyaya panchayat will really be in the best interests of the village. The main principle underlying the criminal jurisdiction is that only those offences be given to nyaya panchayats for trial in which fine is an adequate correction. Keeping this principle in view the State legislations have named the following as triable by nyaya panchayats : affray, non-attendance in obedience to an order from a public servant, refusing oath or affirmation when duly required by a public servant to make it, refusing to sign statement, negligent act likely to cause danger to life or spread infection of diseases, fouling of public water or of reservoir, danger or obstruction in public way or line of navigation, obscene acts and songs, voluntarily causing hurt, wrongful restraint, dishonestly receiving stolen property, killing or maiming animals, criminal trespass, misconduct in public by a drunken person, etc. However, with more experience it would perhaps be possible for the nyaya panchayats to bring a wider variety of offences within their cognizance. Accordingly, the Acts of many States provide for addition to the list of offences triable by nyaya panchayats.

### *Imposition of fines*

In all the States nyaya panchayats have the power to impose fines for criminal offences. These fines should prove as adequate correctives. But it has not been considered advisable to give nyaya panchayats power to inflict sentence of imprisonment in default of payment of fine or order imprisonment substantively in respect of any offence. At this stage of development nyaya panchayats may not be able to use such powers with the fullest understanding of the implications of a case. Where fines are difficult to recover, such cases may be referred to regular courts. However, it may be mentioned that in Bihar, Kerala and Orissa nyaya panchayats



have been given some powers to inflict imprisonment in certain criminal cases.

Almost all the States have laid limits up to which the nyaya panchayats can impose fines in respect of criminal cases. These limits vary a great deal from State to State. In a district in Gujarat the fines imposed have invariably been Re. 1, the reason being that in most cases the accused admitted their guilt. However, the maximum fine varies from Rs. 50 in Madras to Rs. 250 in Assam. In Punjab, a panchayat with enhanced powers may levy a fine which may go up to double the value of property in respect of which the offence is committed, which in some cases could be as high as Rs. 500. The report of the Study Team on nyaya panchayats has however observed that the maximum amount of fine that may be imposed by nyaya panchayats for the time being be fixed at Rs. 50.

As in civil suits the jurisdiction of nyaya panchayats in criminal cases is also exclusive in almost all the States.



## CHAPTER V

### WORKING OF NYAYA PANCHAYATS

In the past, the prestige of the panchayats was based on the respect and confidence with which the villagers regarded the decisions of the village elders. There was always a desire to settle disputes by conciliation. Even today the importance of conciliation is recognised in settling industrial and labour disputes. Conciliation means a solution acceptable to all parties concerned. It minimises friction, avoids bitterness and thus paves the way for the growth of harmonious relations.

#### *Goodwill, the aim and the method*

Villagers in their new development endeavours have to pull together, and it is necessary to foster harmonious relations amongst them in the interest of the village and the nation. Most of the disputes in the villages relate to petty matters and often they can be settled by impartial mediation. The practice followed by panchayats all over the country at the moment is to make every endeavour to settle the disputes whenever possible rather than to adjudicate upon them. The percentage of cases disposed of by compromise ranges from 75 in Orissa to 30 in Uttar Pradesh. While the nyaya panchayats can conciliate in respect of all matters within their jurisdiction, the actual method and manner of bringing about conciliation is, however, left to be devised by the nyaya panchayats, taking into account the circumstances of each case. However, it is generally felt that conciliation should not be made a compulsory pre-condition to the settling of disputes by nyaya panchayats. Compulsory conciliation can create complications. It may give rise to a new category of revision petitions and may enable the parties to manipulate evidence. There is difference of opinion on the issue whether the work of conciliation should be given to nyaya panchayats themselves or a separate body should be set up. The Study Team on nyaya panchayats is of the opinion that there should be no separate body for conciliation. Multiplicity of bodies is not considered conducive to efficiency and the volume



of work does not justify a separate body for conciliation. However, Andhra Pradesh, Gujarat and Madhya Pradesh have made provision in nyaya panchayat legislation for compulsory conciliation and separate bodies for the purpose.

### *Procedure*

If the nyaya panchayats are to function efficiently, the procedure for disposal of case coming before them should be simple. One of their main functions is to bring about, as far as possible, compromises in respect of all the simple disputes arising in the villages. Failing to do so they are expected to adjudicate upon them on the basis of broad principles of natural justice. Thus, to be above reproach, the procedure of nyaya panchayats should be such that the proceedings are conducted in accordance with the established principles of natural justice. The language of the procedural details should be simple. The procedure should not be too rigid, since provision cannot be made for all possible contingencies. If the rules and principles framed are simple, and proper attention is focussed on these in the training programmes, the nyaya panchas would be able to grasp the procedural details easily. Most of the States specifically provide in their legislation a simplified procedure for trial before nyaya panchayats and in some States the application of civil procedure code and criminal procedure code has been disallowed.

For the trial of cases the nyaya panchayats constitute themselves into different benches. For the disposal of any proceedings the bench concerned should include at least one member from the village in which the plaintiff or complainant resides and one from the village in which the defendant or accused resides, and where both parties reside in the same village, at least one member from that village. If any nyaya panch has personal interest in the subject matter of the dispute, this would disqualify him from sitting on the bench. In all cases tried by nyaya panchayats a brief record of the evidence of each witness is kept. On the spot enquiries are also made. Judgment is given in writing. The nyaya panchayats levy court-fees which are well within the means of the villagers. Usually it varies from Re. 0.50 to Rs. 10 depending on the value of the case. This is not a big burden on the parties concerned since they are saved from



the expenses of travelling to a far away district or tehsil headquarters, engaging legal practitioners, etc. Legal practitioners are not allowed to appear before the nyaya panchayats except in Kerala and in some cases in Bihar and Andhra Pradesh. That legal arguments might lead to technical tangles is the reason for not encouraging the appearance of lawyers.

#### *Enforcement of orders of nyaya panchayats*

Enforcement is required in respect of the following two categories of orders :—

- (a) Execution of decrees
- (b) Realisation of fines.

Nyaya panchayats in certain States enjoy the simple power to distrain and sell movable property in execution of decrees. Failing satisfaction by this procedure, the decree or order can be transferred to the Collector for execution.

Similarly, difficulties in realisation of fines in criminal cases can be referred to Magistrates.

#### *Panchayat Secretary*

There are many functions of a purely clerical and routine nature which have to be performed by the nyaya panchayats. Several registers have to be maintained, petitions and applications of litigants have to be received, complaints have to be recorded, summons and other processes have to be issued, copies of proceedings have to be furnished, evidence and judgment have to be recorded, fees have to be collected and receipts issued, intricate cases have to be referred to the regular courts and papers may have to be sent up to revisional authorities. It is therefore necessary that nyaya panchayats should have someone competent to do these jobs. For this purpose in all the States a part-time or whole-time secretary or clerk has been provided to the nyaya panchayats. To begin with, depending on the number of cases coming up before the nyaya panchayats, it may be enough to provide one secretary for two to three nyaya panchayats. It is, however, essential that these secretaries are properly trained to be able to discharge their functions. They have to play a vital



role in making nyaya panchayats a success by displaying thoroughness, efficiency and integrity in maintaining the records and by rendering the work of panchas easier, by putting up to them cases in proper form. It is to be ensured that, whereas injustice is not perpetrated in the name of rough and ready justice by nyaya panchayats, their judgement is not, at the same time, set aside by superior courts on mere technicalities. With this in view, the Study Team has recommended and most of the States have provided for revision by superior courts in cases of failure of justice, but no appeal is allowed.

The revisional court may interfere if it is not satisfied as to the correctness, legality or propriety of any decision, sentence or order of nyaya panchayat. About the transfer of a case it will be the discretion of the ordinary court to agree to such a transfer from one nyaya panchayat to another or to an ordinary court. A nyaya panchayat may decide to transfer an intricate case to an ordinary court.

#### *Supervision of nyaya panchayats*

To ensure the proper growth of nyaya panchayats, it is necessary that in the early stages they should be regularly inspected by judicial officers. It should not be a mere routine check-up to ensure that there is proper maintenance of registers, etc. The inspecting officer should be able to act as a guide, philosopher and friend to nyaya panchayats. Perhaps, this could best be done by a special judicial officer appointed for the purpose.

To ensure that panchas act honestly and fairly in the discharge of their duties, certain powers of control should be vested in a special authority. This body should have powers to remove any panch if he is found to be guilty of misconduct or of remissness in the discharge of his duties or to be actively associated with any political party or with any religious, racial, caste or communal group. Such powers of removal should ordinarily be vested in a judicial authority and there should be a right of appeal against such removals. In most of the States such powers of control are vested in a senior judicial officer.



*Regain the past glory*

Adequate arrangements are necessary for apprising the people of the useful work being done by nyaya panchayats in helping the people to solve the disputes amicably and maintaining the harmony of the village. Nyaya panchas could be awarded prizes where good work has been done so that a healthy competition could be engendered among the nyaya panchayats. However, the real success of these institutions depends not so much on the panchas as in the people themselves. With proper understanding and sincere co-operation we can make these institutions powerful organisms radiating peace and goodwill in our countryside. Conflicts cannot be eliminated so long as people live in a society, but they can be resolved without leaving a trail of bitterness or grievance. By fulfilling this noble function, the nyaya panchayats will herald a climate of co-operation in our villages, facilitating their peaceful progress in every sphere of life.



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