PANCHAYAT JUSTICE:
AN INDIAN EXPERIMENT IN LEGAL ACCESS

by

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I. INTRODUCTION *

India's massive attempt to provide access to justice for hundreds of millions of villagers through the promotion of Nyaya Panchayats (village courts) is theoretically provocative as well as practically important. Yet it remains virtually unexamined in India as well as unknown abroad.

A. TRADITIONAL PANCHAYATS

Panchayats, which have existed in India for thousands of years, are a characteristic and distinctive institution of Indian civilization. Literally the term 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. ¹ Although Indian civilization contained refined and respected bodies of legal learning — the Dharmasastra (Hindu law) and later Muslim law as well — and although there were royal courts in administrative centers, these did not produce a unified national legal system of the kind that developed in the West. The textual law influenced but did not displace the local law. The government's

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¹ A note on terminology: Panchayati Raj (regime of panchayats), abbreviated in this paper as PR, refers to the Indian government's policy of promoting elective village panchayats as units of local self-government. The judicial branch of these are nyaya (Sanskrit for justice) or (in some states) adalat (Persian for court) panchayats. We use the term Nyaya Panchayats throughout to refer to such judicial tribunals established by government policy and abbreviate it as NP.
law did not penetrate deeply into the countryside. Throughout most of Indian history there was no direct or systematic state control of the administration of law in the villages where most Indians lived. 2

In pre-British India there were innumerable, overlapping local jurisdictions, and many groups enjoyed some degree of autonomy in administering law to themselves. Disputes in villages and even in cities would not be settled by royal courts, but by tribunals of the locality, of the caste within which the dispute arose, or of guilds and associations of traders or artisans. Or, disputes might be taken for settlement to the panchayat of the locally dominant caste or to landowners, government officials or religious dignitaries.

Some panchayats purported to administer a fixed body of law or custom; some might extemporize. In some places and some kinds of disputes, the process was formal and court-like. Some panchayats were standing bodies with regular procedures, but many of these tribunals were not formal bodies but more in the nature of extended discussions among interested persons in which informal pressure could be generated to support a solution arrived at by negotiation or arbitration. 3 These tribunals would decide disputes in accordance with the custom or usage of the locality, caste, trade or family. Custom was not necessarily ancient or unchangeable; it could be minted for the occasion. The power of groups to change customs and to create new obligatory usages was generally recognized.

Rulers traditionally enjoyed and occasionally exercised a general power of supervision over all these lesser tribunals. In theory, only the royal courts could execute severe punishments. These lesser tribunals could pronounce decrees and invoke royal power to enforce them. But while some adjudications might be enforced by governmental power, most depended on boycott and excommunication

2 On the pre-modern Indian legal system see J. DEBRETT, RELIGION, LAW AND THE STATE IN INDIA (London, Faber and Faber, 1968); N. SEN-GUPTA, EVOLUTION OF ANCIENT INDIAN LAW (Calcutta, Eastern Law House, 1953); M. AHMAD, THE ADMINISTRATION OF JUSTICE IN MEDIEVAL INDIA (Allahabad, Historical Research Institute, 1941); V. GUHE, THE JUDICIAL SYSTEM OF THE MARATHAS (Poona, Deccan College Post-Graduate and Research Institute, 1953); P. KANE, HISTORY OF DHARMASASTRA, (5 vols. in 7) (Poona, Bhandarkar Oriental Research Institute, 1930-62). On the transition to the present system see GALANTER, THE DISPLACEMENT OF TRADITIONAL LAW IN MODERN INDIA, 24 J. OF SOCIAL ISSUES 65-91 (1968); J. DEBRETT, supra; Rudolph & Rudolph, Barristers and Brahmins in India: Legal Cultures and Social Change, 8 COMP. STUD. IN SOC. AND HIST. 24-49 (1965).

3 This Bernard Cohn, Anthropological Notes on Disputes and Law in India, in THE ETHNOGRAPHY OF LAW 90 (67 AMERICAN ANTHROPOLOGIST SPECIAL PUBLICATION, L. Nader ed., 1965) prefers to regard the panchayat as a "process" rather than a body.

as the ultimate sanctions. Community enforcement of these sanctions had, therefore, to reflect a high degree of consensus. 4

B. THE CONSTITUTIONAL SETTING

India is a highly stratified and heterogeneous society. It is a rural society and an overwhelmingly poor one. In 1971, 438 million out of a population of 547 million lived in about 570,000 villages. Agriculture accounts for over 50% of the national product. Most people in rural areas live in dire poverty. 5 The efforts to provide access to justice that we shall discuss must be seen in the context of the need for development to eliminate or at least reduce this poverty, as well as for integration of a diverse population. Such efforts at development have taken place under a constitution which establishes the Western type of competitive liberal democracy through adult suffrage, guaranteed fundamental rights and judicial review. 6 Political democracy, as many observers have noted, provides a setting (and indeed a vehicle) for economic development that did not exist when Western societies embarked on industrialization and which differs from that obtaining in most nations that have gained independence since 1947.


5 Estimates of rural poverty vary, but even the most conservative suggest a very high incidence of poverty. One generally accepted estimate is that about 45% of rural people are poor at a poverty line of Rs. 15 monthly per person; which (at 1960-61 price levels) was just adequate to provide a nutritional minimum of 2,500 calories per day.

6 The probability that courts may be activated to delay or defeat certain developmental measures has led the Indian Parliament to assert its supremacy in the sphere of constitutional amendment, including a readiness to use the unique device of the Ninth Schedule, which immunizes the statutes inserted therein from any challenge on the ground that they violate certain Fundamental Rights. See also note 23 infra. This has, of course, led to a revision of initial constitutional assumptions. Liberation from the constraints of judicial review may be justified by an appeal to the need for rapid social change and even as a necessary condition for such change. Even if this is so, such liberation does not constitute a sufficient condition for planned social change. The extent to which such liberation has in fact generated legislative activity and accompanying executive action remains an urgent matter for empirical study.
The Indian Constitution, drafted during the turbulent period 1947-49, explicitly gives the Indian state a vast mandate for economic and social planning. It is the overarching obligation of the state to pursue the "welfare of the people" through the promotion of a social order in which justice, economic, political, and social, shall inform all aspects of social life (Article 38). The guarantees of Fundamental Rights (Part III) and the enunciation of the Directive Principles of State Policy (Part IV) as fundamental to the governance of the country, imposing a duty on the state to apply them in the making of laws, together represent the values and aspirations of the constitutionally desired social order. Contrary to Gandhian pleas for a decentralized, village-based, democratic format, it is the state which is entrusted with the massive task of social and economic planning and development.

In a sense, India's planning ideology and practice has been one long story of seeking access to the village people, and their participation in the formulation and attainment of development goals. But all this had to be achieved in conditions different from Western or socialist societies. By and large, India had to create an institutional infrastructure in her quest for public participation.

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8. G. Austin, *supra* note 7, at 26-46; Baxi, *supra* note 7, at 339-44; Galanter, *The Aborted Restoration of Indigenous Law in India*, 14 COMP. STUD. IN SOC. AND HIST. 53-70 (1972). The constitutional preference for a liberal competitive polity as a framework for planned social transformation has resulted in what Gunnar Myrdal has aptly described as the "Third World of Planning." Indian planning does not follow the historic Western model in which state intervention arose as a consequence rather than a precondition for development. It also differs from the socialist prototype where "state enterprise and collectivism" is the rule by its democratic emphasis.

9. G. Myrdal, *The Asian Drama: An Enquiry Into the Poverty of Nations* 738-40 (New York, Pantheon, 1968). Another key difference between India and Western countries as they stood on the threshold of industrialization is her "commitment to egalitarianism," which is an "integral part of the ideology of planning." This ideology is a "radical variant of the modern Western concept of the advanced welfare state. Economic development is defined as a rise in the levels of living of the masses." Social equality is a cherished goal.

10. The dilemma is an acute one: the South Asian countries are in a hurry and need the modern infrastructure in order to mobilize popular support for planning and development. They cannot wait for an infrastructure to emerge from below. There is no choice but to create the institutional infrastructure by government policy, and to spur its growth by government intervention. The question is: Can this be done? And if it can be done — without a monolithic state, a disciplined ruling party and a network of cadres — will not the resulting infrastructure, nevertheless tend, at least initially, merely to channel a stream of influence from above and thus contradict the entire ideology of democratic planning?... [Is not the ideal of democratic planning rather an illusion that will weaken the entire effort?]

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PANCHAYAT JUSTICE

The Indian quest for public participation (or the state's access to its people for the tasks of development) has led to remarkable experimentation in the form of cooperative movements in village areas, programmes of community development, and attempts at democratic decentralization through the system of *Panchayati Raj*. All this has no doubt led to a growing politicization of village life, a transformation of caste functions, a proliferation of bureaucracy, and an emergence of new bases of power and influence in competition with the existing structures of domination. Although informed opinion remains sharply divided on the scope, rate and adequacy of change and the suitability of the forms of polity within which the transformation is taking place, contemporary India has certainly been transformed by these attempts. Our account of panchayats as a means of access to justice can only be understood in the context of these attempts to transform village life and link the villages to the polity. But these in turn are built on a history of pre-Independence efforts to promote self-rule in the villages.

C. PRE-INDEPENDENCE ATTEMPTS TO REVIVE PANCHAYATS

Continuing efforts to reorganize rural self-government through panchayats include the Mayo Resolution of 1870 on Decentralization, Lord Ripon's famous resolution of 1882, the Report of the Royal Commission on Decentralization, the Government of India Resolution of 1915, and the Montague-Chelmsford Report of 1918. All these efforts were "nowhere intended to reproduce the characteristics of the old-time panchayats." Indeed, they were based on the view that revival of ancient panchayats was neither necessary nor possible.

The 1911 census had directed particular attention to the question of the persistence of the "ancient" panchayat system. The Bombay census found no evidence of "such an organization as village panchayat," adding that the "myth" of its existence has "probably arisen from the fact that a village is generally if not invariably formed by families of one caste." The census for the...
United Provinces similarly concluded that panchayat was "entirely an organ of caste government." The Government accepted this evidence 11 and proceeded to form panchayats, as units of rural local government primarily for the purpose of providing "a rudimentary municipal framework for large villages and small towns" and/or to form a "simple judicial tribunal." 12

The development of village government from 1920 to 1947 consisted primarily of the creation of panchayat bodies blending "municipal/administrative" and "judicial" functions. Except in the United Provinces (U.P.), village councils were elected bodies; in some the franchise was limited by literacy tests. There were no doubt certain ex officio members including the village headman, nominees of government, certain classes of landlords (in Bombay), and — after 1939 — women, communal groups and untouchables. The development of panchayats varied from one province to another according to such factors as taxing powers, "enthusiasm or indifference" shown by officials or people, and ecological conditions. Professor Tinker, in an authoritative survey, concluded that:

The expansion of village councils did not fulfill expectations in most provinces. A complete network of village authorities was built up in Bengal, and was later established throughout wider areas of Madras; one quarter of the rural population of the United Provinces was brought within the panchayat's orbit; in Punjab, Bombay and C.P. [Central Provinces] they covered only about one-tenth or fifteenth of the countryside, and in other provinces village councils affected only an insignificant fraction of people. 13

The administrative tasks entrusted to panchayats were really minor (upkeep of country roads, village streets, minor sanitation, lighting by oil lamps, etc.), though in the area of education, especially in Madras and Bengal, some major responsibilities did lie with rural bodies. 14 Some other functions like water supplies and medical (usual ayurvedic) services were also significant and aroused some enthusiasm.

Judicial functions seem preeminent in the available accounts of the panchayat institutions. These functions were sometimes performed by special village courts (as in Madras) or by "ordinary territorial panchayats. . . . The ordinary panchayats of C.P., Punjab and U.P. were mainly occupied with judicial work." In Bengal "there were special union benches to try criminal offenses and union courts to which civil suits might be taken;" by 1937 "there were 1,521 union benches and 1,338 union courts." The village courts were usually elected by villagers though in some cases there was indirect election and nomination. 15

Professor Tinker, in particular, has drawn our attention to the preeminently judicial character of some of the panchayats. Under the U.P. Panchayat Act, 1920, the "principal function of the panchayat was to act as a petty court"; and the Bombay Village Panchayat Act of 1920 was "broadly similar in purpose" though "quite different in detail." 16 Judicial functions were preeminent in the ordinary panchayats of Central Provinces, Punjab and the "union" courts in Bengal and "village courts" in Madras. The dimensions of judicial activity of panchayats are indicated in the following fragmentary account. In U.P., the panchayats disposed of 122,760 cases in 1925 (two-thirds being civil cases); the subsequent pattern is one of steady decline: 1931, 91,476 cases; 1936, 85,399 cases; 1937, 67,233 cases. In Bengal, by contrast, the union benches and courts handled an increasing volume of disputes: 120,000 in 1929 and 174,000 in 1937. There was a considerable amount of judicial work in other provinces, but on "such a huge scale." 17 Income from fines was among the important sources of revenue for village panchayats, which had during this period no taxing powers.

D. CONSTITUTION-MAKING AND VILLAGE PANCHAYATS

The draft constitution of India did not contain any reference to villages and was subjected to the criticism that "no part of it represents the ancient polity of India." Dr. Ambedkar, the chief

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11 Id. at 197.
12 Id. at 199.
13 During the Dyarchy years (1919-35),
14 Id. at 206-07.
15 Id. at 117.
16 Id. at 207.
draftsman, vigorously defended the omission of villages and ruffled the feelings of many in the Constituent Assembly by stating bluntly: "I hold that those village republics have been a ruination of India.... What is a village but a sink of localism, a den of ignorance, narrow-mindedness and communalism?" In response, Mr. H. V. Kamath dismissed Ambedkar's attitude as that of an "urban high-brow" and insisted that "sympathy, love and affection" toward "our village and rural folk" was essential to the "uplift" of India. Mr. T. Prakasam pleaded for a modernized system of panchayats which will give "real power to rule and to get money and expend it, in the hands of the villagers." Professor N. G. Ranga asked, "Without this foundation-stone of village panchayats, how would it be possible for our masses to play their rightful part in our democracy?" 18

Gandhi himself had urged a different form of polity for India. Gandhi stated his ideal of village swaraj (self-rule) in pragmatic as well as poetic terms. The ideal village will be self-sufficient, he said, in food and cotton; it will have its reserve for cattle and playgrounds for children, its own waterworks, and sanitation arrangements (to which he attached very great importance). "The government of the village will be conducted by the Panchayat of five persons annually elected by adult villagers. The "panchayats will be the legislature, judiciary and executive combined"; 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." Gandhi concluded his "outline" of village government thus:

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. 19

Neither Gandhi nor his followers were unaware that they were positing an ideal picture of village self-sufficiency and democracy which had no prospect of acceptance. They knew, as well as the modernists, that even if such village republics had existed in the distant past, or indeed even up to Moghul rule, they were vastly affected by the "anarchy" following dissolution of the Moghul empire, the growth of transport and communication, the spread of commerce and the organization of markets, patterns of revenue settlement, the penetration of the bureaucracy, the introduction of British justice, irrigation, roads, education, etc. 20

Gandhi compared Gram-Rajya to Ram-Rajya (i.e., self-rule by villagers, to the righteous polity of Lord Rama). His advocacy of this kind of polity on the eve of constitution-making served certain clear purposes. He was "making it possible for the traditional elite to assert its values both in the Congress Party and in the Constituent Assembly, thus hoping to create an atmosphere in which over-Westernization of the projected political system can be consciously corrected." 21 Gandhi was in this view "aiming to create a healthy division within the party, one wing of which will at least be dedicated to bringing about the social, moral and individual transformation from below while the organizational and political wings engaged themselves in a frontal assault on the traditional society." 22 The Constitution as it emerged did include certain village-oriented Directive Principles of State Policy. 23

Article 40 obligates the state to "take steps to reorganize village panchayats and endow them with such powers and functions as may be necessary to enable them to function as units of self-government." Subsequent developments in the area of democratic decentralization, though not realizing the Gandhian utopia, owe much to the overall ideology.

E. DEMOCRATIC DECENTRALIZATION

Since the adoption of the Constitution there have been continuing efforts at "democratic decentralization" — insistence on

20 Id. at 5-9; H. TINBERGEN, supra note 10, at 1-25.
21 BAXI, supra note 7, at 343.
22 Id.
23 Article 48 urges the state to "endeavor to organize agriculture and animal husbandry on modern and scientific lines." To promote the well being of agricultural workers, Article 42 exhorts the state to "endeavor to promote cottage industry on an individual or cooperative basis in rural areas." The state is directed, by Article 46, to "promote with special care" the "educational and economic interests of the weaker sections of the people, and in particular of the scheduled castes and tribes," who shall be protected against injustice and "all forms of exploitation" (on the status of these Directive Principles, see note 41 infra). Article 31A, in a thoroughgoing derogation of the fundamental right to property guaranteed by Articles 19 and 31, enables the state to immunize certain laws against challenges of violation of fundamental rights by placing them in a special Ninth Schedule to the Constitution.
public participation by villagers in formulating and implementing, at various levels, planned social change. Those efforts have generated formation of rural credit and service cooperatives, cooperative farming experiments, community development programs, agricultural extension services and, beginning with 1959, the institution of Panchayati Raj.

Article 40 has been among the most vigorously implemented provisions of the Indian Constitution. The directive to organize village panchayats and to empower them to function as units of self-government saw a steady fulfillment in the period 1949-1959, which was followed by the introduction of the Panchayati Raj (PR) system in the period 1959-62. Shortly after the passing of the Constitution, a number of states which did not have statutory village panchayats enacted legislation providing for them; and states which had had panchayat legislation proceeded to strengthen it. Panchayats were given a wide variety of developmental and regulatory (local governmental) functions. The number of panchayats increased from 14.8 thousand to 164.3 thousand during the first ten years of independence. The Five Year Plans emphasized the role of panchayats in community development — the panchayats were represented on bloc advisory committees; modest funds were made available to panchayats for specific projects, and they were considered principal agencies for creating public awareness and participation for developmental work.

The adoption of the Balwantray Mehta Committee Report (1958) on democratic decentralization led to the creation of a three-tier system of Panchayati Raj (PR). The three levels of reorganized local government system are: Gram Panchayat (village), Panchayat Samiti (bloc) and Zilla Parishad (district). Each of the two higher levels is indirectly elected from the tier below and also draws membership from legislators, cooperative officials and others. There were in India in 1965 219,694 Gram Panchayats, covering 99% of villages and a population of more than 406 million. In addition, there were at that time 34,45 Samitis and 246 Parishads.

Although not originally envisioned, the adult residents of panchayat areas have now been constituted in all states (except Madras and Kerala) into statutory Gram Sabhas, whose functions are to discuss (in some cases approve) the annual budget of the Gram Panchayats, its annual administrative report, proposals for tax and major developmental programs. A minimum number of Gram Sabha meetings are also statutorily prescribed. The size of a Gram Sabha varies from 250 to 5000, though the average number of people comprising it may be around 300. Available literature suggests that this institution has not been successful in evoking substantial public participation; indeed, it is clear that it has failed in fulfilling even a modicum of its prescribed functions. The size of the Gram Sabha, lack of proper scheduling of its meetings, the dominance of the Sarpanch (chairman of panchayat), Samiti representatives, development officials and local notables, and overall indifference by the villagers are some of the notable reasons for this result. H. Madding, supra note 26, at 70; R. Mathur, N. Nair and A. Sinha, Panchayati Raj in Rajasthan 140-75 (New Delhi, I. P. S. India, 1966); S. Jain, supra note 24, at 167-69.

The Committee on the Status of Women has found representation inadequate and ineffective and has suggested the creation of statutory women's panchayats to deal with special problems of women with a view to enlarging their participation in rural development and to promoting equality. This recommendation is still under consideration. TOWARDS EQUALITY: REPORT OF THE COMMITTEE ON THE STATUS OF WOMEN 385 (Ministry of Education and Social Welfare, Government of India, 1974).

The average physical area covered by the bloc is about 566 square miles, although there are wide regional variations in size (from 105 square miles to 2,837 square miles); the average number of panchayats per bloc is about 40. S. Jain, supra note 24, at 202; H. Madding, supra note 26, at 5. In almost all states, members of legislative assemblies are members of the Samiti in each region, in some cases local members of Parliament also serve on the Samiti. In addition to the provision for cooption of the Scheduled Castes and Tribes, some states also provide for the cooption of persons "experienced in social work, development and administration." This latter provision has often been criticized as interfering with the elective character of the Samiti and with its efficient functioning. S. Jain, supra note 24, at 200-08; H. Madding, supra note 26, at 90-98.
Parishad is not directly elected. It draws its membership from diverse sources: panchayats, Samitis, members of state legislatures and parliament, cooperative societies, women, Scheduled Castes and Tribes, urban local bodies and people with “special experience in administration.” The functions of these bodies are varied and wide, but it should be noted that with the establishment of Nyaya (judicial) Panchayats, the village panchayats lost their adjudicatory powers. This loss marks a historic break with the panchayat system as it existed prior to Independence, an aspect we examine later in this paper.

Panchayats are subject to the powers of the state government which, on paper, are extensive. How far PR has attained the objectives of democratic decentralization remains a matter of serious and sustained debate in a vast and growing literature, official and scholarly. Different images of PR give rise to differing assessments. The contemporary political scientist sees in the PR movement a massive endeavor to mobilize people’s participation in a political rather than (as in the earlier community development program) in a bureaucratic mode. The contemporary Gandhian judges PR in terms of movement toward the ideal of consensual communitarian democracy, without parties and professional politicians. The growing politicization and pervasive factionalism seem to him a perversion of the PR ideals, whereas the political scientist regards this as not merely inevitable but indeed commendable.

Political images provide only one basis for evaluation of PR. Panchayats may also be envisioned as units of local rural government and as developmental units. Since PR institutions respond to the central elements of most of those images, analytical disaggregation (necessary for impact analysis) is very difficult. Nor, of course, do available empirical studies support any major India-wide generalizations. But studies with specific focus do suggest some basic problems in regard to the functioning of the PR institutions. For example, Henry Maddick, viewing PR specifically as rural government, finds that while the “basic structure” of PR is sound, there are widespread problems. Relations with government departments, “variable as they are, are nothing like as good as they might be. Staffing systems vary from the ill-considered, as in Madhya Pradesh, to the careful approaches of Rajasthan or Maharashtra.” Financial allocation is “generally far from satisfactory,” given the wide range of functions entrusted to the PR institutions. The problem of resources for developmental work thus continues to affect the fulfillment of the objective of PR.

The impact of competitive politics on PR institutions is harder to assess, but it increasingly provides the principal context for the future development of PR — whether in terms of administration or development programs or financial assistance. The enormous increase in the number of Gram Panchayats functioning on the principle of direct elections has meant a greater role for party and factional politics. In villages where elections have been contested, the proportion of people actually voting is reported to range from about 70% to 90%. Surveys indicate that elections are fair. Election studies also indicate that voting is frequently influenced by factional factors cutting across caste and kin: upper caste—lower caste alliances to offset dominance of other castes are not uncommon, though caste loyalties do play a significant role.

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30 It can determine the jurisdictional area of panchayats; it frames rules and by-laws concerning all important matters relative to the panchayats’ functions (conduct of business, personnel administration, assets and liabilities, records, budget, accounting, audit, etc.). It may call for records and reports. The government also has the power of supervision and suspension of panchayats, presumably to be exercised in consultation with Samiti and Parishads. This latter power does not seem to have been exercised frequently. Panchayats also depend upon the government for grant-in-aid. Similarly, panchayats depend on major decisions of the Samiti — for allocation of resources or approval of budgets. The fact that Sarpanch are members of the Samiti creates structural linkages between Samitis and panchayats, but it also creates further structural distance between Sarpanch and panchayats (other members) within panchayats. There is some evidence of (and considerable anxiety over) Samiti hegemony over panchayats impeding the democratic decentralization principle.


Some studies show the emerging pattern of rural leadership. Significant numbers of panchas are young people with comparatively better education and greater political awareness. The monopoly of leadership by certain groups is being disturbed, although poorer and weaker sections of the community still do not occupy effective leadership roles. Also, while emerging leaders are mostly agriculturist, there is a tendency to shift over to business. Membership of political parties, mostly the ruling party, is a feature of the emerging rural leadership. Conceptions or images of leadership also seem to be changing; there seems to be greater emphasis on constructive and developmental tasks.

Electoral politics at the panchayat level also has led to patronage, electoral bargains, and a certain degree of corruption. Since the PR institutions are conduit pipes for funds and grants, the struggle for PR positions is naturally keen; it has been often suggested that the dominant sections in villages capture power for their own ends.

A recent empirical study disclosed that 97% of the villagers in the areas under study were of the view that the working of PR institutions (including, in this instance, Nyaya Panchayats) “have encouraged such evils as crimes, theft, personal jealousies, favouritism, litigations, feuds, and insecurity of life and property at the village level.” All this has contributed to a “loss of faith” in Panchayati Raj.

this support was based on group alliances. This is probably inevitable when the traditional pattern of leadership is giving way to a more representative leadership.

R. Halidipur & V. Parmahansa, eds., supra note 31, at 89.


36 A senior official of the Government of India wrote in 1970:
There was also marked corruption in the techniques of elections and with stakes becoming higher, competing groups went to extreme lengths (not excluding kidnapping and murder) to ensure victory at election. All this in turn had its impact on the morale of officials working in the system; the good ones becoming confused and deserted, and the bad ones jumping on the winning bandwagon, without much compunction.


Nevertheless, the tendencies toward coercive politics highlighted in the preceding paragraph do not appear to be the dominant features of electoral politics for PR as a whole, if the available literature is any guide. On the other hand, factionalism may be rampant; but the growth of factionalism may open up possibilities of political mobilization through alliances and bargains across established lines.

Micro-level studies indicate significant and continuing changes arising out of the political dimension of PR. Although its scope and direction may vary, it has been “universally acknowledged that political consciousness” of the people “has increased under Panchayati Raj. An average villager is more conscious of his rights today than before. He has also developed a self-confidence.... PR institutions have also “provided training ground in democracy to rural people who have so far been denied access to the avenues of power.” Indeed, in this sense, the PR is a “revolutionary step,” even though the emerging rural leadership may still, in some cases, be more a “silent spectator than an active partner in the deliberations and working of the panchayati raj institutions.”

Politicalization has also meant that at the block level administration is getting “somewhat democratized”:

[The] average villager is nearer the administration today than in the pre-panchayati period. He now moves about with greater self-confidence to the office of the block development officer and not with the drooping spirit of a person who is in quest of a bakshish [tip, handout]. The ... administrator also does not treat the villager with indifference or contempt.

These findings in a study on Panchayati Raj in Rajasthan in 1966 point to trends that are confirmed by many other studies.

This very fragmentary account of an ongoing massive social transformation, favoring values of access, participation and democratic decentralization of power in the development process should


40 R. Mathur, I. Narain & A. Sinha, supra note 27, at 290.
leave no doubt that PR has introduced into the political and administrative systems greater responsiveness to people’s needs and demands. It has also engendered strong expectations of change and has introduced, however variably, incremental changes in structures and patterns of domination. At the same time, the dilemmas in structuring access are severe. The levels of funding available for panchayats limit their capacity to achieve results, and this latter affects the institutionalization (and legitimation) of PR. Development bureaucracy is assisted, as well as frustrated, by power politics. The greater the discrepancy between the rhetoric and the reality of change, the greater are the prospects of either alienation or organized restiveness — both, to some extent, dysfunctional to planned development. The tension between centralized planning and the drive to popular participation in planning change persists. Against this background we turn, finally, to our primary subject: the judicial organ of the village panchayats.

II. NYAYA PANCHAYATS: EXPERIMENTATION IN LEGAL ACCESS FOR THE VILLAGE POPULATION

A. THE FORMATION OF NYAYA PANCHAYATS

While Article 40 of the Constitution enjoins the state to organize village panchayats, another Directive Principle (Article 50) directs it to take steps to separate the judiciary from the executive. ...41 Apart from the states which already had a system of village courts at the time of the adoption of the Constitution (Madras, Mysore, Kerala), only a few states (Madhya Pradesh, Utar Pradesh) implemented Article 50 upon the adoption of the Constitution by creating separate Nyaya Panchayats. In the period following the adoption of the Babvantray Mehta Committee Report (1959) and the reorganization of the village institutions both as local government and developmental agencies, many more states established Nyaya Panchayats (NP) as separate judicial bodies, thus fulfilling the Directive Principle of separation of judiciary from executive.

The ideology of separation of judiciary from the executive power, embodied in Article 50, was clearly one impulse that led to the creation of NP in states which did not have such separate bodies. This ideology also influences, as we shall shortly note, the structuring of NP. But the creation of judicial panchayats was not entirely a function of this ideology. As panchayat institutions were reorganized and oriented to a wider range of functions, it was felt that considerations of efficiency in performance of the assigned developmental and governmental tasks required relief from the judicial workload. We have already noticed that in the period 1920-1947 the village panchayats — for example, in U.P., Bombay and Bengal — were already engaged in a substantial amount of adjudication work. The Law Commission’s Fourteenth Report testified to the volume of this work in the years following Independence. In the U.P., for example, judicial panchayats heard, for the period 15 August 1949 to 31 March 1956, 1,914,098 cases, of which 1,894,440 cases were disposed. ...42 Clearly, then, as a measure of planning efficient allocation of workload, the establishment of NP must have been felt essential. However, this separation was accompanied by some apprehension that “without judicial authority the Panchayats would become ineffective bodies and would fail in seeking people’s participation.” ...43

Apart from the ideology of separation and considerations of efficient division of labor, the creation of NP can be seen as illustrating two other concerns. First, their creation testifies to concern for providing easy legal access to the village population. Second, at the same time, it also represents a massive attempt by the...
state to displace (as effectively as it could) the existing dispute processing institutions in village areas — be they jati (caste) institutions, territorially based secular institutions or special dispute processing institutions established under the auspices of social reformers (such as the Rangpur People's Court). 44 The NP seek to do this by retaining procedural flexibility and lay adjudicators, thus coopting the very features of the institutions they seek to displace. On the other hand, the NP, as integral parts of the administration of justice, are characterized by principles of formal organization and of judicial oversight and control which do not “mesh in” with the organization of justice by village communities. In the very structuring of NP, therefore, inheres the drive to extend state power and constitutionalist ideology to the countryside, and this creates incompatibilities and dilemmas to which there is no easy solution.

Although the establishment of NP derived symbolic support from an appeal to the virtues of traditional panchayats, it should be emphasized that these new tribunals are in many ways very different from their traditional counterparts. Their membership is fixed rather than flexible and is based, indirectly, on popular election rather than social standing; their constituencies are territorial units rather than functional or ascriptive groups; they decide by majority vote rather than by rule of unanimity; they are required to conform to and apply statutory law; they are supported by the government in the compulsory execution of their decrees; these decrees may be tested in the regular courts.

B. CONSTITUTION AND COMPOSITION OF NP

Legislative details concerning the constitution and composition of NP vary so that any general account of NP may be somewhat inaccurate as regards a particular region. For present purposes, however, it may be convenient to state the main features of NP organization which have now become more or less generally established. NP are established for a group of villages, usually an area covering 7 to 10 villages. NP usually cover a population of 14,000 to 15,000 villagers. A member of an NP must be able to read and write the state language, must not suffer from any disqualifications described in the statute, and must not hold an office of Sarpanch or be a member in the Samiti, Parishad, or state or union legislature. The rules regarding appeals in disputed elections are the same as those which apply to Gram Panchayats. The NP has a chairman and secretary elected by its members; one-third of its members retire every second year.

Almost all states have adopted election as a method of constituting NP. Each Gram Panchayat (itself an elected body) elects members for NP. Some states combine the method of elections with nomination; thus, in U.P. members of panchayats nominate a person from among themselves to membership of the NP; such nomination may also be by consensus. The nominations are then screened by a sub-divisional officer and forwarded to the District Magistrate who, as the chairman of the Advisory Committee established for the purpose, shall ultimately appoint members of NP. It has been pointed out that in practice the District Magistrate (and the Committee) follow the advice of the sub-divisional officer, "who in turn relies on the advice of minor government officials such as the village accountant and the panchayat secretary," a procedure which "may result in favoritism." 46

Another combination of nominative and elective principles is furnished by the Bihar legislation in which the panchayat courts, comprising the Sarpanch and eight other panchas, are chosen in three different ways. The Sarpanch is directly elected by the Gram Sabha; four Nyaya Panchas are also directly elected, but from four wards into which panchayats are divided for election purposes; the remaining four are chosen from the gram panchayat by the NP Sarpanch and the four elected members in a joint meeting. The chairman of the panchayat has no direct role in this process of constituting NP. Provision also exists for representation of Scheduled Castes and Tribes in NP. 47 Finally (without being exhaustive), one might mention the states of Kerala and the Union Territory of Delhi as furnishing extreme ends of the spectrum: in the former all Nyaya Panchas are nominated; in the latter all of them are directly elected.

44 Baxi, From Takar to Karar: The Lok Adalat at Rangpur — A Preliminary Study, 10 JOURNAL OF CONSTITUTIONAL AND PARLIAMENTARY STUDIES 52 (1976).
45 Cf. the contrast of the statutoryGram Panchayats with traditional village panchayats in R. Reitzlaff, supra note 34, at 236; Luschinsky, Problems of Cultural Change in the Indian Village, 22 HUMAN ORGANIZATION 75 (1963).
The method of the constitution of NP has been a subject of some controversy. The Law Commission, in its Fourteenth Report, expressed itself against the principle of government nomination of Nyaya Panchas. It felt that nominated panchas may not "command the complete confidence of the villagers"; nominated panchas may be impartial, but the nominating officer may lack "first-hand knowledge of local conditions"; in that event, "the freely expressed will of the villagers, in substance, [would] be replaced by untrustworthy recommendations of sub-ordinate officials." The nominees would "tend to act in a manner which will command the approval of the appointing authority rather than discharge their functions in a true spirit of service to the village community." Although the Commission did not, in principle, support an elected judiciary, it did not regard NP as judiciary in the proper sense of the term, but rather as "tribunals" who have to "inspire the confidence of villagers." 48 The Study Team on Nyaya Panchayats in 1962, endorsing those views, concluded:

[The system of nomination in any form has to be ruled out. Villagers must be given a free hand and the choice lies between the system of direct elections and indirect elections. The method of indirect elections seems to afford for the time being the best solution and of the various possible methods of indirect elections, the best seems to be the type in which each of gram panchayats in the Nyaya Panchayat circle elects a specified number of persons to serve on the Nyaya Panchayat. 49

There are very few studies of NP in action, with the result that it is not possible to assess the correctness of the foregoing assertions concerning the worthwhileness or otherwise of the election of NP. To be sure, nomination of Nyaya Panchas may degenerate into mechanical endorsement of "untrustworthy recommendations of subordinate officials," as the experience of U.P., for example, seems to indicate. 50 But, as the Commission itself acknowledged, outright nomination of village court members in Kerala "seems to have worked satisfactorily" for the reason of "smallness of the area and the consequent ease with which the higher officials are in a position to choose persons respected in villages as the panchas." 51

However, one of the few empirical studies of NP discloses the dominant role of the Sarpanch of the Gram Panchayat in the process of indirect elections of NP. Since each panchayat generally elects one Nyaya Pancha, politics and patronage do intrude in elections. Very often the person elected by the panchayat is a man "with ridiculously low level of education . . . quite incapable of grasping the niceties of the law" he has to administer. Such persons were "reported to have political aspirations which they sought to fulfill by getting into Nyaya Panchayat." Often the Sarpanch accommodated the defeated panchayat members in NP. So dominant is the influence of the Sarpanch that "a look at the antecedents of the members of NP would convince anyone that they were strong supporters (and in one case, a relative also) of the Sarpanch." 52

The dominance of panchayats by Sarpanches has emerged as a general structural feature of PR in action. Hence these Rajasthan findings may well be replicated in other regions. When elections to NP are overtly political or perceived to be such, it is unlikely that NP will inspire the confidence of the villagers let alone symbolize "the freely expressed will of the villagers." Indeed, the recent report of the High Powered Committee on Panchayati Raj in Rajasthan recommends the abolition of the NP altogether, partly on the ground that they have "not been able to inspire public confidence." 53 Similarly, the Maharashtra Evaluation Committee on Panchayati Raj finds entrustment of judicial functions to NP "on the basis of democratic elections or otherwise" both "out of place and unworkable" and also recommends the abolition of NP. 54

If indirect election of Nyaya Panchas involves politics and patronage and reduces the level of public confidence in, and use of, NP, it does not seem likely (though there are no studies on this point) that direct election by the Gram Sabha will necessarily lead to better results. On the other hand, nomination of Nyaya Panchas

48 LAW COMMISSION REPORT at 912-13.
49 REPORT OF THE STUDY TEAM OF NYAYA PANCHAYATS 125 (Ministry of Law, Government of India, 1962). (Hereinafter cited as STUDY TEAM REPORT.)
50 Robins, supra note 46, at 239.
51 LAW COMMISSION REPORT at 914.
52 R. MATHUR, I. NARAIN & A. SINHA, supra note 27, at 177, 182-85; cf. Hitchcock, supra note 4, where an extremely close relationship between Gram Panchayat Sarpanch and Nyaya Panchayat Sarpanch was dominated by the latter.
53 REPORT OF THE HIGH POWERED COMMITTEE ON PANCHAYATI RAJ 43 (Government of Rajasthan, 1973) [hereinafter cited as RAJASTHAN REPORT].
54 REPORT OF THE EVALUATION COMMITTEE ON PANCHAYATI RAJ 203 (Government of Maharashtra, 1971) [hereinafter cited as MAHARASHTRA REPORT].
by state officials may avoid such results (despite the experience in Kerala), but at the cost of diluting the ideology and symbolism of NP.

C. JURISDICTION

NP have civil and criminal jurisdiction, but the former is more limited than the latter. Civil jurisdiction is normally confined to pecuniary claims of the value of Rs 100/- (about U.S. $12) (which may by agreement among parties be raised to Rs 200/-) involving money due on contracts not affecting interests in immovable property, compensation for wrongfully taking or damaging property and recovery of movable property. In some states the civil jurisdiction extends to the recovery of minimum wages or arrears for maintenance (e.g., Kerala). Also, in certain states (e.g., Bihar) civil jurisdiction of NP may be enlarged by an agreement between the parties to do so "irrespective of the nature and value of the suit." 55 Nevertheless, it appears that in most cases the civil jurisdiction is confined to pecuniary claims related to property.

The criminal jurisdiction is comparatively extensive and covers a substantial range of offenses under the Indian Penal Code as well as the special statutes (e.g., Cattle Trespass Act, Gambling Acts, Prevention of Juvenile Delinquency Act). The range of offenses triable under the Code varies from state to state, but NP have jurisdiction to try offenses such as criminal negligence or trespass, nuisance (including water pollution), possession or use of false weights and measures, theft, misappropriation (subject to a pecuniary limit — in some cases as low as Rs 25 to 50/-), intimidation, perjury, attempt to evade a summons, etc. The NP are authorized to levy fines (ranging from Rs 25 to 100/-), but they have no power to sentence offenders to imprisonment, substantively or in default of fine. NP are usually empowered to pay compensation to the injured out of fines thus imposed. They have also the power to admonish in certain cases. The state government retains power to enhance the jurisdiction of NP as well as to diminish it if there is "admission of miscarriage of justice." 56

Emphasis on the amicable settlement of disputes is an important aspect of the NP ideology. Accordingly, conciliation is emphasized over adjudication in some state legislation. In Bihar and Kerala it is obligatory on NP to first resort to conciliation in all matters, including criminal cases; in Rajasthan conciliation is permissible though not obligatory. In the latter state, however, field studies have shown a "surprising feature" — "conciliation is resorted to not so much at the stage of judgment but at the review stage." The NP reopen the suit for consideration in cases of non-compliance; in one instance 33 out of 34 suits decided in a year were thus reviewed and settlements reached. While such settlements may be desirable in principle, the processes of review after decision and non-compliance are "likely to affect the reputation" of NP; the practice is also against "the accepted canons of judicial administration." 57

D. ORGANIZATION OF NP WORK

Two essential features of lay adjudication, simplicity of procedures and flexibility of functioning, are realized in the design of NP. The NP are not encumbered by the need to follow the elaborate rules of civil or criminal procedure or the laws of limitation of evidence. Complaints may be made orally or in writing; no legal representation is allowed, although in some civil matters parties may be represented by an "agent." Parties are heard by NP in a fairly informal manner. At the stage of reaching a decision, parties are asked to absent themselves; panchas confer among themselves and arrive at a decision which is pronounced in open court. A judgment is written which, after being read out in open court, is signed (or thumb-impressed) by the parties, signifying the communication of judgment to them. Witnesses, if any, are examined on oath or solemn affirmation.

The NP share these features, more or less, with other community dispute institutions. But of necessity they depart from the model of non-state dispute institutions in certain major respects. First, although the statutes setting court fees do not apply to NP, minor court fees are levied (e.g., 50 paise or a rupee for a criminal complaint or execution order; 5 to 10 % of the value of the claim in a civil matter). Second, NP have power to issue summons (though not warrants) and to proceed ex parte in case of a recalcitrant defendant/respondent. Third, NP have the power to levy execution through attachment orders pursuant to unfulfilled decrees, although this

55 K. Pillai, supra note 47, at 34-62; T. Bastedo, supra note 47, at 197.
56 K. Pillai, supra note 47, at 56-57.
power is confined to certain kinds of movable property (for example, bullocks, cows, seed grains, tools, etc., are excluded from attachment orders). *Fourth*, the judgments of NP are written and maintained as part of official records, as is the gist of the depositions by parties and witnesses. *Fifth*, the record-keeping functions also include maintenance of registers of civil and criminal matters, court fees and fines, summons and notices, and expenses of witnesses (paid for by parties calling for them). *Sixth*, the higher judiciary has powers of control and oversight. The subdivisional or district magistrate can transfer a case from one NP to another. They may intervene in a particular case on the ground that miscarriage of justice is imminent or has occurred. *Seventh*, despite the recommendations of the government's Study Team on NP, the magistracy has the power to entertain appeals from NP decisions in most states. In addition to the right of appeal, parties also have a privilege to apply for revision of a NP decision. The Study Team favored availability of the latter only.

All these features, cumulatively, distinguish NP rather sharply from the community (non-state) dispute-processing institutions. Additional distinctions are imposed by the need to constitute benches of NP. Traditional panchayats, it should be recalled, might consist of standing bodies of village or caste leaders who heard disputes arising within their respective groups. Or they might be open bodies, incorporating all interested parties into the discussion and reaching consensus by negotiation and mediation. In contrast, the chairmen of NP constitute benches which may be “as numerous as the number of villages.” The eminently practical idea of appointing benches has created certain problems in the functioning of NP. The Rajasthan study highlighted the considerable scope for misuse of this power by the chairman. He “may put himself in all benches excepting the one functioning in his village;” he may also “pack” them with his “favorite panches,” excluding some panchas altogether from the NP work. The discretion of the chairmen is only limited by the

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58 Study Team Report at 129, K. Pillai, supra note 47, at 75-81.

59 Revision is the right of a high court or authority to call for the record of any case decided by a court subordinate to that court, and in which no appeal lies herein. If the high court feels that the subordinate court exercised a power not held, failed to exercise a power properly held, or acted improperly in the exercise of the power, the reviewer may uphold, revise, reverse or remand the case. Procedural consistency is deemed imperative, but the court may decide not to intervene if substantial justice has been done in spite of legitimate error. A. J. R. Commentary, The Code of Civil Procedure Sec. 115, 111-15 (8th Ed. 1968).


61 Id. at 189-93.
panchas, often causing a lack of quorum in the benches, was partly related to this lack of minimum finances. Of course, conflicting social and economic commitments, as well as the absence of the "glamor of executive authority" (enjoyed by village panchayat members) may also contribute to this result. The lack of a minimum financial base for NP is nonetheless an important factor affecting the performance of its bureaucratic as well as judicial tasks.

E. WORKLOAD AND DISPOSITION

No aggregate information is available on the number of Nyaya Panchayats, their personnel, workload, or disposition patterns. The Law Commission of India found, in 1958, that the workload of NP (and village courts) was substantial. We emphasize the need for more up-to-date figures on the incidence of recourse to NP. Whether recourse is affected by such factors as: nominative versus elective NP, enforcement patterns, financial position, caste composition and so forth must await richer data. We have available to us information on Uttar Pradesh for the period 1950-56 and 1960-70 and on Rajasthan for the period 1961-62 — an obviously highly unsatisfactory state of affairs. We proceed faute de mieux with the available data.

Detlef Kantowsky in a study of NP in Uttar Pradesh noted that the total number of cases going before NP in U.P. is in relative decline. Taking the year 1957-58 as the norm (when 202,116 cases were filed, of which 82% were heard; of the latter, 83% were disposed of, 3% were appealed, and 41% of those disposed of were settled by compromise), he finds that the percentage index of cases filed before NP in the years 1963-66 has declined (1963-64, 194,625 (96%); 1964-65, 159,840 (79%); 1965-66, 122,923 (61%)). The number of cases filed in the Benaras district NP showed a similar marked decline: from 2,671 cases in 1963-64, NP in the district handled only 1,339 cases in 1965-66 (registering nearly a 50% decline). He also finds that the rate of appeals from NP decisions increased in the period 1963-66.62

This decline in the number of cases filed is corroborated by state reports on the administration of justice in Uttar Pradesh. Table 1 shows the figures for the number of NP and the number of cases filed and pending for 1950-56, 1961-66 and 1969-70.

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There is some minor discrepancy with Kantowsky's figures, but the drastic decline in cases, from 633,502 in 1950-51, with 8,543 operating NP, to 91,107 in 1960-61 (8,662 NP in operation), to only 35,865 in 1969-70 (8,727 NP in operation), reflects the same trend. The rate of filings per NP has fallen to one-fourth of its peak in the 1950's. Figure 1 displays the average filings per panchayat for Uttar Pradesh as tabulated in Table 1.

FIGURE 1
CASES FILED PER NYAYA PANCHAYAT IN UTTAR PRADESH 1951-1970

(The higher rates in 1950-51 may be due at least in part to an accumulation of cases between enactment and commencement of NP, and those in 1952-54 may reflect a surge of cases related to land reform legislation.)

The decline in NP activity does not appear matched in the experience of other dispute processing institutions. The business of the regular state courts increased steadily throughout this period. Table 2 shows available figures for the period 1961-70.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Civil Cases in Subordinate Courts (a)</th>
<th>Criminal Total No. of Persons on Total</th>
<th>Source (b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>74,958</td>
<td>Rust 760,704</td>
<td>1961: 41</td>
</tr>
<tr>
<td>1961</td>
<td>75,174</td>
<td>Rust 789,670</td>
<td>1961: 8,11</td>
</tr>
<tr>
<td>1962</td>
<td>71,912</td>
<td>Rust 845,952</td>
<td>1962: 8,47</td>
</tr>
<tr>
<td>1963</td>
<td>71,068</td>
<td>Rust 879,687</td>
<td>1963: 10,53</td>
</tr>
<tr>
<td>1964</td>
<td>71,371</td>
<td>Rust 895,859</td>
<td>1964: 9,51</td>
</tr>
<tr>
<td>1965</td>
<td>81,908</td>
<td>Rust 873,023</td>
<td>1965: 9,43</td>
</tr>
<tr>
<td>1966</td>
<td>85,114</td>
<td>Rust 873,023</td>
<td>1966: 10,43</td>
</tr>
<tr>
<td>1967</td>
<td></td>
<td>Rust</td>
<td></td>
</tr>
<tr>
<td>1968</td>
<td>88,762</td>
<td>Rust</td>
<td>1968: 49</td>
</tr>
<tr>
<td>1969</td>
<td>91,859</td>
<td>Rust 1,001,249</td>
<td>1969: 11,49</td>
</tr>
<tr>
<td>1970</td>
<td>86,749</td>
<td>Rust 1,037,896</td>
<td>1970: 12,13</td>
</tr>
</tbody>
</table>

(a) Includes paid sub-divisional tribunals (courts of munsiffs), small cause courts, district courts and chief courts of the districts.
(b) REPORT ON THE ADMINISTRATION OF JUSTICE, UTTAR PRADESH (Allahabad).

No direct relationship between the regular state courts' increased activity and the decline in NP activity can be established with the available data.

The apparent low workload of NP in Uttar Pradesh is matched by low figures provided by Bastedo's fieldwork in Bihar. Fifteen NP in a single block heard only 202 cases over a sixteen year period, or an average of 1.25 cases per year for each panchayat. This was one of three blocks where NP had been instituted. Bastedo noted an increase in regular court activity throughout the same period.

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64 REPORT ON THE ADMINISTRATION OF JUSTICE, UTTAR PRADESH, supra note 63.

65 V. PURWAR, supra note 63, at 220.
A final note to the discussion of low and declining workloads in NP is provided by the meager but interesting statistics for West Bengal. West Bengal instituted NP in 1958, holding general elections for Gram, Anchal and Nyaya Panchayat positions. Each Anchal Panchayat, or middle level administrative panchayat in the PR system, was to constitute its NP and thus there was a potential for 2,926 NP to match the 2,926 Anchal Panchayats in that state. However, NP did not progress that rapidly. No further elections have been held for NP. In 1965-66 there were 49 NP operating. Of these 49, 46 heard 937 cases in that year. By 1973 only 13 more NP were in operation.

A profile of disposition rather than of workload is disclosed in the Rajasthan study. In 1961-62 the total number of suits in the NP studied was only 121. The following table provides a profile of the time taken to dispose of a portion of the cases (measured from the time of filing to the delivery of judgment):

<table>
<thead>
<tr>
<th>Time Taken (Days)</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>301</td>
<td>1</td>
</tr>
<tr>
<td>244</td>
<td>1</td>
</tr>
<tr>
<td>150-182</td>
<td>6</td>
</tr>
<tr>
<td>110-150</td>
<td>7</td>
</tr>
<tr>
<td>50-100</td>
<td>14</td>
</tr>
<tr>
<td>50</td>
<td>1</td>
</tr>
<tr>
<td>25-50</td>
<td>8</td>
</tr>
<tr>
<td>15-25</td>
<td>2</td>
</tr>
<tr>
<td>14</td>
<td>1</td>
</tr>
</tbody>
</table>


Significantly, of the 94 criminal cases in the period 5 June 1961 to 31 March 1962, 51 were tried, 43 remained pending; in the period 1 April 1962 to 31 March 1962, 13 of the 55 criminal cases remained pending. On the other hand, for the first period 5 out of 6 civil suits were completed; in the second period 14 out of 45 suits were completed. Similar disposal and pending rates are evident in the U.P. data in Table 1 and 2.

Even if the data base is very limited, we see here the problem of "delay" and arrears, so familiar (and sometimes overwhelming) in urban courts. This "delay" in settlement of cases may be due to a whole variety of factors: lack of minimum training of the panchas in the law they are to administer, lack of quorum in NP, inefficiency of secretarial staff, different attitudes toward conflict resolution on the part of panchas as well as parties, etc.

Obviously, only the most tentative generalizations are possible from this data. Despite the informality and flexibility of procedure, considerable time lag does occur between the institution of suits and their disposal, and the arrears of workload in some cases are substantial. The delays and arrears may or may not compare favorably with the disposal rate in magistrate's courts, but that they occur in any magnitude suggests that the administration of justice deviates from the ideals that inspired it. Recourse to NP and their overall legitimacy may, in turn, be diminished by perception of this deviation.

F. OFFICIAL EVALUATIONS OF NP SYSTEM

While the Law Commission (1958) and the Study Team on Nyaya Panchayats (1962) saw a bright future for NP, two recent evaluations of PR recommend the abolition of the NP

20 Id. These figures are compatible to some extent with work in some panchayat courts in the years 1954 and 1955. The Law Commission Report yields the following information:

<table>
<thead>
<tr>
<th>State</th>
<th>Total No. of Cases for Disposal</th>
<th>Pending at the Close of Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra</td>
<td>2,468</td>
<td>2,454</td>
</tr>
<tr>
<td>Bihar</td>
<td>31,842</td>
<td>39,908</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>47,506</td>
<td>46,698</td>
</tr>
<tr>
<td>Madras (5 districts)</td>
<td>2,331</td>
<td>598</td>
</tr>
<tr>
<td>Orissa</td>
<td>2,033</td>
<td>3,468</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>66,044</td>
<td>53,909</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>132,977</td>
<td>179,918</td>
</tr>
</tbody>
</table>

LAW COMMISSION REPORT at 899.
altogether. The Maharashtra Committee's Report on Panchayati Raj (1971) finds that out of 3,446 NP in the state only 723 are reported to be actively functioning (i.e. 86% are not functioning); the rest are "moribund and ineffective." Of the 14% NP which are functioning, most are in the Vidarbha Division. Aside from this piece of information, the Committee does not have much by way of empirical analysis to support its recommendations. And it is not clear as to how the Committee assesses the "effectiveness" of NP. True, the Collectors were asked to advise the Committee how many NP were effective in their districts and to state reasons why they were ineffective. But if any reasons were recorded, the Report does not mention them, except very generally (e.g., improvement of transport and communications has meant that effective administration has reached "much lower territorial levels"; NP are open to influence and pressures which may distort the course of justice). No information is contained in the Report to suggest that the government has exercised its statutory power to revoke any or all powers of NP for reasons of incompetence or miscarriage of justice.

Be that as it may, the Maharashtra Committee is emphatic that "entrustment of judicial functions, even of petty character, to such institutions set up at the village level on the basis of democratic elections or otherwise, seems out of place and unworkable." The Committee is also concerned that community dispute institutions functioning in villages "on the basis of common consent rather than on the strength of any law" may be adversely affected by NP. Indeed to such an extent that the NP might "destroy all possibilities of continuing or reviving (in the future) community dispute processing institutions." The Committee would favor either a full fledged extension of the state legal system through trained judicial functionaries or leaving the voluntary community effort, "which must be considered commendable," unimpeaded by intrusion of the NP system. Indeed, the Committee stresses:

We consider it a fortunate circumstance that these bodies (NP) have not yet come into vigorous existence and not much damage is done. It would be better to withdraw these steps when there is enough

The Rajasthan Committee also concludes that the NP are "neither functioning properly nor have they been able to inspire confidence in the people." No purpose would be served, it reports, by "continuous flogging of a dead horse." The reasons contributing to this "tragic result" are pitifully stated: the Nyaya Panchayats in Rajasthan are today languishing for want of funds, secretarial assistance, adequate powers as also the people's faith in them. Indeed, in its visits and responses to questionnaires (excluding responses received from the chairmen of NP) the Committee found "almost a unanimous demand" for the abolition of NP.

However, the Rajasthan Committee seems to feel that the failure of NP is due entirely to separation of the judiciary from the executive at the "grassroots level." It, accordingly, recommends that the functions of NP be "entrusted to a sub-committee of Gram Panchayat," having five members including the Sarpanch as the ex officio member acting as Chairman. One of the four members must be a woman, and one member should be from the Scheduled Castes or Tribes. The rule debarring a Nyaya Pancha from hearing cases from his area/ward should be applied to this subcommittee.

Neither of the two high powered committees refers to the recommendations of the 1962 Report of the Study Team on Nyaya Panchayats, which had drawn attention, albeit inconspicuously, to the need to provide the Nyaya Panchas with "the basic amenities such as, a convenient place to hold their meetings or adequate stationary funds for recording proceedings and for other purposes or requisite funds for meeting various contingencies incidental to their work," including travelling and out-of-pocket expenses for Nyaya Panchas. It also emphasized "the great need for an endeavor on the part of all official agencies to extend the fullest cooperation to Nyaya Panchas" and stressed also the need to accord them "the status and courtesy due to them for the proper discharge of their functions." The Study Team was sympathetic to the general
feeling voiced by Nyaya Panchas, some of whom felt that they were treated as if they were "unwanted orphans." 79

Neither the Maharashtra or the Rajasthan Committee Reports seriously attended to this aspect of the Study Team Report. These committees do not explain why the states found themselves unable to attend to the needs of NP, underscoring the painstaking 1962 Report. Was it because the states felt that it would be wrong in principle to interfere with the jurisdiction of village panchayats? Or was it because it was felt that the Sarpanch would make financial commitments to NP a bargaining counter to obtain more resources for panchayats themselves? Or because it was genuinely felt that funds required to meet the NP expenses would be too substantial (the number of NP could be quite large, e.g., Maharashtra has 3,446 NP, Rajasthan — as of 1966 — had 1,370 NP)? Or was it felt that a greater degree of bureaucratization of the functioning of NP might result if additional resources included permanent accommodation and secretariat were to be provided? Or was state inaction a compound of all those elements? Or due to just plain inertia? One could well understand that some Sarpanch of village panchayats would oppose the rise of parallel powerful institutions in the form of NP. But the inspecting magistrates and state departments might have looked at the matter primarily in terms of efficient performance of functions statutorily assigned to NP.

Both Maharashtra and Rajasthan subsequently abolished NP.70 These actions do not conclusively indicate any general trend of the future of NP in their own states, or for India as a whole. There is still some persuasiveness in the urging of the Law Commission Report50 and the Study Team Report that steps be taken to strengthen NP. Whether the existing workload accurately reflects the level of need for village based dispute institutions or points to structural impediments to their functioning, remains a matter for further investigation. The present state of affairs, in so far as one may generalize at all, illustrates some major difficulties of translating ideology into action, to which we will return in the last section of this paper.

G. NATURE OF DISPUTES AND QUALITY OF JUSTICE

If available information on the organization and functioning of NP is meager, information on the subject matter of disputes and the quality of justice of NP processes and outcomes is virtually nonexistent. Aside from the statistical breakdown of disputed matters into the categories of "civil" and "criminal," neither the Fourteenth Report of the Law Commission nor the 1962 Study Team Report gives us information relating to those two dimensions. But to comprehend NP we need to know about the types of disputes that reach them, the nature of their adjudicatory processes, and the outcomes they arrive at. An understanding of the interrelation of NP on the one hand and community dispute processing institutions on the other is inconceivable without a detailed grasp of the nature of disputes, sanctions and incentives entailed in the functioning of NP.61

The Study Team had before it the proposal that NP be vested with matrimonial jurisdiction. Its rejection of this proposal was based on the ground that both legal rules and the facts to which they would apply were extremely complex, and that the Nyaya Panchas could not be expected to have the requisite competence to deal with them.62 This may well be true, as the diversity of personal laws is intimidating, even for specialists. On the other hand, the assumption that villagers will avail themselves of the court system for family law matters is unproven; indeed, available evidence shows lack of both knowledge and will to have recourse

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50 Id. at 119.
79 The State of Maharashtra did abolish NP with the passage of the Bombay Village Panchayat (Amendment) Act, 1974, effective as of August 1, 1975. Cases pending before the NP were transferred to regular civil and criminal courts.
61 It is, of course, clear, given the jurisdiction of NP, that cases of ritual lapse or caste discipline would not directly come before NP, nor would disputes concerning matrimonial affairs, family arrangements in general, or land relations reach NP. A large area of dispute matters thus remains outside the jurisdiction of NP.
62 Study Team Report at 78-79.
to the court system. This means that non-state legal institutions will continue to meet this need, which is a major one. At the People's Court (Lok Adalat) at Rangpur, for example, the bulk of disputes coming before the court concern divorce, maintenance and custody. This is a non-governmental body, founded by a charismatic outsider, which has been functioning in a tribal area for over a quarter of a century. The Lok Adalat settled 17,156 disputes in the period 1949-1971; of these, 10,165 involved marital relations. It is clear that the Lok Adalat system has displaced the NP system in the Rangpur area, in part because it has effectively met the needs of the communities concerned. Insofar as the eventual displacement of community dispute institutions is an aim of the NP system, it is undermined by the NP's lack of this vital jurisdiction.

Concern with the quality of justice administered by the NP system has been confined mainly to a theoretical and structural level. As against considerable attention (and space) given to the issues of the constitution of NP (election/nomination) or training programs (frequently recommended but not yet implemented) for the Nyaya Panchas, existing literature does not probe the justice qualities of NP's functioning. We have no systematic data, for example, on "impartiality" in hearing and disposal of cases, equality in implementation (regardless of socio-economic status of parties involved) or "fairness" of individual decisions. We have reason to think that substantial timelags do occur in disposal of cases; post-judgment conciliation does raise doubt (as documented by the Rajasthan study) concerning the justice of specific outcomes; and we know, broadly speaking, that the rate of appeals from NP decisions is not very high. We do not know whether this "low" appeal rate is due to the appeal provisions themselves or due to differential party capabilities (in terms of knowledge and access) or due to party satisfaction with NP decisions. Nor do we know, though we do need to know, how far the levels of basic facilities made available to NP affect their capacity to provide "justice" in terms of the variables mentioned here.

Discussion of how the NP should be constituted so as to maximize "impartiality" has inevitably centered on the impact of "fac-

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84 Baxi, supra note 44, at 40.

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LAW COMMISSION REPORT at 912-19; STUDY TEAM REPORT at 47-57.
86 Singh, supra note 38, at 117-22. See also Hitchcock, supra note 4; Nicholas & Mukhopadhyaya, supra note 4; Robins, supra note 46.
87 STUDY TEAM REPORT at 65, 72; THE NYAYA PANCHAYAT ROAD TO JUSTICE (Government of India, 1963). The latter is the manual for the Nyaya Panchas.
few programs of training were launched. Rajasthan trained several hundred panchas in 1962-64, but this number was but a small portion of the almost 25,000 panchas in the state (based on 20-25 panchas for each of 1,370 NP). As recently as 1973, the state government of Manipur allocated Rs 20,000/- for training of Nyaya Panchas. Little information is available on the effectiveness of these training programs. Bastedo noted the futility of Bihar's training efforts, reporting that the rapid turnover of panchas in the state and the slow pace of the training program resulted in only one or two panchas in each bench having received any formal help.

The Study Team Report suggested several reasons which may explain but not justify the difficulties Bastedo hints at. The number of persons to be trained reaches the hundreds of thousands, many barely literate. Financial problems of NP and the task of training panchas in a broadly elective context further compounds the problem. The Study Team Report still found that "planned efforts" were necessary to combat the "general apathy" toward properly training panchas. It appears that apathy rather than planned effort is still the general response of the states toward the imaginative suggestions of the Study Team.

III. CONCLUSION

It may seem odd, after more than a decade of the era of democratic decentralization and of Nyaya Panchayats, to raise the question "Why Nyaya Panchayats?" The Maharashtra Report urging the abolition of NP and the Rajasthan Report advocating reversal of separation from the administrative panchayat make this fundamental question of more than academic or historical interest. When we look at the purported justifications of the NP system, we find the same sort of ideological ambiguities as we found in relation to the PR system. These ambiguities may partially account for the present state of affairs in which the NP have been institutionalized, like Gram Panchayats, but in an unsystematic and uneven manner.

1. Like the village panchayats, NP have been perceived, despite sufficient historical evidence to the contrary, as reviving an important feature of traditional community life in India. Even when the intervening "swing of the pendulum in favor of centralization" which occurred during the Moghul and British eras is acknowledged, administration of justice by villagers (and therefore decentralization) is perceived as a "swing back" to the "historic past and... deep rooted sentiment." The revivalist ideology is one important element accounting for the creation and maintenance of the NP system.

2. The fervor for "democratic decentralization" and the institutionalization of the PR system contributed to the creation of the NP. As noted earlier, the logic of the PR system necessitated functional division of labor; it was felt that the wide range of functions to be performed by village panchayats should not include "judicial" functions. Relief from the "judicial" workload for these bodies was important if they were to perform developmental tasks more efficiently. To this consideration was added the rationale of the separation of the executive from the judiciary sanctified by Article 50 of the Constitution.

3. The value of access to state justice was another theme which influenced the creation of Nyaya Panchayats. Administration of justice could be gotten "at the door-step of the village" only through NP. When state justice was brought to the village this way, it would have a different complexion; it would be easy and cheap, less "procedure ridden," more "informal and flexible" and more community based.

4. Nyaya Panchayats and village courts would (it was felt) also be carriers of the secular, egalitarian, modernistic, legal ideology, and thus assist in the desired transformation of society. 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 him in the art of doing "justice between fellow-citizens and instill in him a growing sense of fairness and responsibil-

89 MANIPUR ADMINISTRATIVE REPORT 13 (1972-73).
90 T. Bastedo, supra note 47, at 217-18.
91 STUDY TEAM REPORT at 65-71.
92 Id. at 31.
93 Id. at 35-36.
In this image, the NP constitute an aspect of the overall developmental process.

5. The NP are also visualized as the lowest rungs of the state system of administration of justice. The Law Commission recognized NP (and village courts) as very useful devices to prevent court congestion at higher levels, and thought of NP primarily as petty courts. The jurisdictional range of NP, as presently structured, amply substantiates this role.

6. On the other hand, it is not clear whether NP constitute primarily a sub-system of the state administration of justice system or a sub-system of the panchayats as organs of local self-government. At present, NP continue to be both. In relation to constitution, finances, and secretariat, the NP constitute a sub-system of the panchayats; in their operation, however, they are a sub-system of the state apparatus of justice, both in terms of oversight and review and of relations with police.

7. Finally (without being exhaustive), one may hypothesize that NP, consciously or otherwise, represent an extension of the state legal system in rural areas. A desire for the eventual displacement of community dispute institutions and for the eventual spread of the ideology and values of the desired new order contributes to the motivation for the creation and maintenance of the NP. Extension of state law, of course, means extension of the formal polity at the expense of informal community processes. NP 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 NP 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, without the aid of state law.

One can readily see the diversity and incompatibility of those various rationales for the creation of NP. Assessments of the efficacy of NP will, of course, depend on which rationale or objectives are preferred. Thus, if one were to view NP merely as a “siphoning” device which prevents overburdening of “higher” levels of the court system, the functioning of NP so far might seem satisfactory, as it was viewed by the Law Commission and the Study Team Reports. On the other hand, if one viewed NP in terms of their didactic/developmental roles, there would be much reason for dissatisfaction at their present state. Similarly, as components of the state judiciary NP continue to attract suggestions which will make them more accountable and more capable (through training programs), though these do not seem imperative if NP are merely seen as “siphoning” devices. On the other hand, greater inputs would be needed for disseminating the ideology and values of a constitutionally desired social order.

The diversity of objectives/rationales for the NP makes problematic both the status of NP and the role of the Nyaya Panchas. NP have a relatively insecure and subordinate status both as judicial institutions and as institutions operating within the context of the Panchayati Raj system, without being an integral part of it. The indeterminacy of status also affects perceptions of role obligations; the Nyaya Panchas are not magistrates (except in some statutory context), nor are they adjudicators in the traditional sense. They are not elders of caste panchayats; they do not necessarily enjoy a reputation for integrity and wisdom; nor are they necessarily members of dominant jatis, respected or feared and obeyed as such. Rather, especially when not directly elected, they are ultimately the nominees of the Sarpanch or a distant official. However, the Nyaya Panchas, like community adjudicators, are to perform their tasks in the spirit of community service; unlike judicial officers they are not paid, their services being honorary. And yet they are to work on this basis for the state. Furthermore, unlike the community adjudicators, the powers of Nyaya Panchas are limited with overwhelming clarity; and the ideology inspiring their creation limits the range of sanctions to only those which are available in state law, and that, too, at a level of utmost modesty.

As members of the judiciary, the Nyaya Panchas are effectively isolated from the power hierarchy of the village societies; they cannot hold any formal position within village panchayats, Samitis or Parishads. On the other hand, because they are not full-time or tenured members of the judicial service, they are not full fledged members of the judiciary either.
In the discharge of their statutory functions, the Nyaya Panchas are to administer justice according to the law; but the law they are to administer requires basic training which they do not have. Nor are they to be assisted in the task by trained lawyers or lawmen. They have little option, in strict theory, except to follow the law, which at best they may only partially understand; when, in fact, they reach decisions in disregard of the law or on a basis other than the law (conciliating when not explicitly provided or deciding on solidary lines), they are liable to social and official criticism. The Nyaya Panchas, at any rate the conscientious among them, may thus be exposed to continuous role conflict. The ambiguity of role spills over into the provision of facilities as well. Informality and flexibility do not go well with the bureaucratization entailed in adequate secretarial organization. Social distance, negating these features, may be reinforced if NP were to be provided a permanent office. Indeed, any visible symbol of status enhancement may be seen to move NP closer to the formal court systems, thus "frustrating" some basic aims of the enterprise. As a consequence, we find ambivalence even on the provision of minimum facilities for the performance of adjudicatory tasks.

Our structural diagnosis is confirmed by the fragmentary data on workload which show the erosion of NP, once established. Although the evidence is indirect, it all points unmistakably to severe institutional attrition. This unhappy condition seems to reflect the basic ambivalence surrounding the very conception of NP. Earlier governmental policy never decided whether they were to be accessible local organs of official justice or community-based dispute institutions promoted by the state. The pathos of the NP is that they have achieved neither the impartiality of the regular courts (at their best) nor the intimacy, informality and ability to conciliate of traditional panchayats (at their best). Indeed NP seem in large measure to have achieved a rather unpalatable combination of the mechanical formalism of the courts with the political malleability of traditional dispute processing.

Available data are insufficient to warrant a conclusive evaluation of NP. In the dismal aggregates may lie hidden some exemplary syntheses of intimacy and impartiality, conciliation and redress. We need more data about structure and workload. We need to ascertain how NP function and the needs and policies that are served and frustrated by their functioning. Only intensive comparative studies of the working of NP in their social context could provide a basis for a realistic assessment of the potentialities of NP as a means of providing access to justice. 66 Although administration of justice is a subject on which only states may legislate, the moribund condition of NP calls for a national policy to provide access to justice that is based upon a realistic appreciation of the dynamics of panchayats and of alternative means of providing access.

Since the Declaration of Emergency in June, 1975, India has entered a period of intensified reconsideration of various institutional arrangements for securing justice. There has been an enhanced concern with the implementation and effectiveness of various reforms. During Emergency Rule the Constitution was amended to reduce drastically the role of the higher judiciary in reviewing public policy. Many matters touching on crucial governmental policies (land reform, procurement of food grains, labor relations, governmental, etc.) were removed from the ambit of the regular courts and vested in special tribunals. At the same time, there has been a pronounced concern to increase the access of the poor to the regular courts, evidenced by intense activity to implement long dormant schemes for legal aid and symbolized by the addition to the Constitution of a Directive Principle enjoining the government to provide legal aid to the poor.

The renewed interest in access and legal aid has found expression in a variety of proposals for mobile legal aid units, rural law camps, lay advisory and grievance boards, and even "barefoot judges" (i.e., law students in clinical programs as adjudicators in villages). The upsurge of interest in making law accessible was not, however, noticeably marked by concern to change the character of the courts or to revitalize the Nyaya Panchayats.

The end of Emergency Rule and the restoration of judicial authority was accompanied by renewed interest in NP. The Bhagwati Committee's Report on National Juridical: Equal Justice—Social

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66 Since the body of this paper was completed, the first book-length study of NP has been published: R. Kushawaha, Working of Nyaya Panchayats in India: A Case Study of Varanasi District (New Delhi, Popular Prakashan, 1977). Kushawaha does not discuss the dispute process or justice aspects of NP adjudications and outcomes, but this useful work provides some figures on NP in three blocks of one district in U.P. Although the author's estimation is favorable, his data support this paper's conclusions on dwindling caseloads, protracted dispositions, inadequate financial and administrative support, lack of insulation from village politics, and general apathy in the operation of NP.