



ORIGINAL RESEARCH PAPER

Law

ACCESS TO JUSTICE: THE ROLE OF PANCHAYAT FACILITATED MEDIATION IN RESOLUTION OF DISPUTES

KEY WORDS:

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ABSTRACT

In India, "access to justice" has been regarded as a fundamental right being a facet of "right to life" guaranteed under the Constitution. The Citizen's inability to access judicial mechanisms provided for the determination of their rights and obligations is bound to result in denial of right to equality before the law. The facets that constitute the essence of access to justice lie in dispute resolution mechanism accessibility and affordability to the disputants. The current State legal institutions which are often found to be inaccessible, expensive, complicated and time-consuming, access to justice particularly for rural people in these institutions remains a significant challenge due to their socio-economic background. Traditional dispute resolution mechanisms, such as Village panchayat-facilitated mediation, have gained significance in addressing this challenge at the grass-root level. This paper examines the role of panchayat-facilitated mediation in promoting access to justice at the grass-root level. It explores the historical context, framework, and operational mechanisms of panchayats in India. Furthermore, it analyzes the effectiveness of mediation in resolving local disputes and imparting justice at the grassroots level. This paper by highlighting the potential of panchayat facilitated mediation, contributes to the discourse on the role of mediation in advancing the sphere of access of justice in rural areas.

I. INTRODUCTION

In England, courts have, since the era following the Magna Carta, gradually formulated fundamental principles of common law that are established as the basic rights of all humans. These principles have been over a period of time got legal recognition in various countries through instruments such as Bills of Rights and Constitutions, embodying therein the Roman maxim of 'Ubi Jus Ibi Remedium'. The notion of *access to justice* has gained significance with its recognition as a fundamental human right in many constitutional democracies across the world. It traces its roots from the Magna Carta, Universal Declaration of Human Rights (Article 8), and International Covenant on Civil and Political Rights (Article 2). These instruments and judicial interpretations over the years have extensively explored and elaborated on the concept of access to justice to include among other aspects, the state's responsibility to provide all citizens with the means for a fair and peaceful resolution of disputes regarding their legal rights.

In India, courts recognized 'access to justice' as a significant right long before the Constitution came into effect. The framers of the Indian Constitution embraced the doctrine of equal justice in the preamble and incorporates provisions for its fulfillment in Articles 14, 21, 22(1), 32, 38, 41, 46, 142, 226, and 282. To give real and purposive meaning to the doctrine of access of justice,

Article 39A was later introduced in the Constitution and further get strengthened by Hon'ble Supreme Court recognition of access to justice as a fundamental right under Article 21 and 14 being a facet of "right to life" guaranteed under the Constitution. The Citizen's inability to access judicial mechanisms provided for the determination of their rights and obligations *is bound to result in denial of right to equality before the law. The facets that constitute the essence of access to justice lie in dispute resolution mechanism accessibility and affordability to the disputants. The current State legal institutions which are often found to be inaccessible, expensive, complicated and time-consuming, access to justice particularly for rural people in these institutions remains a significant challenge due to their socio-economic background.*

The notion of 'participatory development' encompasses

within it the related concepts of democratic decentralization, good governance, and sustainable development. Indeed the process of democratizing the judicial system should commence from the grassroots level itself either by means of transforming the current judicial system, or through people's direct participation in the judicial administration. The people's direct participation in process of dispute resolution will interface well with the ongoing democratic decentralization occurring in the country, prominently through the age-old institution of village *panchayats*.

About seven and half decade of the Constitution at work has raised many issues relating to the functioning of the current legal system, the most important being the judicial delays and large pendency of cases in the courts. In India, the majority of the people continues to reside in the rural areas with low socio-economic conditions. For them 'access to justice' is commonly being understood in sense of access to their customary dispute resolution forums like village *panchayats* or respected elders of the family or clan. It thus becomes imperative to deliver speedy justice to them, since the existing judicial system cannot all alone handle the huge burden of backlog of cases. One way to overcome this is by reviving the mechanism of mediation for resolution of petty disputes through the local bodies like village *panchayats*.

This paper examines the role of panchayat-facilitated mediation in promoting access to justice at the grass-root level. It explores the historical context, framework, and operational mechanisms of panchayats in India. Furthermore, it analyzes the effectiveness of mediation in resolving local disputes and imparting justice at the grassroots level. This paper by highlighting the potential of panchayat facilitated mediation, contributes to the discourse on the role of mediation in advancing the sphere of access of justice in rural areas.

II. Conventional Forums of Judicial Administration

The dispensation of justice by village *panchayat* and concomitant involvements of the people in judicial administration in India are as old as the villages themselves. In ancient India, village communities were functioned in itself as a little republics, having innumerable local jurisdictions and enjoyed some degree of autonomy in administering law to

themselves. The genesis of village *panchayat* have to sought in the democratic institutions of village assemblies such as *kula*, *sreni*, *puga*, developed by the ancient autonomous village communities. The ancient system of dispute resolution was based on the principle of quick justice enunciated in the *Sukranitisara* which states, "They are the best judges of the merits of case who live in the place where the subject matter of the dispute arises." Thus, disputes in villages were not settled by royal courts which are situated mainly in cities, but locality within which the dispute arose either by the elders of the locality, or associations of traders and guilds or village *panchayats*.

The traditional legal framework observed in ancient villages constitutes an essential component of the normative structure, firmly grounded in the principle of *Dharma*. This comprehensive concept of *Dharma* encompasses ethical standards, proper conduct, religious values, legal principles, and everything that fosters harmonious human interaction. Interestingly, rural inhabitants often hold traditional laws in higher regard than urban courts, as these laws resonate more deeply with their cultural identity and societal norms. The villagers prefer to resolve their disagreements amicably, adhering to the customs and traditions of their community, viewing it as a matter of pride to avoid resorting to legal proceedings. They perceive litigation in court as shameful, whereas those who opt to settle disputes within the village, under the guidance of elders and in accordance with established customs, are highly esteemed. They believe that resorting to the court results in both financial loss and a tarnished reputation, disrupting community harmony. This sentiment reflects their earnest desire to uphold and sustain the traditional legal system.

Attempts to control and curtail the authority of these village assemblies by the Kings were rare and exceptional and did not succeed even when attempted. It is a peculiar fact of the Indian sub-continent that, throughout most of its history there was no direct or formal control of State over the administration of justice in the villages where most Indians lived. Even the Muslim invasion was not able to make any vital impact on the village community. The breakup of these village institutions somewhat began under the British rule. The early British administrators ignored local indigenous legal system and imposed the process of adjudication in their courts on the pattern of their own British law courts of the period. Under the highly centralized system of the British administration, where all the activities were controlled and guided by directions from the central administration, village assemblies not having the sanction of British law finds no place, led to the death of village *panchayats*.

III. Village panchayat system during Colonial and Pre-Independence period

However, it did not take long for the British rulers themselves to realise the utility and importance of the village organisations, and soon one behind the other they began to shower fulsome praise on these organisations, although decadent, often referring to them as "the soul of corporate life in rural areas". Having regard to its historic antiquity and to the deep rooted sentiments attached to the village *panchayats* institution, the pendulum swing in other direction, namely, in favour of a certain amount of decentralization. Realising the importance of these village bodies, the British administration attempted to revive them in some form or other.

The initial official discussion on authorization by the State of village bodies to dispense certain administrative and judicial functions emerged during the beginning of nineteenth century. The earliest statutory recommendation came in the form of regulations passed in Bombay and Madras in 1802 and 1816 respectively that were aimed at diminishing the expense of litigation and employing respectable and intelligent inhabitants of the locality in administering justice to their

neighbours. Thereafter, continuing efforts to reorganize rural self-government through village *panchayats* include the 1870 Mayo Resolution on Decentralization, Lord Ripon's famous 1882 Resolution, the 1907-08 Report of the Royal Commission on Decentralization, the 1915 Government of India Resolution, and the 1918 Montague-Chelmsford Report. The Civil Justice Committee of 1924-25 also recognized that the judicial work of the village *panchayat* was part of the village system and has been the basis of the indigenous administration from time immemorial.

Therefore, the village *panchayat* system is a longstanding institution deeply ingrained in the cultural values of the nation and is not a new concept. Considering the relatively minor nature of disputes in villages and the potential for significant animosity and unproductive legal conflicts, the village *panchayat* system has proven to be an effective means for promptly resolving local disputes and fostering peace, harmony, and tranquility within communities.

IV. Post-Independence attempts for Re-Vitalisation of Village Panchayat's

Postcolonial development discourse in India carried elements of people-centric community development primarily influenced by the Gandhian notion of the village democracy. Mahatma Gandhi positing an ideal picture of democracy and village self-sufficiency outlined that, village *panchayats* will be the 'legislature, judiciary and executive combined', and there will be 'no system of punishments in the accepted sense' as "non-violence with its techniques of satyagraha and non-cooperation will be the sanction of the village community". Although, Mahatma Gandhi expressed his ideal of village *swaraj* (i.e self-rule) in a pragmatic manner, but also knew that even if such village republics had existed and flourished in the distant past, they were vastly affected by the anarchy following dissolution of the Moghul Empire, and with the introduction of British justice.

Although, the draft Constitution of India did not contain any reference to villages and was thus subjected to the criticism that, no part of it represents the ancient polity of India. Chief draftsman of the Constitution, vigorously defended the omission of villages and ruffled the feelings of many in the Constituent Assembly. Mahatma Gandhi himself had urged a different form of polity for India. Mahatma Gandhi compared *Gram-Rajya* to *Ram-Rajya* (i.e., self-rule by villagers, to the righteous polity of Lord Rama). Mahatma Gandhi was in this view aiming to bring about the social, moral and individual transformation from the below. The Constitution as it emerged did include certain village-oriented Directive Principles of State Policy under Article 40. Subsequent developments in the area of democratic decentralization, though not realizing the Gandhian utopia, owe much to the overall ideology. However, to fulfill the Gandhiji's ideal of *Gram-Rajya*, since the adoption of the Constitution, there have been continuing efforts at 'democratic decentralization' through insistence on 'public participation' by villagers in formulating and implementing social change including the administration of justice.

'Equal Justice to all' as the paramount goal is set by the Constitution of India, and in order to secure this cherished goal, the value of 'access' to State justice was another strand of thought which influenced the creation of village *panchayats*. Only through the village *panchayats*, administration of justice could be brought 'at the door-step of the village'. When thus brought, state justice will have a different complexion; it would be easy and cheap, less procedure ridden, more informal and flexible and more community based. In order to realize the cherished goal of 'access to justice', an amendment was made in 1976 and Article 39A was introduced in the Constitution of India which directs the State to secure that operation of legal system must "promotes justice, on a basis of equal opportunity, and shall, in particular, ensure that

opportunities for securing justice are not denied to any citizens by reason of economic or other disabilities". This constitutional imperative mandates that administration of justice to be justified in terms of providing simple procedure which also help in fighting the delay in the disposal of disputes simultaneously reducing the cost and making justice effective, inexpensive and substantial in character.

Article 40 of the Constitution mandates the State to arrange village *panchayats*, while Article 50 directs the State to ensure the segregation of the judiciary from the executive. This call for the separation of judicial and executive authority, as stated in Article 50, motivated many states to establish Nyaya *panchayats* as distinct judicial entities. Following independence, nearly all states established village *panchayats* and Nyaya *panchayats*, maintaining them as separate entities to ensure the segregation of the judiciary from the executive. However, as the functions of village *panchayat* institutions expanded and diversified, there arose a need to alleviate the judicial burden in order to enhance efficiency in carrying out developmental and governmental responsibilities.

Besides the principles of separation and efficient allocation of tasks, the establishment of village *panchayats* can be interpreted through two additional perspectives. Firstly, their inception reflects a commitment to providing accessible legal recourse to rural communities. Secondly, it signifies a significant governmental effort to supplant existing dispute resolution mechanisms in villages, whether they are based on caste, territorial affiliations, or are specialized institutions established by social reformers like the Rangpur People's Court. Village *panchayats* aim to achieve this by maintaining procedural flexibility and involving lay adjudicators, thereby adopting the very characteristics of the institutions they seek to replace. However, they also adhere to formal organizational principles and judicial oversight, which are incongruent with the traditional justice systems of village communities. Consequently, the structuring of village *panchayats* inherently reflects the state's endeavor to extend its authority and constitutional values to rural areas, resulting in complexities and dilemmas for which there are no straightforward solutions.

Thus for the purpose of providing *access to justice* to its citizens at their doorsteps, and no to deny them the opportunities of securing justice on the basis of their social, economic or other disabilities, the Nyaya *panchayats* as a subset of village *panchayats* were established at the grass root levels in light of mandate of the Article 40 and Article 39-A of the Constitution of India. The objectives of these Nyaya *panchayats* is to provide access to justice to the most marginalised sections of the society and specifically to reduce 'barriers to access' in terms of distance, time, and associated costs; reduce dependence of rural citizens on extra-judicial alternative forms of justice; tackling mounting arrears in legal system by providing for a fourth tier of judiciary with summary procedures; provide for formal 'participatory justice' in rural areas and reducing workload on the higher tiers of judiciary.

The quintessential feature of traditional village *panchayat* justice was community mediation for resolution of disputes locally with the paramount consideration of welfare of the disputants. But after independence, the role of village *panchayats* in the delivery of justice at the grassroots level declined as they were entrusted with a new responsibility, that is, looking after the development works in the village. Although the roles of village *panchayats* in the settlement of disputes declined, yet they continued to resolve disputes in the villages informally. However, the sanction of decisions taken by the village *panchayat* in such cases get diminished as compared to legal sanctity enjoyed by the State established court of law.

V. Strengthening of Nyaya Panchayats through Gram Nyayalayas

The Law Commission, in its Fourteenth Report, stresses the "educative value" of Nyaya *panchayats*, just as village *panchayats* would educate the villager in the art of self-government, 'so would Nyaya *panchayats*' train them in the art of doing "justice between fellow-citizens and instill in him a growing sense of fairness and responsibility. The report further noted that Nyaya *panchayats* (village courts) being carriers of the secular, egalitarian, modernistic legal ideology, assisted in the desired transformation of society. They are visualized as the lowest rungs of the state system of administration of justice and recognized as very useful devices to prevent court congestion at higher levels. Since village courts are acquainted with the local customs of the village and its people, they are better able to understand the nuances of the local idioms as to why certain things had happened and done. The villagers would also welcome an institution near at hand composed of persons who, although they may make mistakes in the procedure, know the people and to a great extent give them satisfaction.

Nyaya *panchayats* therefore represent an extension of the state legal system in rural areas. Extension of state law, of course, means extension of the formal polity at the expense of informal community processes. Nyaya *panchayats* are supposed to combine some features of the state legal system (e.g., formal principles of organization and operation, hierarchy, oversight and control) with some prominent features of community dispute-handling processes (e.g., informality, flexibility). This makes Nyaya *panchayats* institutions halfway between fully fledged judicial institutions of the state on the one hand and these judicial institutions which flourish under the auspices of the communities themselves. Moreover, a common perception amongst the rural masses is that 'access' to formal State justice is complex, difficult, and urban elite oriented. As a result, they avoid seeking legal redress for their grievances through State courts.

Therefore, need was felt to create a mechanism for resolution of disputes at grass-roots level, which secures 'Justice' to village and rural folks. The 'other disabilities' referred to in Article 39A, distinct from the economic disabilities arise because of lack of suitable local fora for dispute handling and greater emphasis being laid on professionalised justice. The 114th Law Commission report on 'Gram Nyayalaya' emphasized on the alternative model of deprofessionalised justice. In this model, the indigenous juristic potential of the people, including their own sense of justice, is allowed room for development, which has been sought to be done through people's participation in administration of justice. The 114th report of Law Commission of India thus suggested establishment of independent State sponsored Gram Nyayalayas for providing affordable and quick access to justice to the citizens at their doorsteps.

The Government of India accepted Law Commission's recommendation, and on the occasion of Mahatma Gandhi Jayanti in 2009, The Gram Nyayalayas Act came into force. The Gram Nyayalayas are aimed at providing inexpensive justice to people in rural areas at their doorsteps with jurisdiction on criminal cases, civil suits, claims or disputes which are specified in the First Schedule and the Second Schedule to the Act. They are to follow summary procedure in criminal trial and in civil cases disputes are to be settled as far as possible by bringing about conciliation between the parties, in accordance with the principles of natural justice. Most of the Indian States have established the Gram Nyayalayas and have been functioning with positive results in providing access to justice, reducing arrears in the District Judiciary, delivering speedier justice, reducing dependency of citizens on alternative/extra-constitutional forums of justice, and allowing rural citizens to agitate on their legal rights that

previously went unlitigated due to difficulties in Accessing Justice.

VI. Panchayat facilitated Mediation in Resolution of Disputes

The institution of *Nyaya panchayats* at the grassroots level functioning as the self-governing bodies, had played a significant role in maintaining rural harmony through resolving community disputes and upholding justice at the local level from the ancient times. Central to this functioning of village *panchayats* is the practice of mediation, which allows for the peaceful resolution of conflicts, highlighting their role in fostering community justice and promoting social cohesion. Disputes arising within the community were primarily resolved through the method of mediation and consensus-building, under the community leadership of respected elders or intervention by the local village heads (like *Panch* or *Mukhiya*). These leaders of the community, acted as mediators facilitates open dialogue, encourage compromise, and helps the disputants find mutually agreeable solutions. Community mediation is designed such as to achieve the objective of settling the conflict at grass root level at the beginning of the conflict itself, so that harmony and peace in society can be maintained.

Panchayats thus provides greater opportunities for settlement, and any decision given does not leave behind that trail of bitterness which generally follows in the wake of every litigation in the ordinary courts. The desire to fight out every case to the bitter end which is ordinarily associated with a court litigation tends to disappear, particularly because of the consensus method of approach adopted by *panchayats* to problems coming before them. Moreover, in village it is difficult for any person to speak an untruth and corruption and suborning of false evidence find very little room to play. *Panchas* drawn from among the simple village folk are fully alive to their responsibilities to see that their decisions are fair and implemented. A justice system rooted in practical wisdom, accessible right in the village, economical yet efficient, devoid of cumbersome procedures and delays, focused on reconciliation rather than prolonging disputes, administered by local residents who share the same language and often similar perspectives, characterized by its informal and transparent nature open to public scrutiny, and boasting a longstanding tradition, naturally garners widespread acceptance.

Moreover, in order to prevent the escalation of conflicts at the early phase before it becomes too difficult or unmanageable, the Mediation Act, 2023 provides for mediation and settlement of conflicts in society at grass-root level using community mediation. The aim of idea of pre-litigation mediation is to stop the mess of litigation of disputes which are not even worth starting, and which tends to disrupt the peace, harmony and tranquility amongst the residents or families of any area or locality. The introduction of community mediation under chapter X of the Mediation Act, 2023 offers an opportunity for settling disputes locally although settlement agreement arrived during community mediation shall not be enforceable as a judgment or decree of a civil court. For carrying out the community mediation under sub-section 1 of section 43, any of the parties can approach the concerned Authority constituted under the Legal Services Authorities Act, 1987 or District Magistrate or Sub-Divisional Magistrate in areas where no such Authority has been constituted. However, the 2023 Act does not define the nature of cases which affects the peace, harmony and tranquillity amongst residents or families of any area or locality, and further the authority given to Executive Magistrates signifies that community mediations will be done primarily in law and order situations.

VII. CONCLUSION

In the tapestry of rural India, where disputes can unravel the

fabric of community harmony, Panchayat-mediated mediation emerges as a time-honored tradition steeped in wisdom and resilience. By embracing the principles of dialogue, equity, and inclusion, *Panchayats* pave the way for peaceful coexistence and collective progress in India's rural hinterlands. As custodians of justice and architects of reconciliation, they embody the timeless spirit of community and collaboration that defines the soul of rural India.

Village Panchayats and mediation thus plays a multifaceted roles in India's rural communities, ranging from governance and dispute resolution to social empowerment and cultural preservation. Recognizing their importance and addressing existing challenges can contribute to more inclusive and effective rural development strategies.

REFERENCES

1. *In Re: Llewelyn Evans* AIR 1926 Bom 551, Madgavkar, J. of High Court of Bombay, observed that "... if the ends of justice is justice and the spirit of justice is fairness, then each side should have equal opportunity to prepare its own case and to lay its evidence fully, freely and fairly before the Court. This necessarily involves that the very state which undertakes the prosecution of the prisoner, also provides him, if poor, with such legal assistance."
2. *Anita Kushwaha v. Pushap Sadan* (2016) 8 SCC 509.
3. The expression *panchayat* is literally means the "coming together of five persons," hence, a council, meeting or court consisting of five or more members of a village or caste assembled to judge disputes or determine group policy.
4. The Economic Survey 2022-23 notes that 65 per cent (2021 data) of the country's population lives in the rural areas, available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1894901> (Visited on March 01, 2024).
5. The British colonial administrator, Sir Charles Metcalfe, described villages as:
 - a. "The village communities are little republics, having nearly everything they wanted within themselves. They seem to last where nothing else lasts. Dynasty after dynasty tumbles down, revolution succeeds to revolution. Hindu, Pathan, Moghal, Mahratta, Sikh, English, are masters in turn, but the village communities remain the same. The union of village communities, each one forming a separate little State in itself, has, I conceive, contributed more than any other cause to the preservation of the people of India, through all revolutions and changes which they have suffered, and it is in high degree, conducive to their happiness, and to the enjoyment of a great portion of freedom and independence."
 6. According to Katyayana, *Kula* refers to family, *puga* refers to one village or city consisting of different caste and professions, *sreni* means guilds of artisans or group of persons having the same trade while they may belong to different castes.
 7. K. N. Chandrasekharan Pillai, "Criminal Jurisdiction of Nyaya Panchayats" 19(4) *JLI* 438 (1977).
 8. K Ishwaran, "Customary Law in Village India" 5 *Leiden* 1 (1964):
 9. J. Derrett, *Religion, Law and the State in India* (London, Faber and Faber, 1968).
 10. In the words of Elphinstone-"These village communities contain in miniature all the materials of a State within themselves, and are almost sufficient to protect their members, if all other governments were withdrawn." Sir Bemapfyde Fuller observed: "the village as a self-contained unit, has manifested extraordinary powers of resistance and has remained a centre of vitality in the darkest days of foreign conquest."
 11. Gandhiji concluded their outline of village government thus:
 - a. "Here then is perfect democracy based upon individual freedom. The individual is the architect of his own government. The law of non-violence rules him and his government. He and his village are able to defy the might of a world".
 12. *Federation for Fast Justice & Anr v. Union of India & Ors.* W.P(C) No. 1067 of 2019.
 13. Law Commission of India, 14th Report on Reform of Judicial Administration (September, 1958).
 14. The urban elite consider that "administration of justice requires technical knowledge of law and those uninitiated in the knowledge of law cannot be trusted with the task of administration of justice. Justice according to law has been interpreted to mean 'justice rendered by those who know law'".
 15. Law Commission of India, 114th Report on Gram Nayalaya (August, 1986).