

Functioning of Nyaya Panchayats in Himachal Pradesh



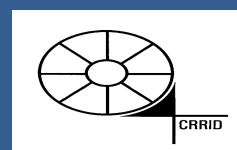
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of
Nyaya Panchayats
in
Himachal Pradesh**

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Executive Summary

The present study was assigned to CRRID by the Ministry of Panchayati Raj, Government of India in order to know the Functioning of Nyaya Panchayats in Himachal Pradesh. Due to difficult mountainous terrain in the state it becomes necessary that people should get affordable and accessible justice system. In this context, formation of Nyaya Panchayats in the state has its own significance. Therefore due recognition was given in the 1952 State Panchayat Act, which empowered the state government to constitute Nyaya Panchayat which should be independent from the elected Gram Panchayats. Until 1978 all Nyaya Panchayats were functioning independently with its own jurisdiction but during 1978, functions of Nyaya Panchayats were transferred to Gram Panchayat. Therefore, elected representatives of every gram sabha started performing the dual functions of gram Panchayat as well as of Nyaya Panchayat. Since then, the function of delivery of justice, which was earlier performed by the Nyaya Panchayat, is being performed by the elected Gram Panchayats. Thus, in this study the judicial functions of gram Panchayats has been considered as that of Nyaya Panchayats.

Methodology

The findings of this study are based on a sample survey, for which three districts have been taken from different geographical regions. While Kullu district represent the central part, Solan south represents the south-western part and district Kinnaur represents the tribal area in the north eastern part of the state. While Kinnaur is a PESA district the other two are non-PESA districts. A total of 30 Gram Panchayats was covered for in-depth primary study from these districts. From each district, two blocks were selected and from each block five GPs were selected. From each GPs 5 gram sabha members comprising of males, females and SCs and STs were selected for primary level study. In each gram panchayat, elected gram Panchayat members, village elders, women's, and other members of the society were contacted and interviewed to fulfill the objective of the study. Apart from them views of legal experts, advocate and retired legal and civil servants of the state on judicial function of Panchayat were also collected.

Major Findings

The Nyaya Panchayats (the elected Gram Panchayats when performing judicial functions have been referred to here as the Nyaya Panchayats) in Himachal Pradesh are playing a very useful role in dispute resolution in rural areas, especially in remote and inaccessible areas. The main advantages of the Nyaya Panchayats are as follows:-

- **Easy accessibility:-** Being a hilly state, regular courts in Himachal Pradesh are not easily accessible to many people, especially those who are residing in remote and inaccessible villages, because these courts are generally located in urban centres or large sized villages. By contrast Nyaya Panchayats (NPs) are located in the villages itself. Thus, these courts (NPs) are easily accessible to all villagers.
- **Low cost:-** Seeking justice through NP is highly cost effective as one neither has to engage a lawyer nor has to pay the court fee. Also no cost is incurred on traveling. Moreover, there is no major loss of work as one does not have to leave the village to attend the case in the court.
- **Quick redressal of the complaint:-** It is generally said that “justice delayed is justice denied.” Regular courts take very long time to decide a case because they are over burdened with work and the procedure is very lengthy and cumbersome. Certain cases in the regular courts linger on for years, some times for decades without any result. The Nyaya Panchayats

by contrast provide justice to the complainant at the shortest possible time - in many cases within a week.

- **Just decisions:** - Since the members of the Nyaya Panchayat and the parties involved in a dispute belong to the same village, the Nyaya Panchayat members are in a much better position to know the true facts of the case, moreover they also understand the nuances of every act, action or utterance in the socio-cultural context of that village. Thus most decisions of the NPs are happily accepted by the people and they feel satisfied with these decisions.
- **The poor and the weaker sections friendly:** - The real beneficiaries of the NPs are the poor and the weaker sections of the society, because these people cannot approach the regular courts for the redressal of their complaints. But the NPs are easily accessible to them because these are located in the villages it self and do not require any expenses.
- **Maintaining social harmony:** - It has been observed that NPs are conciliatory rather than adjudicatory in nature. They always try to strike an amicable compromise between the parties involved in dispute. They opt for judicial course only when they fail to strike a compromise between the disputants. Such an approach helps in maintaining social harmony in the village.

No doubt NPs in Himachal Pradesh are playing a very useful role in resolving disputes and maintaining social harmony in villages, yet, because of certain limitations, the potential of this institute is not fully exploited for the benefit of the people. Some of these limitations are as follows:-

- **Judicial and executive functions are entrusted to a single body:** - In Himachal Pradesh after the enactment of HPPR (Amendment) Act 1977, the Gram Panchayat, which is an executive body, was also given the authority to discharge the judicial functions as well. This transfer of judicial functions to the elected panchayats was against the constitutionally prescribed principle of separation of the judiciary from the executive which cannot be compromised (Article 50, Constitutions of India).
- **Very little time for judicial functions:** - After the 73rd Constitutional Amendment the functions and responsibilities of Gram Panchayats have increased enormously. They have to act as the main agent of socio-economic development in the rural areas. With the implementation of MGNREGA their burden of responsibilities has further increased. In the changed scenario Panchayats have been left with hardly any time for performing judicial functions in a satisfactory manner.
- **Limited knowledge about judicial functions:** - Although training to Panchayat functionaries and elected representatives of PRIs is arranged by the state government, yet it was observed that the understanding of most of the panchayat functionaries and elected representatives of PRIs regarding judicial functions is very very limited. Such person cannot perform the judicial functions with competence.
- **Gender bias in decision making:** - It has been observed that most NPs do not take any serious view of domestic violence against women. In a male dominated society of Himachal Pradesh physical or mental torture of woman by her husband is not viewed as an offence worth consideration of the NP. Any woman making such complaint is rather reprimanded for sullyng the reputation of the family. Thus in most cases of domestic violence women are generally denied justice.
- **Limited powers:** - Nyaya Panchayats in Himachal Pradesh have very limited powers. Extremely low pecuniary limits deprive the NP of any relevant role in the village society, eroding the very respectability and legitimacy of the institution. The maximum fine which the

NP can impose is so low that it has no effect on the guilty. The revenue jurisdiction, especially regarding mutation, boundary dispute and correction of records is also very very limited.

- **Disposal of certain cases is problematic:** - Certain panchayat have reported that they face many difficulties while disposing certain cases. Limited jurisdiction of NPs, extremely low pecuniary limits which do not instill fear of NP in the minds of the guilty, interference by the influential persons into its functioning, non compliance of Nyaya Panchayats orders by certain persons, difficulty in finding reliable witnesses, limited knowledge of law and judicial functions on the part of members of NP, lack of time for judicial functions, etc. make the disposal of certain cases very difficult.

Suggestions and Recommendations

- Nyaya Panchayats independent of the elected Gram Panchayats as were functional in the state prior to 1977, be revived. However, till that time, Justice Committees under the chairmanship of Pradhan or Up-Pradhan be constituted in each village on the pattern of other Standing Committees of the Gram Panchayat. Such a committee should have, in addition to its chairman, minimum of four and maximum of six nominated or elected members (as was recommended under HPPR Act, 1968). The committee should also provide due representation to SC/ST population and women. The role of the committee will be to exclusively deal with the judicial cases. The decisions taken by the committee may be sent to Gram Panchayat for ratification.
- The training programme organized by the State Government in the judicial functioning of the panchayats for elected members of PRIs and other functionaries of the panchayats need to be upgraded and made more rigorous. Services of Law Officer at the district or lower level may also be made available to the NPs free of cost as and when required.
- Revenue jurisdiction of NPs especially with regard to mutation, boundary disputes and correction of records need to be extended on the pattern of Bihar.
- The civil and criminal jurisdiction of NPs be enlarged by enhancing the pecuniary limits.
- A simple and effective mode of execution of the orders of NPs is necessary. A decree passed by the NP should be deemed to be a decree passed by the Civil Court and be executed in the manner it is executed by the court having jurisdiction to execute that decree as is being done in Chhattisgarh.
- The conciliatory approach of the NPs in dispute resolution which play a very important role in maintaining social harmony within the village as well as within family/families must be appreciated and encouraged.
- Keeping in view the sentiments of the people and sensitive nature of certain cases, registration of every case which is reported to the NP may not be insisted upon. If the complainant do not want to register his or her complaint, his/her sentiments must be respected and the case be taken up verbally.

- If the matters relates to SC/ST or woman, especially SC/ST woman proportionate representation in keeping the provision of Draft Nyaya Panchayat Bill should be considered. Moreover all decisions should be in writing and should have binding effect to prevent recurrence of disputes.

Chapter 1

Introduction

The present study has been assigned to CRRID by the Ministry of Panchayati Raj, Government of India in order to know the Functioning of Nyaya Panchayats in Himachal Pradesh. The state, due to difficult terrain has problem of accessibility. It therefore becomes necessary that people should get affordable and accessible justice system near their homes. In this context, formation of Nyaya Panchayats in the state has its own significance. Therefore due recognition was given in the 1952 State Panchayat Act, which empowered the state government to constitute Nyaya Panchayat which should be independent from the elected gram panchayats. The Nyaya Panchayats were constituted in the state for the first time in 1952, which continued to function independently with its own jurisdiction till 1978. But in 1978 judicial functions of Nyaya Panchayats were transferred to the elected gram panchayats. Thereafter, every elected gram panchayat started performing the dual functions of gram panchayats as well as of the Nyaya Panchayat. In this arrangement every elected representative became member of Nyaya Panchayats. The institution of panchayat thus has been performing the functions of delivery of justice, as earlier done, by Nyaya Panchayats. Due to present practice the judicial functions of gram panchayat has been considered as Nyaya Panchayat functions in this report.

Himachal region, before 1947, consisted of thirty small princely states, all independent of each other, not under the suzerainty of the British crown. Hence there was no single Act in operation till 1939 when Punjab village panchayat Act, 1939 was adopted. The entire Himachal region underwent a series of metamorphic changes, both political and administrative till 25 January 1971 when it became eighteenth state of Indian Union. Gram Panchayat and Panchayat Samities enjoyed a certain level of status and powers. Himachal Pradesh enacted a new Panchayat Raj legislation, known as Himachal Pradesh Panchayati Raj Act, 1994, in conformity with the provision of the constitution (73rd Amendment) Act, 1992.

Himachal Pradesh has a population of 60.77 lakhs according to census 2001, out of which 90.21 percent are living in rural areas and the remaining 9.79 percent in urban areas. At present, Himachal Pradesh has 3243 gram panchayats, which indicates that each G.P. on an average caters to less than 2000 persons.

The judicial functions and powers of Gram Panchayat are covered in Chapter IV of Panchayati Raj Act, 1994. It deals with many details like offences cognizable by gram panchayat, penalties to the accused and compensation to the aggrieved, extend of jurisdiction, etc. However, there is, a need to study its present status and relevance in the present context. The gram panchayats have been empowered to conduct and decide cases relating to minor offences under I.P.C., Vaccination Act, 1880, Cattle Trespass Act, 1871, the H.P. Juveniles (Prevention of smoking) Act, 1952 and the Public Gambling Act, 1867 and also to hear and decide applications for maintenance under section 125 of the Cr. P.C.

The GPs have also been empowered to protect public property such as milestones signboards, on public walls, hand pumps, water supply schemes, public taps, community buildings, mahila mandal bhawans, school buildings, health institution buildings etc. In case of violation of orders of GPs in any matter, GPs can impose penalty upto Rs. 1000/- and in case of recurring breach, further penalty up to Rs. 10/- per day with maximum limit of Rs. 5000 can be imposed.

1.1 Objectives

The main objective of this study is to evaluate the functioning of Nyaya Panchayats in the state. For this purpose the followings aspects of the Nyaya Panchayats were looked into:-

- How efficiently are the Nyaya Panchayats functioning in the state?
- Whether the legislative provisions enacted by the state for the establishment of NP are adequate? In case of any lacunae what changes are needed to be brought in?
- Whether or not the state administration supports the NPs?
- What is the jurisdiction of the NPs?
- What type of Infrastructure is available with the NPs?
- Whether or not any training programme, relating to exercise of judicial functions was conducted for the members of Nyaya Panchayats?
- Is there any Judicial Intervention/court intervention in the working of NPs?
- Any other relevant issues.

1.2 Methodology

The study is based mainly on primary data collected through sampling method from the field. However, wherever necessary, secondary data was also used in the study.

Size of Sample and Sampling Technique Used

For this study 30 gram panchayats were selected from three districts, viz., Kinnuar, Kullu and Solan. These districts represent three different geographical regions of the state. Solan district represents the south-western low-hill tract of the state. Kullu district represents the central middle and high-hill region of the state and Kinnaur district represents the northeastern high mountainous region of the state. Another reason for selecting these districts was that within the state Solan has relatively high percentage of urban population (18.2%), Kullu moderate (12.6%) and Kinnaur is a 100% rural population district.

From each district two blocks were selected. While selecting these block distance from the district headquarter was used as the main criteria. One block in each district was selected from a zone near the district headquarter and the other from the zone at a larger distance from the district headquarter.

From each block 5 gram panchayats were selected. These panchayats were also selected from different zones from the block headquarter within each block. Easy accessibility was also an important consideration in the selection of panchayats. In the selected panchayats due representation was also given to those panchayats which had Sarpanches from the reserve categories, such as females, SCs and STs. The selected panchayats formed nearly 5 % of the total panchayats in Solan and Kullu districts and over 15 % in Kinnaur district.

Apart from these two sets of respondents who were interviewed systematically, informal meetings and discussions were also held with village elders, government officials working at the GP level, retired legal and civil servants of the state, advocates and other legal experts.

Data Collection

Two separate questionnaires/ schedules were prepared for gathering the requisite information. One of these questionnaires was meant for extracting information from the selected members of the panchayats. It contained questions regarding the judicial functioning of the panchayats. In addition to that information regarding the socio-economic background of the elected representatives of the people was also gathered through this questionnaire/ schedule. For filling this questionnaire/ schedule a meeting of the elected members of the panchayat was called in each village. Discussions were held with them and their responses to different questions/ queries were recorded. Thus only one questionnaire was filled for each panchayat which reflects the composite views of all the elected members of the panchayat.

The second questionnaire was got filled from the selected members of the gram sabha individually. This questionnaire mainly focused on the people's perception regarding the functioning of Nyaya Panchayats.

The views of villagers, government officials associated with village panchayat (BDO, Panchayat Secretary), retired civil servants, advocates, legal experts etc regarding the functioning of Nyaya Panchayats were recorded separately after holding meetings/discussions with them individually.

The collected data was then tabulated and analyzed.

Basic Information about the Area Surveyed

Basic information about the selected districts as well as the selected blocks and the list of Panchayats covered in this survey is provided below:-

District Kinnaur:-

• Total population of the district	78,334
• Number of blocks in the district	3
• Number of blocks covered in the survey	2
• Number of Gram Panchayats in the district	65
• Number of Gram Panchayats covered in the survey	10
• Population of selected Gram Panchayat as percentage of total population of the district	21.63
• Number of elected Gram Panchayat members interviewed	66
• Number of Gram Sabha members interviewed	50
• Number of Government officials interviewed	12

Information about the selected blocks

Block Kalpa

• Total population of the block	29,361
• Number of Gram Panchayats in the block	23
• Number of Gram Panchayats covered in the survey	5

Block Nichar

• Total population of the block	26,630
• Number of Gram Panchayats in the block	18
• Number of Gram Panchayats covered in the survey	5

List of Selected Grams Panchayats in District Kinnaur Block Kalpa

Gram Panchayat	Population
• Khawangi	2968
• Kothi	2638
• Duni	1084
• Sudarang	2375
• Powari	926
• Total	9991

Block Nichar

• Bari	1047
• Taranda	2128
• Ponda	1705
• Sungra	4844
• Nichar	2230
• Total	11954
• Total of 10 GPs	16945

District Kullu:-

• Total population of the district	3,51,478
• Number of blocks in the district	5
• Number of blocks covered in the survey	2
• Number of Gram Panchayats in the district	204
• Number of Gram Panchayats covered in the survey	10
• Population of selected Gram Panchayat as percentage of total population of the district	06.25
• Number of elected Gram Panchayat members interviewed	75
• Number of Gram Sabha members interviewed	50
• Number of Government officials interviewed	12

Basic Information about the selected blocks

Block Kullu

• Total population of the block	117205
• Number of Gram Panchayats in the block	70
• Number of Gram Panchayats covered in the survey	5

Block Nagar

• Total population of the block	87081
• Number of Gram Panchayats in the block	40
• Number of Gram Panchayats covered in the survey	5

List of Selected Grams Panchayats in District Kullu Block Kullu

• Balh	3334
• Kalheli	2029
• Bajaura	1381
• Bhuin	1674
• Bara Bhuin	1297
• Total	9715

Block Nagar

• Katrain	3586
• Nagar	4068
• Gojra	900
• Duwara	1738
• Karzan	1971
• Total	12263
• Total of 10 GPs	21978

District Solan:-

• Total population of the district	4,08,455
• Number of blocks in the district	5
• Number of blocks covered in the survey	2
• Number of Gram Panchayats in the district	211
• Number of Gram Panchayats covered in the survey	10
• Population of selected Gram Panchayat as percentage of total population of the district	05.45
• Number of elected Gram Panchayat members interviewed	77
• Number of Gram Sabha members interviewed	50
• Number of Government officials interviewed	12

Basic Information about the selected blocks

Block Dharmpur

• Total population of the block	82473
• Number of Gram Panchayats in the block	38
• Number of Gram Panchayats covered in the survey	5

Block Kunihar

• Total population of the block	80487
• Number of Gram Panchayats in the block	45
• Number of Gram Panchayats covered in the survey	5

List of Selected Grams Panchayats in District Solan Block Dharmpur

Name of GP	Population
• Anji Matal	1688
• Dharmpur	4702
• Goela	2376
• Protha	1102
• Patta Barian	2792
• Total	12666

Block Kunihar

• Bakhalag	2056
• Dewra	1533
• Domehar	2504
• Kothi	2510
• Sanan	965
• Total	9568
• Total of 10 GPs	22228

Duration of field survey

The time duration of the field survey conducted in the three districts of Himachal Pradesh was during “15 November 2009 to 15 February 2010”.

Chapter 2

Nyaya Panchayats in India: History and Significance

The participation of citizens in the justice system is not a new concept. Even Aristotle in his book has mentioned the essential attributes of a citizen as one who takes part in the process of judgment and in the deliberations of the Assembly. In India in the earlier period, village community created their own Panchayats where there was no element of election. Responsible members of the village community formed the Panchayat and the decisions were generally respected by the village community. The word 'Panchayat' means a group of village men who command respect from their community and the word 'Nyaya' means justice. Therefore when a dispute is resolved by the village heads or elders who are respected and trusted by the parties to a dispute through a mutually acceptable settlement such a body of trusted and respected persons may be termed as a 'Nyaya Panchayat'. Much before the introduction of the judiciary in India by the British, people resolved their various disputes within the community itself. The process was usually headed by a person of high status, experienced in every day life of the village, someone who commanded respect, had integrity and was honest. Such a person was usually assisted by other people with equal qualifications, and was referred to as the "Panchayat" and the members of 'Panchayat' were termed as "Panch Parmeshwar" i.e. 'The five who are like God'. The disputes between the residents of the village were decided by the 'Panchayat' and the paramount consideration in such settlements was welfare of the disputants. Similarly, in cases of dispute arising between people from different villages the settlement was done by the mutually agreed upon persons from both the villages. But after independence the role of Panchayats in the delivery of justice at the grass-root level declined as they were entrusted with a new responsibility, that is, looking after the development works in the village. Although the roles of Panchayats in the settlement of disputes declined, yet they continued to resolve disputes in the villages informally. However the decisions taken by the Panchayat in such cases had no legal sanctity as enjoyed by the 'State' established court of law.¹

Nyaya Panchayats are visualized for dispute resolution at the village level with functions based on broad principles of natural justice with civil and criminal jurisdiction. The process followed was more or less of conciliation at the village level. The initial official discussion on authorization by the state of village bodies to dispense certain administrative and judicial functions emerged during the British rule. The earliest statutory recommendation came in the form of Village Courts Act, 1888, which has since been amended in 1920 and 1951. The scheme of the Madras Legislation was to have two classes of village courts; firstly, courts presided over by village munsifs, (in place where panchayat courts were not constituted) and secondly, panchayat courts consisting of not less than five and not more than 15 members elected by the villagers. Legislation similar to the Madras Act was undertaken in the other provinces at about the same time. The Civil Justice Committee of 1924-25 also recognized that the judicial work of the Panchayat was part of the village system and has been the basis of the indigenous administration from time immemorial.

The Royal Commission on Decentralisation of 1909 recommended the revival of nyaya panchayats having both civil and criminal jurisdiction in petty cases arising within the village. In May 1915, by a resolution passed by the Government of India, the matters regarding the

establishment of nyaya panchayat was left to the State Government. In 1920, *Bombay Village Panchayat Act* was passed and that resulted in the conduct of a series of panchayat adalats. But select committee of the legislative council opposed the investing of judicial powers on panchayats. In 1933, a village bench consisting of elected members and outsiders were created as per provisions of the *Bombay Village Panchayat Act* in Bombay. Since independence, almost all States enacted village panchayat acts as guided by the directive principles and have resulted in the creation of statutory nyaya panchayat legislation. The village panchayat and nyaya panchayat existed as dual entities in order to have separation of judiciary from the executive.

In Independent India, several reforms were introduced in the administrative and judicial roles of various bodies and in functioning of village Panchayats. The report of the study team on Nyaya Panchayats under the Chairmanship of Mr. G.R. Rajagopal clearly recommended that villages must be given free hand in electing members of the Nyaya Panchayat. It also suggested that the jurisdiction of Nyaya Panchayats should be exclusive and not be subject to voluntary submission of disputes for resolution. However, it was not in favour of conferring jurisdiction in matrimonial cases. It also advocated conciliation as the preferred method of resolution of disputes. In fact, the committee also drew up a formal bill titled “Nyaya Panchayat Bill of 1962”. The Government of Gujarat too constituted a High Level Committee under the Chairmanship of the then Chief Justice of Gujarat High Court, Justice P.N. Bhagwati. The Committee recommended a new pattern of Nyaya Panchayat wherein a Panchayati Raj Judge was to be assisted by two members from amongst a panel of persons to be drawn up by the District Collector to act as member of Nyaya Panchayat. It advocated as far as possible spot resolution of disputes and a simple procedure guided by justice, equity and good consensus. The Rajgopal Committee too strongly advocated retention and revitalization of Nyaya Panchayat.

“Justice to all” is the paramount goal of the constitution of India. In a sense the Indian Constitution is a monumental document of social engineering. The framers of the constitution have tried to realize this goal through the twin parts III and IV of the Constitution that deal with Fundamental Rights and the Directive Principles of State Policy. For the sake of proper understanding of the operationalization of the ideal of justice in practice, the twin parts are not to be studied separately but jointly. While it is true that the Fundamental Rights are justifiable and Directive Principles are not justifiable i.e. they are not enforceable in any court of law. Article 14, 32, 145 and 226 presupposes effective access to justice. As a mechanism of controlling, constitution has envisaged various concepts and mechanism to ensure the Justice.²

The present system of administration of justice has failed to achieve its desired goal, and the time has come to establish a forum where the grievances of the needy and poor can be speedily redressed. A common perception amongst the rural masses is that access to justice is both complex and difficult and as a result, they avoid seeking legal redress for their grievances through courts. Justice delayed is justice denied and at the same time justice hurried is justice buried. Therefore there is a need to create a medium which is balanced and which secures ‘Justice’ to the poor and needy.

In order to bring certainty to the cases pending and reduce the backlog the government has introduced various Alternative Dispute Resolution mechanisms like Section 89 of Civil Procedure Code, Lok Adalats, and recently ‘Plea Bargaining’ in the criminal justice system. In its most traditional and general sense, “Plea-Bargaining” refers to pre-trial negotiations between the defendant, usually conducted by the counsel and the prosecution, during which the defendant

agrees to plead guilty in exchange for certain concessions by the prosecutor. Plea bargain is beneficial for both the complainant as well as accused. For the complainant it is justice and accused here is left with the certainty of accepting a sentence for a lesser charge, rather than face the uncertainty of a trial in which though one may be found not guilty, but which also carries the risk of being found guilty of the original, more serious charges.³

2.1 Significance of Nyaya Panchayats

When assessing the prominence given to “Justice” including social, economic and political as stated in the Constitution of India, it is surprising to know that it is rather cumbersome for the poor to access justice. Article 39A of the Constitution of India provides that State shall create a legal system which promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. Although such statements may sound good on paper, the ground realities are quite the opposite as enumerated below:—

The first and foremost aspect in this regard is the lack of information and it is the main hindrance in securing “access to justice”. A field research that was conducted as part of the legal literacy trainings under the National Legal Literacy Mission in the States of Uttarakhand, Chhattisgarh and Jharkhand revealed this crucial fact. It is a multi-dimensional problem which encompasses absence of knowledge as to what rights one has, where to go in case of violation of one’s right and what to do in order to demand one’s right and the problem is further aggravated by one’s incapacity to understand legal jargon.

The high cost involved in the legal procedure, which keeps the aggrieved away from the formal court set-up is also another matter of concern. The cost involves payment to lawyers, court fees etc. These costs disallow the aggrieved even to initiate the legal proceedings let alone carrying it through. In addition to direct cost involved there are other auxiliary costs such as traveling from the place of residence to court, sundry paper work, cost of traveling of witnesses etc. The supposed beneficiaries of justice system stand in queue for hours and get robbed of their hard earned money by the experts (legal). For them seeking recourse through a formal justice system is nightmarish experience.⁴

The wide spread corruption prevailing in the judicial system is another matter of concern. In Corruption Perceptions Index 2005 India with a score of 3.3 out of total ranked 70th in overall and scored 12th in the region and the confidence range between 3.1 – 3.6. Corruption puts an additional economic burden. It is widespread conception in India that additional money is required to get “favorable outcome”. This notion leads many people to think that justice is for rich.

Legal Complexities of the system is also another hindrance. The procedure in courts is extremely formal, which only lawyers can understand. The common man standing in court finds himself to be distanced from the entire process. The complexities not only elude the common man from the courts but also compel him to pay to lawyers. Therefore the outcome of a case depends on procedure rather than substance. This distancing of the common man from the “temples of justice” is ingrained not only in the court formalities but also in the dress code and architecture of the courts.

The unwanted delay in getting justice is creating problems. The constantly increasing number⁵ of cases has led to delay in disposal of cases thereby denying the citizens access to justice. The utmost requirement of any system of justice is that it should be just, efficient and effective. Data collected from the Supreme Court reveals that institution of cases in all courts i.e. Supreme Court, High Court and Subordinate Courts is constantly increasing. To these cases one has to add the pending cases in various Administrative Tribunals, Tax Tribunals of the Center and States, land Tribunals and other quasi-judicial bodies and authority's set-up to reduce the workload of regular courts. Although there may not be any formal figures as to the number of these cases but a conservative estimate would be around 3.5 crores and this is the situation after establishing various Fast Track Courts and Tribunals for different matters taking away the jurisdiction of High Courts for the sake of prompt disposal and removing unbearable congestions in the regular courts. The large number of pending cases leads to inordinate delay in final decision thereby further detaching common man from formal judiciary.

The geographical factor is also creating hindrance. In India the courts are usually located in the district headquarters. Considering the size of a district it is improbable for everyone to reach the district headquarters for dispute resolution. These geographical problems are of vital importance, as the traveling cost and other needs are required to be met time and again till the end of legal process. The life in city is very different from village and it can be emotionally taxing for a person from village in the unfamiliar environment.

In addition to the above denial of access to justice has led to mushrooming of parallel systems of justice, such as religious courts, caste panchayats, revolutionary councils, etc. Rural/poor people's preference for using such non-state (at times even anti-state) systems, reflect the weakness of the formal justice system and not necessarily satisfaction with the informal justice systems. It is a choice based on "availability" (access) rather than "quality" (substance). The non state-informal systems too have their problems of accessibility, impartiality, independence and accountability. As with the formal system, poverty and powerlessness shape access. It is imbued with social norms and values of the dominant patriarchal culture that perpetuates discrimination against women, backward, marginalized, minority groups and the poorest.

Nobody can deny the fact that democratization of the justice system should start at the grass root level through transforming and sensitizing existing dispute settlement mechanisms/structure to human rights and constitutional values and linking them with the formal justice system. This will interface well with the process of democratic decentralization that is presently on in the country through the Panchayati Raj Institutions (PRISs). Justice is critical to any poverty reduction agenda and economic growth. The importance of re-orientating the traditional justice system, lies not just as a mechanism for dispute resolution but because social change around these informal institutions can pave the way to social justice and democratization. A functioning justice system is not only a mark of development but also a factor of development. Thus, access to justice is not only central to the realization of constitutionally guaranteed rights, but also to broader goals of development and poverty reduction and urgently needs acceptance as a development indicator.⁶

Since a forum for the resolution of disputes with the participation of people in local justice administration is the goal envisaged by Article 39A of the Constitution of India, it is strongly felt by some jurists and social scientists that it is incumbent on the government to take immediate steps to activate nyaya panchayats, given the fact that it might not be possible to render access to justice in rural areas in a simpler and quicker move. It is also argued that nyaya panchayats guided

by local traditions, culture and behavioral pattern of the village community instill confidence in the people towards the administration of justice.

The Law Commission has observed that the Article 39A of the Constitution of India directs the State to secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by economic or other disabilities. This is the constitutional imperative. Denial of justice on the grounds of economic and other disabilities is in nutshell referred to what has been known as problematic access to law. The Constitution now commands us to remove impediments to access to justice in a systematic manner. All agencies of the Government are now under a fundamental obligation to enhance access to justice. Article 40 which direct the State to take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government, has to be appreciated afresh in the light of the mandate of the new article 39A.⁷

With a rapid increase in the number of people approaching the courts, the primary concern faced by the Judiciary is the escalation in the amount of new cases coming in and an ever increasing backlog, which seems to have assumed insurmountable proportions making access to justice to the public at large a far delayed and long drawn process. There are more than three crore cases pending before the various courts of India as stated by the Chief Justice of the Supreme Court of India. So there is a need to gear up the activity of clearing the pending cases. Here comes the necessity of establishing more and more Nyaya Panchayats. So a study team was constituted in this regard. The following considerations seem to have prompted the Law Commission and the Study Team on nyaya panchayats to recommend the revitalization of nyaya panchayats:⁸

- They would dispose of a large number of cases and thus relieve the burden of regular courts.
- They would succeed in getting a large number of cases compromised through peaceful conciliation.
- The villagers in general would be satisfied with the administration of justice obtaining in village or panchayat courts and that the decisions of these courts on the whole would do substantial justice.
- Appeals and revisions from these decisions would be small in number.
- There should be speedy and cheap disposal of cases.
- The litigants and witnesses who are mostly agriculturists can conveniently attend the courts and thus there would be no interference with agricultural activities in the village.
- The panchayat could bring justice nearer to the villager without involving the expenditure which would otherwise have to be incurred in establishing regular courts.
- Panchayat would have an educative value.
- Local courts acquainted with the customs of the neighborhood and nuances of the local idiom are better able to understand why certain things are said or done.
- An institution nearer to the people holds out greater opportunities for settlement and a decision taken by it does not leave behind that trial of bitterness which generally follows in the wake of litigation in ordinary courts.
- There are better chances of conciliatory method of approach in nyaya panchayats.

- People in a village are so closely known to each other that the parties to a dispute would not be able to conceal or produce false evidence easily and those who tell lies before the nyaya panchayat face the risk of being looked down upon and even boycotted by others.
- Panches being drawn from among simple village folk strive at decisions which are fair and at the same time consistent with the peculiar conditions of the parties.

Justice S.B. Sinha has emphasized that there is also a need to deliberate on the methodologies to be adopted for encouraging justice dispensation through the traditional forum of Panchayats. This age-old institution has found new vigor with the introduction of the 73rd Amendment to the Constitution. Strengthening the institution of Panchayats and empowering people at the grass-root level to resolve their disputes amicably would solve many of the problems that are faced by conventional justice dispensation machinery in its attempts to percolate to the lowest levels. This would provide a solution to the problems of access to those living in remote regions.⁹

2.2 73rd Amendment Act and Nyaya Panchayats

Legislation to formalize these bodies and bring them within the ambit of organized justice in India was planned as part of the Panchayati Raj reforms of Rajiv Gandhi in the 1980s, but was put on hold to coincide with broader reform of the justice system.

After the 73rd Constitutional Amendment, the states of Bihar, Himachal Pradesh, Punjab, Uttar Pradesh, Jammu and Kashmir and West Bengal provided for NP in their new confirmatory laws or in their confirmatory amendments to old laws. States of Andhra Pradesh, Gujarat, Haryana, and Karnataka made no provision for NPs in their post-73rd amendment law, though they have the provisions in their earlier laws.¹⁰

The omission of 'Justice' in 11th Schedule has also been used as another justification to avoid Nyaya Panchayats. This argument does not seem very logical as according to Concise Oxford dictionary eleventh edition a Schedule is defined as "an appendix to a formal document or statute". In other words schedule is concerned only with the procedural aspect not the substantive and it is well established that procedure cannot defeat substance (as laid in Article 243G as well in the Preamble of the Constitution). It is also well settled that the Eleventh Schedule of Constitution is illustrative not exhaustive.

The Amendment to the Constitution empowered the States to realize the dream of 'Gram Swaraj' by devolving on Panchayats 29 subjects with certain powers by which the panchayats can work as an institution of self-governance. However non-mention of 'Justice' within the language of Part IX has given an excuse to the legislator to stifle the Nyaya Panchayats. Many groups opposing Nyaya Panchayats has used an argument that as per Article 243G only such powers can be given to the Panchayats, which are necessary to enable them to function as institution of self - government. Judicial function is not the part of institution of self-government. However it is worth mentioning here that the Article 243G requires Panchayats to give power to further "social justice". Therefore it can be stated that in larger social interest the word social justice as used under Article 243G should be read in correlation to concept of 'JUSTICE' as specified in preamble to the Constitution of India.

The NPs are visualized to establish themselves as effective instruments for settlement of disputes or impart justice. Despite evidence that NPs are far from realizing their true potential it is still held to be the only option available for India's rural legal problems. Regrettably, the 73rd amendment,

which was intended to usher in the era of “Gram Swaraj”, actually led to confusion and provided most States with an excuse to abandon the Nyaya Panchayats. The Amendment empowered the State Legislature to devolve power and authority regarding twenty-nine subjects (as mentioned in the eleventh Schedule and Article 243G) to enable the Panchayats to function as institutions of self-government, however, ‘dispensation of justice’ by the Panchayats did not find mention in the list. Thus, it was not only the weakness of these institutions but more so the lack of political will and state support that stood as an impediment in the development of justice delivery institutions at the grass roots level.

Following the victory of the Congress Party-led United Progressive Alliance in the 2004 General Elections, the National Advisory Council advised the Government of India to introduce legislation on Nyaya Panchayat. To draft legislation in this regard a drafting committee, under the chairmanship of Professor Upendra Baxi, has been formed by the *Ministry of Panchayati Raj*, Government of India.

2.3 Nyaya Panchayats in Himachal Pradesh; a brief History

Nyaya Panchayat as a statutory body has a long history in Himachal Pradesh. The current judicial functions have evolved from a changing constitutional and legal status of the Panchayat Raj System itself. The present political and administrative boundaries of Himachal Pradesh comprising 12 districts have been evolved over a period of 23 years. The hilly state of Himachal Pradesh came into being as a Chief Commissioner Province of the Indian Union on 15th April 1948 as a result of merger of 30 erstwhile princely states of Punjab and Shimla hills. All these areas at that time constituted four districts viz. Chamba, Mahasu, Mandi and Sirmour with an area of 27,167 sq. km and population 9, 35,000. In the year 1951, Himachal Pradesh was made a part ‘C’ state. In 1956 it was rendered as a Union Territory, a status it maintained till 1971. It was granted full-fledged statehood on 25 January 1971. As the State’s administrative and political boundaries evolved, several revisions were also made to the State’s Panchayati Act, effecting several changes to their judicial structure and functions. Because of the complex topography of Himachal Pradesh the need for system of affordable and accessible Justice Delivery was felt very much. Therefore in 1952, Himachal Pradesh Panchayati Raj Act incorporated the concept of Nyaya Panchayat. Section 47 of this Act empowered the State Government to constitute a Nyaya Panchayat for a cluster of Gram Sabhas.¹¹

The Himachal Pradesh Panchayati Raj Act 1968 (HPPRA) replaced HPPRA 1952, Punjab Gram Panchayat Act 1952 and the Punjab Panchayat Samitis and Zila Parishad Act 1961 which were applicable in the hill areas of the state of Punjab that were merged with the state of HP in 1966. In the HPPRA 1968, Nyaya Panchayats were retained.¹² The Act has two separate chapters dealing with the Nyaya Panchayat (NP). It is evident from the reading of this enactment that the objective of having a separate Nyaya Panchayat was to keep socio-economic functions and judicial functions of the Panchayats separate as the former were to be undertaken by the Gram Panchayat (GP) and the latter by NP. But the HPPR (Amendment) Act 1977 abolished the concept of a separate Nyaya Panchayat.¹³ The executive committees of the Gram Sabha i.e. the Gram Panchayat were given the authority to discharge the judicial functions as well. The scope and nature of the judicial functions which were to be exercised by the NP in the 1968 Act were retained and the only difference left was that instead of a separate NP, the GP would be responsible for the discharge of the judicial functions. So Chapter XV of the HPPRA 1968 was renamed as the judicial functions of the GP. In fact the rules of 1971 were also amended to include a separate chapter on judicial functions of Gram Panchayat in 1978.

The Constitution (73rd) Amendment Act, 1992 was enacted on 24th April, 1993 with a view to give constitutional status, to the Panchayati Raj Institutions. Essentially, the Amendment Act lays down certain basic rules and general guidelines for the constitution of local bodies. This consists of a well defined duration of five years, safeguards against external interference in the form of prolonged suppression, provision for regular election, proper representation of scheduled casts and tribes and women, devolution of finances functions and functionaries and constitution of DPCs. But the details are to be worked out by the State as it is a state subject. On 23rd April, 1994, Himachal Pradesh enacted the HP Panchayati Raj Act, in the light of the 73rd Constitutional Amendment Act, 1992. Simultaneously, the State Election Commission and the State Finance Commission was constituted by the Government. Soon elections were held and three tier systems of PRIs came into force.

Chapter 3

Review of Provisions in the Nyaya Panchayats Acts

3.1 Samjhauta Samities for Compromise

Earlier the dispute settling mechanisms gained ground through compromise entitled by the samjhauta samities constituted by the gram panchayat as per section 47-A of the 1952 act. Accordingly anybody who needs a settlement can write to the pradhan, the up-pradhan or the secretary of the gram panchayat of the area within whose jurisdiction the defendant or the accused resides. On receipt of an application the details are recorded in Form Number 36 and signatures of the applicant are obtained. The pradhan of gram panchayat constitutes a *samjhauta samiti* under section 47-B of the Act, consisting of 3 to 5 members. When the date, time and place for the first meeting of the committee are fixed, the concerned members are informed well in advance. No gram panchayat member can become a member of the *samjhauta samities* if the case has any direct link with that member. The committee in its first meeting selects one of their members to be the chairman of the *samjhauta samiti* to conduct proceedings. If there is pradhan or up-pradhan in the committee they are given preference to act as the chairman. The committee fixes a date for parties to appear before it and the parties are informed through the chowkidar of the gram panchayat.¹⁴

The *samjhauta samities* make efforts to bring about an agreed settlement of the case and if a settlement is reached, the terms are to be recorded with the signature of the parties. This has to be attested by the pradhan of the *samjhauta Samiti*. If a settlement has not been possible for want of evidence the *samjhauta samiti* postpones the meeting and direct the parties to produce all documents and evidence on another date. In the next hearing if a settlement is reached it shall be recorded in Form Number 36. The fine that a *samjhauta samiti* can impose under section 37-H of the Himachal Pradesh Panchayat Raj need not exceed Rs. 20. A part of the cost, as determined by the *samjhauta samiti*, will be paid to opposite party and the rest is deposited in the gram fund. When a settlement is reached in a civil dispute, it would be certified under section 37-D and will be filed in the Nyaya panchayat of the Gram Sabha area. This has the effect of a decree of the Nyaya Panchayat and shall be enforced in the same manner as a decree of the judicial court.¹⁵

3.2 Nyaya Panchayats: its structure and *modus operandi*

The Gram Sabha, of a Gram Panchayat area, selects fifteen members, residing within its jurisdiction to be members or panches of the Nyaya Panchayat. For this purpose a meeting of the gram sabha is called. Usually this meeting is convened by the president of that Gram Panchayat.¹⁶ The selection is normally done through show of hands wherein the members are called upon to propose and second the name of the Panch. The report of such selection is sent by the president or the Secretary of the Panchayat to the Inspector of the Panchayat who forward it to the Sub-Divisional Judge. The Sub-Divisional Judge after giving the remarks forward it to the District Judge. The District Judge after a detailed enquiry selects five out of the fifteen names, within one month time from the date of selection. It was stipulated that at least one-fifth of the persons selected by the Gram Sabha must have the capacity to record proceedings in Hindi. It has been stipulated that no member of the Gram Panchayat is eligible for selection as a member of the

Nyaya Panchayat unless he has resigned from the Gram Panchayat before such selection. All the panches selected can elect from among themselves a Sarpanch and a Naib Sarpanch. If there is any dispute arising out of such election the matter can be referred to the prescribed authority whose decision is final and can not be questioned in any Court of law. The term of office of every Panch shall be three years from the date of selection. The Sarpanch, and in his absence the Naib Sarpanch or any other Panch with the approval of the Sarpanch have the power to constitute Benches of five members each for the trial of cases, suits or proceedings. One of the panches for each Bench shall be a person who is able to record evidence and proceedings in Hindi. Every Bench has to be presided over by Sarpanch or a Naib Sarpanch. There is one condition that no Panch, Sarpanch or Naib Sarpanch shall take part in any case, suit or proceedings to which he or her near relation, employers, employee or partner in business involved. The Act also envisaged the constitution of special benches under special circumstances. If there is dispute involving residents of different circles then the district Judge had the discretionary power to constitute a special bench consisting of certain panches of the Nyaya Panchayat of a circle. Similarly, in cases where the near relation of a Sarpanch was involved in a dispute or when a Sarpanch found difficulty in forming a bench, then this is to be intimated to the District Judge who then constitutes a special bench for its trial. The jurisdiction of a Nyaya Panchayat has been expanded including section 77 of the Punjab Tenancy Act, as applied to Himachal Pradesh.¹⁷

Nyaya Panchayat holds its sittings at the headquarters of the gram panchayat on a date and time fixed by sarpanch. It usually sits for the required number of days in a month for the speedy, disposal of cases. This is determined by the concerned district panchayat officer. Every suit, case or proceedings are to be disposed within six weeks of its acceptance or its transfer to the nyaya panchayat. If it is not decided within this period, the nyaya panchayat has to record reasons for the delay in the prescribed register of cases and suits and also in the quarterly returns submitted to the sub-divisional judge. The date on which the nyaya panchayat has to sit in a month is to be published in the third week of every month. A weekly list of suits, cases and proceedings with names of parties with the dates on which they would be heard has to be posted outside the office of the nyaya panchayat for general information. As soon as an application, oral or in writing is made under section 77, their substances have to be recorded in the prescribed register with the signature or thumb-impression of the applicant in the register. The sarpanch or panch receiving the application would, under section 78, record all particulars required under section 56 for determining territorial jurisdiction.¹⁸ In cases of civil suit, there must be proper description of the details and in a criminal case, the nature of the offences are to be mentioned. The sarpanch or in his absence the area member of the nyaya panchayat who has received application, then issue summons or notices to the parties concerned and take action to ensure their appearance before the bench of the nyaya panchayat for hearing. When hearing a civil suit or revenue proceedings the nyaya panchayat has to examine the plaintiff or applicant and his witness and afterwards the defendant or objector and his witnesses. While trying a criminal case, the charges made against him are to be explained to the accused, record prosecution evidence and then examine the accused and his defense. If in a criminal case an accused makes a voluntary confession of the crime, he may be convicted without recording any evidence while in a civil suit or revenue proceedings if the claim of the plaintiff or the applicant is totally admitted by the other party, it is also not necessary for the nyaya panchayat to record any evidence. Each party can cross-examine another party (except the accused) and its witnesses just after their examination. Before examining any person except an accused, a nyaya panchayat shall administer him the oath of: - "I shall say the truth and nothing but truth. So help me God."¹⁹

In matters involving a question of title or right under the personal law of the party, the Nyaya Panchayat can make only a summary enquiry and cannot enter into intricate questions of title based on civil and personal laws. In case of doubt the matter can be taken to sub-divisional officer for direction. After ascertaining the facts of the case, the nyaya panchayat records the judgment order, in the prescribed register with the signatures of the panches and the parties present at the time of suit. The fine imposed or the compensation granted by nyaya panchayat has to be paid to the secretary. An appeal against the order of a bench of the nyaya panchayat can be filled within the prescribed period of limitation at the office of the nyaya panchayat. The secretaries after having received the appeal and entered it in the register have to place it before the sarpanch. If an appeal is not dismissed the sarpanch can fix the next date of hearing and issue notice to the parties in this regard. The nyaya panchayat shall first hear the appellant then the respondent, and then grant opportunity to the appellant to give a brief reply. After hearing the parties, the nyaya panchayat can discuss the whole case and come to a decision. In case of difference of opinion the decision shall be taken by majority of votes. In case of a tie sarpanch uses the casting vote. The following fees in cash can be charged by the nyaya panchayat before entertaining any suit or proceeding:-²⁰

Types of Complaints:-

Fees to be charged

1. Civil suits

When the amount or value of the subject matter in dispute does not exceed Rs.10

Four annas

When it exceeds Rs.10 but does not exceed Rs.25

Eight annas

When it exceeds Rs.25 but does not exceed Rs.50

Rupees one

When it exceeds Rs.50 but does not exceed Rs.200

Annas four every ten rupees or part thereof

When it exceeds Rs.200

Six annas for every ten rupees of part thereof.

2. Criminal complaints

Eight annas

3. Miscellaneous applications in a suit, case or proceeding

One annas

The following registers have to be maintained by the nyaya panchayat:-

- (1) Registers of civil suits.
- (2) Registers of revenue proceedings.
- (3) Book or receipts for money separately for civil suits and criminal cases.
- (4) Registers of processes and summons issued or sent for services.
- (5) Register of diet money.
- (6) Register of criminal cases.
- (7) Register of fine.
- (8) Inspection book.
- (9) Nyaya panchayat fund account book.

The act also stipulates the role of police in respect of offences and assistance to Panchayats. Section 133 specifies that a police officer has to give to the GP information of offences committed within the jurisdiction of the GP and that could be tried by it. The police officer is also expected to assist all panches and servants of the GP in the exercise of their duty. As per the act Nyaya Panchayats has the power to impose fine not exceeding rupees hundred. But it can not inflict a sentence of imprisonment, either substantive or in default of payment of fine. For disobeying summons it could panelize a person imposing rupees twenty-five as fine. As per section 118 of the act, a gram panchayat and the tehsil panchayat can be dissolved or superseded showing the specified reasons, but this does not affect the functioning of nyaya panchayats.

3.3 The Key Features of the Act

It is with the aim of separating judiciary from the executive, separate nyaya panchayats were made under the Himachal Pradesh Panchayati Raj Act, 1952 (*see Annexure-I for Decree form, Form of receipt, Summons, Register of diet money and Schedule-I related to offences cognizable by GP*). With this the nyaya panchayats got separated from gram panchayat. The gram panchayats mainly focused their activities on the socio-economic functions whereas the Nyaya Panchayats exclusively dealt with the judicial functions. The Gram Panchayats still exercise judicial functions through the Samjhauta Samities which in certain cases have all the powers of Nyaya Panchayats. It is clear that even in the presence of Nyaya Panchayats the role of gram panchayats in judicial matters was never undermined. The Nyaya Panchayats were established at the circle level for which the districts were divided in to a number of circles. Since every Gram Sabha area was included in some circle, the Nyaya Panchayat became accessible to every Gram Sabha area. There is a detailed methodology for constituting of Nyaya Panchayat. At first there is selection of Panches followed by nomination by judge and finally the election of Sarpanch. In the act the judicial process is well defined. Going by different stages beginning from filing a case till the execution of verdict all minutes details are clearly narrated, leaving little chance for ambiguity or confusion. This gives a clear scope for impartial decision. This act did not define a 'Panch'; it was taken to mean a member of constituent body of the Nyaya Panchayat.

There is an element of continuity in the functioning of Nyaya Panchayats and later in the judicial functions of gram panchayats. To make it more clear, the details pertaining to Nyaya Panchayats Act of 1952, were further carried on into 1968 act (*see Annexure-II for Decree form, Form of receipt, Registers of revenue proceedings, Criminal cases and recovery*) which again got continuity in 1977 act when the judicial functions were notified and transferred to the gram panchayats. Later, it again became a focal point in the 1994 act. In all these acts, the key element of judicial functions continued without much interruption. The territorial and legal jurisdiction of 1994 Act continues to be the same as in the 1952 Act. All the offences mentioned in the Schedule-I of the 1952 Act have been incorporated in the 1994 Act. The 1994 Act has a few more additional offences under the IPC such as The Cattle Trespass Act 1871, The Himachal Pradesh Juveniles (Prevention of Smoking) Act, 1952 and The Public Gambling Act 1867 (II of 1867).²¹ The qualification criterion of members to be appointed a Panch has some variation. As per the 1952 Act one-fifth of the panches should be able to record proceedings in Hindi. The 1994 Act does not set any condition on literacy. This may be because at present the Panchayat Secretary who is educationally qualified is responsible for recording proceedings. But the position of secretary is not clear in the 1952 Act.

It is to be stated that the rate of fine imposed continued to be the same in all the successive acts. In the 1952 Act, the fine of Rs.100 also equaled the limit on the value of the suits that a NP could

try. Currently however the limits of the value of suits are extendable to Rs.5000 but the value of the fines imposable by the GP continued to be Rs.100. As pointed out by elected Panchayat members, while the sum was substantial in 1952, it is considered a negligible amount in the present context and thus does not serve as a deterrent for offenders.

Generally conciliation and mediation are the methodologies used for dispute resolution. This strategy is continuing even today with greater acceptability. Both the gram panchayats and nyaya panchayats follow this formula of compromise for settling civil dispute as well as criminal cases. What is visualized for Nyaya panchayat is being carried out by Gram Panchayat also. As per the later acts, through mediation and compromise the Gram Panchayats in the exercise of their judicial functions can take cognizance of almost 46 legal offences. Interestingly, in most of the cases a settlement is made outside the system as majority of the people insists the panchayat to avoid the legal procedure and settle the dispute by mutual agreement. So this can be said as one of the reasons that led to the merging of nyaya panchayats with gram panchayats in due course.

The 1952 Act did not have any provision for the reservation of seats for women in the Nyaya Panchayat. Although every adult member which includes within its definition male or female of 21 years or above could be member of Nyaya Panchayat, no specific reservations were made for women panches in the Nyaya Panchayat. This is contrary to the provisions in the Gram Panchayat, where reservation for women was there as early as 1952. The government is required to reserve seats for women for each Sabha area through a notification where it should not exceed twenty percent of the total number of seats fixed for that Gram Sabha. There is a provision to supersede gram panchayat and tehsil panchayat but no specific mention has been made with regard to nyaya panchayat. This shows its popularity and acceptability among the people and the prominence given to it by the state.

3.4 Nyaya Panchayats further strengthened in the HPPR Act, 1968

According to the Act every Gram Panchayat has to elect a judicial committee to be known as Nyaya Panchayat for each circle.²² The number of Nyaya Panches in a Nyaya Panchayat including the Sarpanch and Naib-Sarpanch must not be less than five and not more than seven. The Gram Panchayat can elect any member of Gram Sabha as a Nyaya Panch provided, that member is not simultaneously a panch of Gram Panchayat. To make it clear that no Panch shall be eligible for election as a Nyaya Panch and if any Panch wants to contest for election as a Nyaya Panch, one has to resign from the office of Panch. Maintenance under section 488 of the Code of Criminal Procedure is the main responsibility of the Nyaya Panchayat. Whenever the Sarpanch of the Nyaya Panchayat suspects any person responsible for breach of peace or public tranquility, the suspected person can be called to execute a bond for an amount not exceeding one hundred rupees. Then the Sarpanch constitutes a bench within three days to deal with the matter. The Bench, after the due process hears from the person and witness, within the time fixed by the Nyaya Panchayat and takes a decision.

No Nyaya Panchayat can take cognizance of any offence where the accused person has been previously convicted of an offence punishable with imprisonment term of three years or more, or has been fined under section 379 of the Indian Penal Code by any Nyaya Panchayat or executed a bond for good behavior under section 109 or 110 of the Code of Criminal Procedure 1898 or, convicted for gambling. If a Nyaya Panchayat is satisfied after inquiry that a case brought before it was false, frivolous or vexatious it can order the complainant to pay a compensation of not exceeding twenty-five rupees. A Magistrate can direct the Nyaya Panchayat to conduct an inquiry

under section 202 of the Code of Criminal Procedure, 1898, and submit its report to the Magistrate. A Nyaya Panchayat have no jurisdiction to take cognizance of any of the cases such as a suit for a balance of partnership account for a share or part of a share under intestacy case against the State or a public servant for acts done in his official capacity against a minor, or a person of unsound mind.

It is the duty of the Nyaya Panchayat to ascertain the facts of every suit, case or proceeding before it by using every lawful means. It can make local investigation in the village to which the dispute relates. It has to follow the Code of Civil- Procedure 1908, the Indian Evidence Act, 1872, and the Code of Criminal Procedure. If any person, who is summoned by a Nyaya Panchayat by written order to appear to give evidence or to produce any document before it, willfully disobeys such summons, the Nyaya Panchayat can make a complaint to the Magistrate and the person is punishable with a fine of twenty-five rupees. But there is provision that no woman shall be compelled to appear in person before the Nyaya Panchayat. She can be examined by a commission. If the Nyaya Panchayat finds any difficulty in the recovery of fines it has imposed, it can request the Sub-Divisional Judge, within whose jurisdiction the circle of the Nyaya Panchayat belongs. Every police officer shall give immediate information to the Nyaya Panchayat of an offence coming to his knowledge which has been committed within the jurisdiction of the Nyaya Panchayat and its trial by the Nyaya Panchayat and should assist all Nyaya Panches in the exercise of their duty.

Every case that is coming to the Gram Panchayat should be finally disposed of within six weeks of its institution or its transfer to the Gram Panchayat. A weekly list of suits, cases and proceedings with names of parties and the dates on which they are to be heard shall be displayed outside the office of the Gram Panchayat for general information. No fee shall be charged from a party or witness for enquiring orally or by application, the date fixed for the hearing of a case. The Pradhan or Up-Pradhan receiving the application shall, record all particulars required under section 195 for determining territorial jurisdiction and in cases of civil suit it has also to record its description and valuation. If it is criminal case, the details should include the nature of offences, and other particulars mentioned in section 206. The Pradhan of the Gram Panchayat after receiving the application, issues summons to the parties concerned in accordance with the procedure laid down in rules 106 to 117 and take action to secure their appearance before the bench of the Gram Panchayat.²³

When hearing a civil suit or revenue proceeding the Gram Panchayat examines the plaintiff/ applicant and his witnesses and the defendant and his witnesses. While trying criminal case it shall first explain to the accused the charge made against him and records prosecution evidence. After that they hear the accused and his defense. Each party is allowed to cross examine another party (except the accused) and its witnesses. If a woman as a party or a witness is to be examined the Gram Panchayat, can send a commission to her? The Panch nominated by the Gram Panchayat shall, thereupon on a specified date and time, examine the woman at her residence in the same manner as if she were appearing before the Gram Panchayat. The statement so recorded shall be signed or thumb marked by her and attested at least by an identifying witness which shall form part of the record of the case. If during the pendency of a criminal case, the accused dies, the case shall abate, but if during the pendency of a civil suit or revenue proceedings any party dies the legal representative of the said party shall be made a party to the suit.²⁴

The fine imposed or the compensation granted by the Gram Panchayat shall be paid to the Pradhan or in his absence Up-Pradhan, or the Secretary and he shall give a receipt for the amount in Form X. the following fees, in cash shall be charged by the Gram Panchayat before entertaining any case, suit or proceeding:-²⁵

Types of Complaints:-

Fees to be charged

1. Civil suits	
When the amount or value of the subject matter in dispute does not exceed Rs.10	Twenty-five paisa
When it exceeds Rs.10 but does not exceed Rs.25	Fifty paisa
When it exceeds Rs.25 but does not exceed Rs.50	Rupees one
When it exceeds Rs.50 but does not exceed Rs.200	Twenty-five paise for every ten rupees or part thereof
When it exceeds Rs.200	Forty paise for every ten rupees or part thereof.
2. Criminal complaints	Rupees one
3. Miscellaneous applications in a suit, case or proceeding	Twenty-five paisa

Every application for obtaining a copy of the judicial records of the Gram Panchayat shall be made to the Pradhan or Up-Pradhan and it has to be accompanied by a fee of ten paise. Copying fees shall be charged at the rate of twenty-five paisa for every two hundred words. The Gram Panchayat gives a copy of its order to an accused free of cost in case of his conviction. The Pradhan also issues a certified true copy of the order to the applicant.

If the summons or notices are to be served at the instance of the party, the Gram Panchayat, except in a criminal case, shall, recover a fee of seventy-five paisa per summons or notice, from that party. The fee shall be credited to the Gram Sabha fund and should be paid to the person serving the summons or notice at the rate of 50 paisa per summons. If the person to be summoned by Gram Panchayat in a case resides outside the jurisdiction of the Gram Panchayat in Himachal Pradesh, the Gram Panchayat has the right to send the summons by post to the Gram Panchayat or Court within whose jurisdiction the person is residing. When the case is taken for examination, there is the system of paying diet money. Diet money which includes (a) daily allowance, and (b) travelling expenses shall be paid to the witnesses at the following rates by the Pradhan or Up-Pradhan:-²⁶

- i. Daily allowance Rs. 3.00 to Rs. 5.00
- ii. Travelling allowance for journey by road- actual bus fare
- iii. Travelling allowance for a journey by rail- one and half railway fare of a class considered suitable by the Pradhan or Up-Pradhan

- iv. If a servant or officer of the Government or a local body is summoned as a witness, his daily and travelling allowance shall be governed by the rules of the Government or the local body in this connection, the daily and travelling allowance shall be determined by the Gram Panchayat.

Records of every criminal civil or revenue cases shall be consigned to the general record room at district or sub-divisional headquarters one year after they have been closed. Such records shall be kept and destroyed in accordance with the Destruction of Records Act, 1917. The record of a case, which is pending or which has been decided but the record of which has not been consigned under rule 126, may be inspected by a party there to free of charge. Any other person, desiring to inspect such record, shall obtain the permission of the Chairman of the bench before whom the case, suit or proceeding has come. The inspection of records consigned to the record room, shall be governed by the rules and regulations regulating the inspection of such records in the general records room. The inspection fee shall be twenty-five paise for the first hour and fifteen paise for any subsequent hour or fraction thereof for every record inspected. The use of pen and ink during inspection is prohibited. Inspection of any record shall be made only in presence of an officer of the Gram Panchayat. A Panchayat is deemed to be criminal court when trying a criminal case. When information relating to the commission of a cognizable offence trial by a Panchayat has been given to an officer-in-charge of a police station, he shall forthwith send a copy of the first Information Report to the Panchayat competent to try such an offence and the Panchayat shall not proceed to try any complaint relating to the same facts nor issue any summons in this regard, until the Officer intimates in writing. The police officer is supposed to send an information report to the Gram Panchayat.

3.5 The importance of the 1968 Act

However, the 1968 Act maintained the separation of the Gram Panchayat and Nyaya Panchayat. As detailed above, some new provisions were added with it. In the previous act the word 'Panch' was not properly defined. But in the 1968 Act a 'Panch' is defined to mean a member of the gram panchayat elected or appointed under the act. A 'Nyaya Panch' means a member of Nyaya Panchayat elected or appointed under this act and includes the Sarpanch and Naib-Sarpanch. The Panch under the 1968 Act could either be elected or appointed under this act which is a shift from the earlier position where Panches were selected for the Nyaya Panchayats. In the act of 1968 the selection was replaced by the process of election. The eligibility criteria on literacy that one-fifth of the members of the Nyaya Panchayat should be able to record the proceeding in Hindi has been taken away from this act. This act also adds more criteria for disqualifications than the previous one. The term of Nyaya Panchayat under this act has been raised from three to five years. Moreover this act also made more clarity regarding the role of police. Accordingly the police was bound to give a copy of the FIR to the Nyaya Panchayat for trial of criminal cases. This provision has been retained in the latter acts. In the 1952 Act the appointment of a secretary was subject to the directions of the state governments and they were appointed primarily as secretary of Gram Panchayat. But in the 1968 Act the Gram Panchayat secretary was also appointed as Nyaya Panchayat secretary. In both the acts there is a mention about '*Samjhauta Samiti*' functioning under Gram Panchayats. There is another particular provision in the 1968 act and that is the provision of getting the copy of the judicial records perhaps enshrined on the present RTI act. This is made available after charging its cost. This shows that transparent and efficient judicial system prevailed in those days. As now, for dispute settlement there are two bodies functioning i.e. the samjhauta samities and nyaya panchayats, it became easy to settle cases in a time bound manner. The state government has been authorized to supersede the Nyaya Panchayat in case of misuse of

its position and dereliction of its duty. But no specific procedure has been laid down in the act. It has been specified that upon supersession, the GP could elect a new NP for the remaining period of term. The supersession of a gram panchayat shall not involve the supersession of Nyaya Panchayat.²⁷ The provision of the judicial officer's protection Act, 1850 is applicable to the members of Nyaya Panchayat. No suit or prosecution shall be entertained in any court against Nyaya Panchayat or panches or officer.²⁸

There is a tendency among the people to settle the cases out side the system with out reporting it either to *samjhauta samities* or to the Nyaya Panchayats. So, one can see that the number of cases dealt by them are declining gradually. This is evident from the fact that total number of civil suits/cases instituted in 1963-64 before Nyaya Panchayats and *samjhauta samities* were 712 and 1019 respectively which dropped to 189 and 284 respectively by 1969-70. During the same period the numbers of criminal suits/cases in Nyaya Panchayats were 214 and *samjhauta samities* 402 which later declined to 43 and 107 respectively. The relevant data from the district courts, if compared, confirms the declining trend.²⁹ It is interesting to note that *samjhauta samities* got more cases than nyaya panchayats. This may be because of the fact that people have easy access to *samjhauta samities* which is directly constituted by the gram panchayats.

3.6 HPPR Act 1977-Merger of Nyaya Panchayat with Gram Panchayat

The Amendment Act of 1977 was of far reaching consequences as it abolished the concept of a separate Nyaya Panchayat (NP). The executive committees of the Gram Sabha i.e. the Gram Panchayats (GPs) were given the authority to discharge the judicial functions as well. The scope and nature of the judicial functions which were to be exercised by the NP in the 1968 Act were retained and the only difference is that now instead of a separate NP, the GP would be responsible for the discharge of judicial functions. The act clearly states that all cases, suits and proceedings pending in the Nyaya Panchayats at the commencement of the Himachal Pradesh Panchayati Raj (Amendment) Act, 1977 shall stand transferred to the Gram Panchayats having jurisdiction to try and hear such cases, suits and proceedings. All appeals pending in the Nyaya Panchayats at the commencement of the Himachal Pradesh Panchayati Raj (Amendment) Act, 1977 stand transferred to the Judicial Magistrate, Sub-Judge or the Collector concerned with this. Chapter XV of the HPPR Act 1968 was renamed as the judicial functions of the GP.³⁰ In fact the Rules of 1971 were also amended to include a separate chapter on judicial functions of Gram Panchayat in 1978. The judicial functions of the GP are exactly the same as were being discharged by the NP so far. The Judicial Magistrate or the Sub-Judge or the Collector can, as earlier, transfer a case to another Gram Panchayat within his jurisdiction which shall try or hear the case or suit. A Gram Panchayat shall have no power to cancel, revise or alter any decree or order passed by it. It is also mentioned that no legal practitioner shall appear, plead or act, on behalf of any party in any suit, case, and proceeding before a Gram Panchayat.³¹

One reason for this dramatic shift, which seems obvious, is the control factor of the Panchayati Raj Institution on the seemingly autonomous and independent Nyaya Panchayats where the Panchayat officials were exclusively prohibited from taking on judicial role. The new Act which, allowed the Pradhan or the Up-Pradhan to perform judicial functions is thus a clear indication of appropriating an assuming control over judicial processes. Clearly this is contrary to the legal theory of "judgment in their own cause".³² It is argued that giving the panchayats, an administrative body, judicial power will be struck down by the principle of 'separation of power'. One can see that Indian Constitution is based on the separation of powers, but it is also very true that rigid application of complete separation of powers is practically and theoretically impossible,

and it is for this purpose the doctrine of Checks and Balances has also been incorporated in the Constitution. There are so many instances where one branch of the state performs the functions of others. For example, judicial functions under Criminal Procedure Code and Civil procedure codes are performed by the executive magistrates. The proceeding for contempt of legislature is also judicial in nature. The President has been given the power to grant pardon that means person who is convicted by lower courts, approved by the High Court and Supreme Courts, can apply to the President who is the head of executive and who is not necessarily be a legal person for review a case which has been reviewed by the whole judicial bodies. This is mentioned here to clarify the fact that this power is given to the President only to ensure justice to all.

The Supreme Court of India has also in the case of *Rama Jawaya Kapur vs. State of Punjab* stated that there may be in India a differentiation and demarcation of functions between the Legislature and the Executive, and, generally speaking, the Constitution does not contemplate that one organ should assume the functions belonging essentially to the other organ, yet, nevertheless, there is no separation between them in its absolute rigidly. Even our Constitution does not follow the principle of separation of power in its absolute rigidly. It has also been observed by the Punjab High Court in the case of *Gurdial Singh vs. State of Punjab* that merging of judicial and executive functions in village Panchayats is not unconstitutional.³³

In the 1977 Amendment, the position of women in terms of guarantee for their representation on the Gram Panchayat marginally improved. There was a provision for cooption of women members in case no woman was elected to the Gram Panchayat. As per the mandate of new amendment one women panch would have to be co-opted in case the strength of the Gram Panchayat was of nine panches, inclusive of the pradhan and the up-pradhan. Further, if the total strength of the Gram Panchayat was of more than nine panches, inclusive of pradhan and up-pradhan, then two women panches were required to be co-opted. Further, since the provision for a separate Nyaya Panchayat had been disbanded, woman representation could be ensured while discharging the judicial functions of the Gram Panchayat.

The provisions of the Judicial Officers protection Act, 1850 shall apply to the members of the Gram Panchayat, in respect of the acts done by it under its judicial capacity.³⁴ This act also maintains that every police officer is supposed to give immediate information to the Gram Panchayat of an offence coming to his knowledge that has been committed within the jurisdiction of the Gram Panchayat and assist all Panches and servants of the Gram Panchayat in the exercise of their lawful authority.³⁵

Pages from Field (Kullu)



Field Investigators with members of NP/GP Bhuin in Block & district Kullu (H.P)



Field Investigators with members of NP/GP Kalheli in Block & district Kullu (H.P)



A Court room in view in GP/NP Bajoura, Kullu (H.P)



GP/NP Members with filed team in GP Duwara, Block Naggar, Kullu (H.P)

Chapter 4

Judicial Provisions in the 1994 Act

In pursuant to the 73rd Constitutional Amendment Act, 1992, Himachal Pradesh enacted the Panchayati Raj Act in 1994. As envisaged under Part IX of the Constitution, the State Government of Himachal Pradesh constituted Panchayats at the District, Block and Gram levels and entrusted them with duties and responsibilities with a view to enabling them to function as institutions of self-government. Among the changes that were effected, the two tiers in the Panchayati Raj System, namely Gram Panchayat and Panchayat Samiti, which was already functioning in the State, continued to exist. Adding Zila Parishad to these formed the three-tier Panchayati Raj system.

The judicial powers entrusted to the Gram Panchayat in the Himachal Pradesh Panchayati Raj act 1994 is the continuation of the judicial function contained in the earlier act. It is important to see that Nyaya Panchayats and the judicial functions given to the panchayats are all states initiative continuing from 1952. The 73rd Constitutional Amendment has introduced Part IX of the Constitution giving a national framework for all the states to enact confirmative legislation, but it is to be noted that Part IX does not provide any specific provision on the justice delivery systems at the panchayat level. The eleventh schedule which details the twenty nine subjects to be dealt by the panchayats did not give any provision for justice delivery for the panchayats. Still the HPPR Act, 1994 which did not visualize setting up of nyaya panchayats gave separate provision for judicial functions in the Act of 1994. This shows the importance given to the system which they have been following since 1952.

As per HPPR Act, 1994, the Gram Panchayat has executive and judicial functions. The 1994 Act retained all the changes that were introduced by the 1977 Act replacing the concept of nyaya panchayats and providing a generic list of functions termed as judicial functions and powers of the Gram Panchayat.³⁶ The merger of executive and judiciary is complete here which is against the constitutionally prescribed principal of separation of the judiciary and the executive. In the said Act the word “Panch” has been defined as a member of the Gram Panchayat (GP) while discharging the judicial functions of the GP under this Act and includes the Pradhan and Up-Pradhan also. It can be said that a member of GP while not performing any judicial function is not known by the name of Panch. No separate qualification or disqualification criteria have been provided for removal of a member of a GP exercising the judicial functions- it is assumed that they are the same as those applying to the membership of a GP.

4.1 Territorial Jurisdiction

There is no variation in the jurisdiction of Gram Panchayat while performing the judicial functions. It continued to be the same as that of earlier Nyaya Panchayats. The act says that any criminal case which can be constituted under CRPC 1973 Act before the GP shall be instituted before the pradhan or in his absence the up-pradhan of that GP in whose territorial jurisdiction the offence has taken place.³⁷ Any civil case which can be instituted under CPC 1908 or under the provisions of the Himachal Pradesh Tenancy and Land Reform Act, 1972 shall also be instituted before the pradhan or in his absence the up-pradhan of that GP where either the defendant resides or carries on business at the time of the institution of the suit irrespective of the fact where the

cause of action took place. In the case of disputes registered under the Himachal Pradesh Land Revenue Act 1953, under the specified section 48, shall be transferred by the revenue court to the concerned GP in which the said land is situated and the GP is authorized to decide the matter under the mandate of this Act. If in the above mentioned situation the land is situated within the territorial jurisdiction of more than one GP then the revenue court can transfer the matter to that GP in whose territorial jurisdiction the greater part of that land is situated. When the case is being heard or the proceeding are in progress the Magistrate can transfer any civil, revenue or criminal case as per the request of the party to another GP within the jurisdiction of the authority.

4.2 Legal Jurisdiction

The act says that offences mentioned in Schedule-III or declared by the State Government are to be cognizable by a Gram Panchayat, if committed within the jurisdiction of a Gram Panchayat. Application for maintenance under section 125 of the Code of Criminal Procedure, 1973, shall be heard and decided by the Gram Panchayat. A Gram Panchayat can grant a maintenance allowance not exceeding five hundred rupees per month. Gram Panchayat can impose a fine not exceeding one hundred rupees but cannot inflict a sentence of imprisonment either substantive or in default of payment of fine. No court shall take cognizance of any case, suit or proceeding which is cognizable under this Act by a Gram Panchayat established for the area to which the case, suit or proceeding relates (as per section 67).

At any stage of the proceedings in a criminal case pending before a Magistrate, if it seems that the case can be better tried by a Gram Panchayat, it can be transferred to that particular Gram Panchayat which shall try the case *de-novo*. A Gram Panchayat can dismiss any complaint, if after taking evidence finds that it is frivolous, vexatious or untrue. When the GP is trying a case it should ensure that

- a) Whether it has jurisdiction to try that case
- b) Whether the offence is one for which it can award adequate punishment;
- c) Whether the case is of such a nature or complexity that it should be tried by a regular court

If these conditions are not met it shall return the complaint to the complainant with the direction to file it before the Magistrate having jurisdiction to try such case. No Gram Panchayat shall take cognizance of any offence where the accused-³⁸

- a) Has been previously convicted of an offence punishable with imprisonment of either description for a term of three years or more;
- b) Has been previously fined under section 379 of the Indian Penal Code by any Gram Panchayat or has been convicted and sentenced under the said section by a court;
- c) Has been bound over to be of good behavior under the section 109 or 110 of the Code of Criminal procedure, 1973;
- d) Has been previously convicted of gambling;
- e) Is Government servant and act complained of is the one done in his official capacity.

If the Gram Panchayat is satisfied after enquiry that a case brought before it was false, it can order the complainant to pay to the accused compensation not exceeding two hundred rupees. A Magistrate can direct an enquiry to be made under section 202 of the Code of Criminal Procedure, 1973, by a Gram Panchayat if the offence was committed within the territorial jurisdiction of that Gram Panchayat and the GP has to inquire into the case and submit its report to the Magistrate. The jurisdiction of Gram Panchayat extends to any suit mentioned below, subject to the condition that the value of these should not exceed two thousand rupees:-³⁹

- a) A suit for money due on contract other than a contract in respect of immovable property;
- b) A suit for the recovery of movable property or for the value thereof;
- c) A suit for compensation for wrongfully taking or damaging a movable property;
- d) A suit for damages caused by cattle trespass; and
- e) A suit under clauses (f) and (i) of sub-section (3) of section 58 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972.

The Judicial Magistrate or the Sub-Judge or the Collector can decide on the basis of an application to transfer the case to another Gram Panchayat within the jurisdiction. A Gram Panchayat shall have no jurisdiction to take cognizance of any of the following suits:-

- a) A suit for a balance of partnership account;
- b) A suit for a share or part of a share under intestacy or for a legacy or part of legacy under a will;
- c) A suit by or against the State or a public servant for acts done in his official capacity; and
- d) A suit by or against a minor, or a person of unsound mind.

Every suit instituted before a Gram Panchayat shall include the whole of the claim which the plaintiff is entitled to make in respect of the matter in dispute, but he may relinquish any portion of his claim in order to bring it within the jurisdiction of the Gram Panchayat. If a plaintiff omits to sue in respect of or relinquishes any portion of the claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Every suit instituted before a Gram Panchayat after the period of limitation prescribed in Schedule-IV shall be dismissed, even though limitation has not been set up as a defense. The decision of Gram Panchayat on the question of title, legal character, contract or obligation shall not bind the parties except in respect of the suit in which such matter is decided.⁴⁰ A revenue court can transfer to the Gram Panchayat, any application under section 46 of the Himachal Pradesh Land Revenue Act, 1953 if the relief required is the restoration of possession to the lawful occupant who is found to have been wrongfully dispossessed from the landed property.

The Panchayat Act of 1994 also added a very important provision to the gram panchayats jurisdiction i.e., application of maintenance under the *Code of Criminal Procedure, 1973*. This provision was an important step in favour of women. Under this provision, a wife, a mother, a minor daughter whether legitimate or illegitimate, or major unmarried daughter, legitimate or illegitimate can claim maintenance from their husband, son or father respectively. The Gram Panchayat is empowered to hear and decide upon such applications and grant a maintenance allowance not exceeding Rs 500 per month.

4.3 Procedures to be followed by Gram Panchayat

As per the Himachal Pradesh Panchayati Raj Act, 1953 the Gram Panchayat has to follow the procedure as detailed below:-

1. No Gram Panchayat shall try any suit, proceedings or issue in respect of any matter which is pending for decision, or has been heard or decided by a court of competent jurisdiction in a former suit between the same parties or between the parties under whom they or any of them claim.
2. If a case is pending in any court against an accused person in respect of any offence or where an accused person has been tried for any offence, no Gram Panchayat shall take

cognizance of any such offence, or on the same facts, of any other offence, of which the accused might have been charged or convicted.

3. In a case, suit or proceedings instituted orally, the Pradhan or the Up-Pradhan on receiving the compliant or application shall record the particulars and take the signature or thumb impression of the complainant.⁴¹

4.4 Constituting a bench and hearing

After recording the substance of the complaint in the register under sub-section (1) the Pradhan constitutes a bench of the Gram Panchayat consisting of three Panches and refer the said complaint to that bench for disposal and gives a date for the first hearing of the complaint. But no Panch, who is a member of the Gram Sabha where the case has occurred, can be included in that bench. On the date fixed for the first hearing of the case, the bench formed under sub-section (2), shall, choose one of the Panches to be the Chairman of that bench to conduct the proceedings. The Gram Panchayat can hear and decide the suit in the absence of the defendant or opposite party, if the summons has been served upon the party or if the party has been informed of the time and place fixed for hearing. But a Gram Panchayat shall have no power to cancel, revise or alter any decree or order passed by it. It has been stipulated that no legal practitioner can appear, plead or act, on behalf of any party in any suit. It is not necessary that the applicant himself must attend the hearing of the case. The GP can admit a nominee on behalf of the applicant. The Gram Panchayat can make local investigation in the village to which the dispute relates. It is the duty of the Gram Panchayat to ascertain the facts of every case, by lawful means, and thereafter to make such decree, or order. But the Code of Civil Procedure, 1908 (5 of 1908), the Indian Evidence Act, 1872 (1 of 1872), the Code of Criminal Procedure, 1973 (2 of 1974) and the Limitation Act, 1963 (36 of 1963), are not applicable to Gram Panchayat and so it need not be followed by Gram Panchayat. In the event of any disagreement between the Panches, while deciding a criminal case, suit or proceeding, the opinion of the majority has to be considered.

4.5 Summon

A Gram Panchayat, after getting an application under section 53, can call the defendant or the accused person and request him to produce the evidence.⁴² If the accused fails to appear, the Gram Panchayat can report the matter to the nearest Magistrate. The Magistrate on the receipt of a report under sub-section (1) can issue a warrant for the arrest of the accused and ask to execute a bond with sufficient sureties in the manner provided by section 7 of the Code of Criminal Procedure, 1973. Then only the person will be released from custody. If the accused fails to appear before the Gram Panchayat after executing a bond under sub-section (3), the Gram Panchayat has to report the fact to the Magistrate before whom the bond was executed, and the Magistrate proceeds in accordance with the provisions of Chapter XXXIII of the Code of Criminal Procedure, 1973.

In the 1994 Act, under the 'Judicial Functions of the Gram Panchayat', the Gram Panchayat, while discharging its judicial functions, is authorized to summon the witnesses and to have them produced before them with the help of the magistrate, if they don't appear on appointed date and time despite the summons having been served upon them. However, there is one exception to this rule. The Gram Panchayat cannot compel a woman witness to appear before it and if required she can be examined through a commission in a manner prescribed in the rules made in this behalf by the State Government. In such cases, as stated earlier, a panch nominated by the Gram Panchayat, on a specified date and time examines the women in the same manner as she is supposed to appear before the Gram Panchayat and her statement will be recorded.

Another provision under the 1994 Act which is sensitive to the social needs of the women is the restriction on the power of the Gram Panchayat to enter and inspect any premises. Under the power of the entry and inspection of the Gram Panchayat members it has been specifically provided that sufficient notice must be given and even if it is not possible they must enable the inmates of an apartment occupied by women to remove themselves to some part of the premises where their privacy is not disturbed. As per the rules if the woman concerned is being called to the Gram Panchayat on the Gram Panchayats' motion her travel expenses shall be borne by the Gram Panchayat. If one of the parties wants the said woman to appear as a witness, then they have to bear the expenses. In cases it is her own matter, and then the said woman will have to bear the expenses.

4.6 Appeal

Any person aggrieved by an order or decree of a Bench of the Gram Panchayat can appeal within a period of thirty days to the Judicial Magistrate/Sub-Judge.⁴³

4.7 Execution

A decree or order passed by a Gram Panchayat shall be executed in the prescribed manner. If the property of the defendant or respondent, is situated outside the jurisdiction of the Gram Panchayat, it may transfer the decree or order for execution to the Gram Panchayat within whose jurisdiction the property is situated. If a Gram Panchayat finds any difficulty in executing a decree or order, it can forward the same to the Sub-Judge or the Judicial Magistrate concerned and, then he executes the decree or order as if it is a decree or order passed by him. All sums realized by way of court fees and fine in the cases tried and disposed of by Gram Panchayat shall be handed over by the State Government to the Gram Panchayat.⁴⁴

4.8 Role of Police

The provisions of the Judicial Officers Protection Act, 1850 are applicable for the protection of the members of the GP for any acts done by them while discharging their duties in judicial capacity. They have been accorded immunity from being sued for acts done by them in the capacity of panches during the course of dispensation of justice. The local police have an obligation to inform the relevant GP of all the offences which are in their knowledge occurring in that GPs jurisdiction and shall also assist GP and all the servants of the GP while discharging their judicial functions. The Rule clarifies further that a GP shall be deemed to be criminal court when trying a criminal case. When information relating to the commission of a cognizable offence tried by a GP has been given to an officer-in-charge of Police Station, he shall forthwith send a copy of FIR to the GP. The GP in this case should not proceed to try any complaint relating to the same facts nor should it issue any summons in the matter until the officer has intimated to it in writing that the investigation has been concluded.⁴⁵

4.9 Records and Documents

There are eight records on judicial matters to be kept by the Gram Panchayat.⁴⁶ These are:-

1. Register of civil suit
2. Register of criminal cases
3. Register of Revenue Proceeding
4. Register of Execution of Decree
5. Register of Recovery of fines

6. Register of Diet Money
7. Register of processes and summons of Gram Panchayat
8. Book of receipt for money received

Panchayat secretary is the custodian of the records. All judicial registers and books maintained by a Gram Panchayat when finished are to be kept in the Gram Panchayat Office for two years after which they are to be consigned to the general record room of the office of the Sub-Divisional officer (Civil). Record of every criminal, civil or revenue case decided by a Gram Panchayat are to be consigned to the general record room at the district or sub-divisional headquarters one year after they have been closed. Such records can be kept or destroyed in accordance with the Destruction of Records Act, 1917.

4.10 Functionaries

The Panchayat Secretaries are regular employees of the Government. There are other two categories under this- the Panchayat Chowkidars and the panchayat Sahayaks appointed by the Gram Panchayat on contract basis. One Panchayat chowkidar gets a monthly remuneration of Rs. 500/- per month. There are 3234 Gram Panchayat Sahayaks and chowkidars appointed by the Gram Panchayats in the state. Within the judicial functions the chowkidars are responsible for delivery of summons. Earlier a Panchayat Secretary of Gram Panchayat was a State Government employee and was appointed by the Director. The Government has now declared the cadre of Panchayat Secretaries as dying cadre and has further authorized Panchayat to appoint Panchayat Sahayaks against the vacant posts of Panchayats Secretaries. Every Gram Panchayat shall have either one Panchayat Secretary or a Panchayat Sahayak., Panchayat Sahayaks are paid remuneration out of the Government grant @ Rs1000/- per month.

4.11 Other Related Provisions in the Act

The Himachal Pradesh Panchayati Raj Amendment Act of 1977 introduced special provision relating to the PRIs in Scheduled Areas. This was primarily to conform to the Central Act on Tribal Self Rule namely, “Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996”. Scheduled V Areas of Himachal extends to Kinnaur, Pangi, and Bharmour (in Chamba) and Lahaul & Spiti. The Amendment Act reinforced the customary mode of dispute resolution; however, it also made it clear that such methods should be “without detriment to any law for the time being in force”.⁴⁷

Notes and References

1. Indlaw.com, *Nyaya Panchayat: Doorstep to access to justice*, Shadab Mansoori
2. Article 37 of the Constitution of India.
3. <http://en.wikipedia/wiki/plea-bargain>.
4. D. Bandyopadhyay, *Nyaya Panchayats the unfinished task*, Vol. XL No 51, Economic and Political Weekly, 2005.
5. The total number of cases pending in the subordinate courts is 252,24,284 as on 31st March 2006 (in Courts of Civil Judge Division, Judicial Magistrate Class First or Metropolitan Magistrate, Civil Judge Senior division, Chief Judicial Magistrate, district Courts, Session Courts under Allahabad, Andhra Pradesh, Bombay, Calcutta, Chhattisgarh, Delhi, Gujarat, Gauhati, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Kerala, Madhya Pradesh, madras, Orissa, Patna, Punjab & Haryana, Rajasthan and Uttaranchal High Courts- Data obtained from the Supreme Court of India). In the High Courts the total numbers of cases pending were 35 lakh till Dec. 2005.
6. Final Report of the *Study to Review the Efficiency, Status of Implementation of Nyaya Panchayats, Rural litigation and Entitlement Kendra*, Dehradun, 2008.
7. Report of the Law Commission on Nyaya Panchayat, August 1986.
8. The Law Commission, Fourteenth Report and the Report of the Study Team on nyaya panchayats extracted from an article written by K.N. Chandrasekharan Pillai titled "Criminal Jurisdiction of Nyaya Panchayats" Journal of the Indian Law Institute Vol. 19, October-December, 1977 p. 443.
9. Lecture delivered by Justice S.B. Sinha Judge, Supreme court of India, 1977.
10. Mahi Pal, Village level decentralization of judicial system: Desirability and advantages in S.P. Verma (ed.), *Indian Judicial System: Need and Directions of Reforms*, 2004.
11. Chapter-VI, The Himachal Pradesh Panchayati Raj Act 1952, (Act No.-6 of 1953, amended 29-10-56).
12. Chapter-XV, Section: 194, the HPPR Act 1968 Shimla-3 1970, P.-56.
13. Chapter-VI, Section: 135, Himachal Pradesh Gram Panchayat Manual Part-I, Shimla-3 1978, P.-102.
14. Chapter-V (A) Samjhauta Samities Constitution and Procedure, Section: 100-100-E HPPRA, 1952 (Act No. 6 of 1953) Shimla-3 1953, P.: 16.
15. HPPR Act, 1952 (Act No. 6 of 1953), Section: 37-E, Shimla-3 1957, P.: 14.
16. Chapter-VI, Nyaya Panchayat, its Area Constitution and Procedure HPPRA 1952, Shimla-3 1953, P.-17.
17. *ibid* P.: 17.
18. Chapter-VI, Procedure of Nyaya Panchayat, Section: 112 HPPRA 1953, Shimla-3 1957, P.: 23.
19. *ibid* P.: 27.
20. Chapter-VI HPPRA, 1952 Section: 96 Shimla- 3 1957 P.: 24.
21. Chapter-VI Extension of Jurisdiction, Section: 67 HPPR Act 1952, Shimla-3 1953 P.: 18.
22. Chapter- XV, The Nyaya Panchayat Section: 194, HPPR Act 1968, Shimle-3 1957, P.: 56.
23. *ibid* P.: 62.
24. *Ibid* P.: 62.
25. Judicial Functions of Gram Panchayat, Himachal Pradesh Panchayati Raj Manual Part-I, Shimla-3 1978, P.: 96.
26. *Ibid* P.: 99.
27. Chapter XVI, Section 245, HPPR-68, Shimla-3, 1968, P.: 65.
28. *Ibid* P.: 65.
29. *Man and Development in the Himalayas* by A.K. Kapoor & Dharamvir Singh, Page-125, Academic Foundation, New Delhi, 1996.
30. Section: 214 HPPR Amendment Act, 1977, Shimla-3, 1978, P.: 108.
31. *Ibid* P.: 109.
32. Article 105 of the Constitution of India.
33. Indlaw.com, *Nyaya Panchayat: Doorstep to access to justice*, Shadab Mansoori
34. *Nyaya Panchayat and Gender Justice in Himachal Pradesh*, Study Report, Priya Dass Shimla-3 2006, P.: 19.
35. Section: 235 HPPR Amendment Act, 1977 Shimla-3, 1978, P.: 117.
36. Chapter V, Himachal Pradesh Panchayati Raj Act, 1994, Govt. of Himachal Pradesh, Department of Panchayati Raj, Shimla-3, 2006, P.: 23.
37. *Ibid* P.: 24.
38. Section: 44, Himachal Pradesh Panchayati Raj Act, 1994, Govt. of Himachal Pradesh, Department of Panchayati Raj, Shimla-3, 2006, P.: 26.
39. Chapter IV, Judicial Functions and Powers of Gram Panchayat Section 41- The HPPR Act 1994, Govt. of Himachal Pradesh Department of Panchayati Raj, Shimla- 3, 2006, P.: 25.
40. *Ibid* P.: 27.
41. Section: 54, HPPR Act, 1994 Shimla-3, 2006, P.: 28.
42. Section: 65, HPPR Act, 1994 Shimla-3, 2006, P.: 31.
43. Section: 67, HPPR Act, 1994 Shimla-3, 2006, P.: 31.
44. Section: 68, HPPR Act, 1994 Shimla-3, 2006, P.: 31.
45. Section: 73, HPPR Act, 1994 Shimla-3, 2006, P.: 32.
46. Rule: 89, Himachal Pradesh Panchayati Raj Rules.
47. *Nyaya Panchayat and Gender Justice in Himachal Pradesh*, Study Report, Priya Dass Shimla-3 2006, P.: 35.



A Court Room in Nyaya Panchayat / GP Nichar from Nichar Block , Kinnaur (H.P)



Field Investigators with members of NP/GP Nihar in district Kinnaur (H.P)



Field Investigators with members of NP/GP Bari in district Kinnaur (H.P)

Chapter 5

Nyaya Panchayats: People Perception

Common people are the main stakeholders in the activities of gram panchayats. Therefore it was necessary to discuss the status, role and significance of Nyaya Panchayats in their areas. A total of 150 gram Sabha members were interviewed in selected three districts to elicit their views through a structured questionnaire. This chapter is based on the data collected and discussion held with them during visits to selected gram panchayats.

5.1 Socio-Economic Background of the Respondents

Sex: - Thirty six percent respondents were female.

Age: - Seventy two percent respondents were in the age category of 30-50 years.

Occupation: - 40 percent respondents reported their occupation as agriculture. 24 percent respondents, who are mostly women, were engaged in the household work.

Education: - Thirty- eight percent respondents were educated upto high or higher secondary level. 26 percent were graduates and 8 percent were having post graduate qualification. Out of the remaining 28 percent, 4 percent were illiterate and 24 percent under matriculate. It shows that persons selected in the sample were mostly educated and enlightened, having some knowledge about the functioning of Nyaya Panchayats.

Caste: - Fair representation is given to all the caste groups while selecting the sample. Data show that about one-third of them belong to Scheduled Tribes, 31 percent to the General Castes and 14 percent to the OBCs category (for details see table 5.1)

Table-5.1
Socio- Economic Background of the Respondents in the selected districts

Districts	PESA	Non-PESA		Total
	Kinnaur	Kullu	Solan	
Sex				
Male	34 (68.00)	28 (56.00)	33 (66.00)	95 (63.33)
Female	16 (32.00)	22 (44.00)	17 (34.00)	55 (36.66)
Age				
Less than 30	08 (16.00)	07 (14.00)	06 (12.00)	21 (14.0)
30 to 40	23 (46.00)	13 (26.00)	18 (36.00)	54 (36.0)
40 to 50	16 (32.00)	19 (38.00)	19 (38.00)	54 (36.0)
50 & above	03 (06.00)	11 (22.00)	07 (14.00)	21 (14.0)
Occupation				

Agriculture	16 (32.00)	21 (42.00)	24 (48.00)	61 (40.66)
Labour	02 (04.00)	00 (00.00)	02 (04.00)	4 (2.67)
Service	08 (16.00)	05 (10.00)	05 (10.00)	18 (12.00)
Self-business	05 (10.00)	10	08 (16.00)	23 (15.33)
Housework	17 (34.00)	11 (22.00)	08 (16.00)	36 (24.00)
Any other	02 (04.00)	03 (06.00)	03 (06.00)	8 (5.33)
Education				
Illiterate	01 (02.00)	02 (04.00)	03 (06.00)	6 (4.00)
Up to Primary	03 (06.00)	05 (10.00)	02 (04.00)	10 (6.66)
Primary to middle	08 (16.00)	08 (16.00)	10 (20.00)	26 (17.33)
High and Secondary	21 (42.00)	21 (42.00)	15 (30.00)	57 (38.00)
Graduate & above	15 (30.00)	10 (20.00)	14 (28.00)	39 (26.00)
Post graduate	02 (04.00)	04 (08.00)	06 (12.00)	12 (8.00)
Caste				
General caste	00 (00.00)	25 50.00	22 (44.00)	47 (31.33)
Scheduled caste	00 (00.00)	16 (32.00)	16 (32.00)	32 (21.33)
Scheduled tribes	50 100.00	00 (00.00)	00 (00.00)	50 (33.33)
OBC	00 (00.00)	09 (18.00)	12 (24.00)	21 (14.00)
Total	50	50	50	150

Source: Field Survey

5.2 Disputes and their Settlement

To our query whether they were involved in any dispute during the last one year, only about 3 percent reported that they were involved in some dispute. These disputes were mostly related to land, family matters or quarrel with neighbours. All the persons, who were involved in some dispute, approached panchayats for the settlement of their disputes and all the cases were solved at the panchayat level. Respondents were satisfied with the decision of panchayats. District wise data shows that while in PESA districts not a single respondent was involved in any dispute, in Non-PESA districts i.e. in Kullu 4 percent and in district Solan 6 percent respondents were involved in some dispute in the last one year.

Table 5.2
Involvement of the respondents in Disputes during the last one year

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	00 (00.00)	02 (04.00)	03 (06.00)	06 (04.00)
2	No	50 (100.00)	48 (96.00)	47 (94.00)	144 (96.00)
Total		50 (100.00)	50 (100.00)	50 (100.00)	150 (100.00)

Source: Field Survey

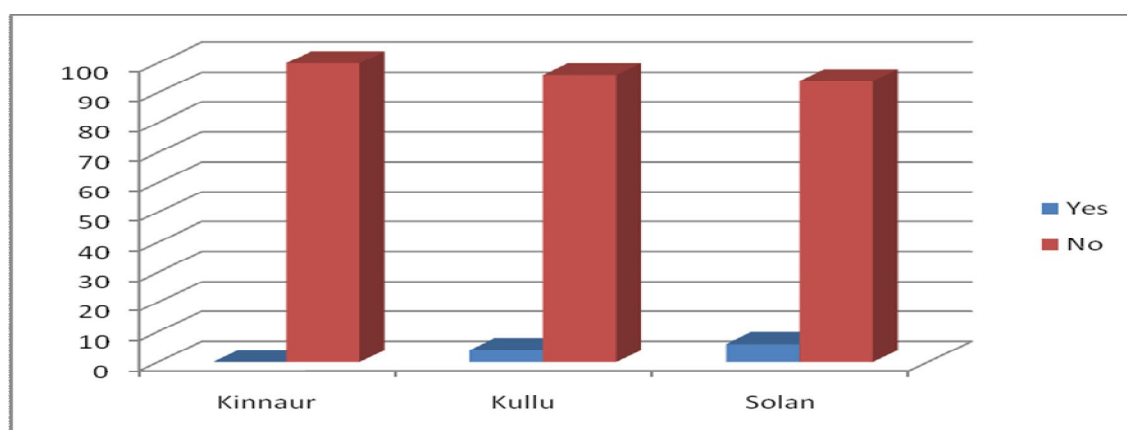


Table 5.3
Types of disputes

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Land disputes	00	02	01	03 (2.0)
2	Family disputes	00	00	01	01 (0.7)
5	Quarrel with neighbours	00	00	02	02 (1.3)
Total		00	02 (4.00)	04 (8.00)	06 (4.0)

Source: Field Survey

Table 5.4
Disputes Reported to Panchayats for Settlement

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	00 (00.00)	02 (100.00)	04 (100.00)	06 (100.00)
2	No	00 (00.00)	00 (00.00)	00 (00.00)	00 (00.00)
Total		00 (00.00)	02 (100.00)	04 (100.00)	06 (100.00)

Source: Field Survey

Table 5.5
Dispute Settled by Panchayats

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	00 (00.00)	02 (100.00)	04 (100.00)	06 (100.00)
2	No	00 (00.00)	00 (00.00)	00 (00.00)	00 (00.00)
Total		00 (00.00)	02 (100.00)	04 (100.00)	06 (100.00)

Source: Field Survey

Table 5.6
Satisfaction from Panchayat Decision

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	00 (00.00)	02 (100.00)	04 (100.00)	06 (100.00)
2	No	00 (00.00)	00 (00.00)	00 (00.00)	00 (00.00)
Total		00 (00.00)	02 (100.00)	04 (100.00)	06 (100.00)

Source: Field Survey

Each respondent was asked why people are generally not satisfied with the decision of Panchayats and they approach either police station or court for settlement of disputes. Following reasons were reported by them for this situation:

- Panchayat members become partial because of factionalism. Decisions are not taken according to the judicial power enshrined in the Panchayati Raj Act 1994. It was observed more in Non-PESA district.
- Panchayat do not record the proceeding of the cases and decision taken. Everything is done verbally. It was found both in PESA and Non-PESA districts.
- It was found in PESA districts that disputes relating to females, particularly between husband and wife were not given much importance and in most of the cases females are pressurized to obey their husband despite excesses done by him.

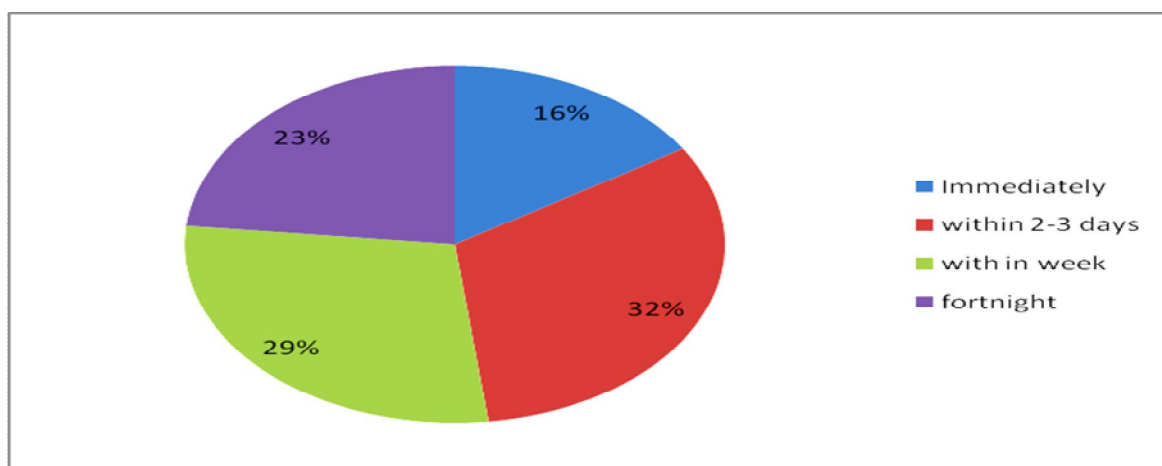
5.3 Time Period required for solving the dispute

To the question that in their opinion, in how many days the panchayat should solve the dispute, one-third reported that it should be done within 2-3 days, 28.66 percent wants cases should be solved by panchayats within a week. (For detailed see table 5.7 and graph). In PESA district about half of the respondents are of the view that Panchayats should solve dispute cases either immediately or with in 2-3 days. In district Kullu 56 percent respondents are of the opinion that Panchayats should take one to two week to solve disputes.

Table 5.7
Opinion about time to be taken to solve the dispute by Panchayat

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Immediately	10 (20.00)	05 (10.00)	09 (18.00)	24 (16.00)
2	within 2-3 days	15 (30.00)	17 (34.00)	16 (32.00)	48 (32.00)
3	with in a week	15 (30.00)	10 (20.00)	18 (36.00)	43 (28.66)
4	With in a fortnight	10 (10.00)	18 (36.00)	07 (14.00)	35 (23.33)
Total		50 (100.00)	50 (100.00)	50 (100.00)	150

Source: Field Survey



5.4 Awareness on Nyaya Panchayats

The survey revealed that not a single respondent is aware that government is trying to establish Nyaya Panchayats for dispute settlement.

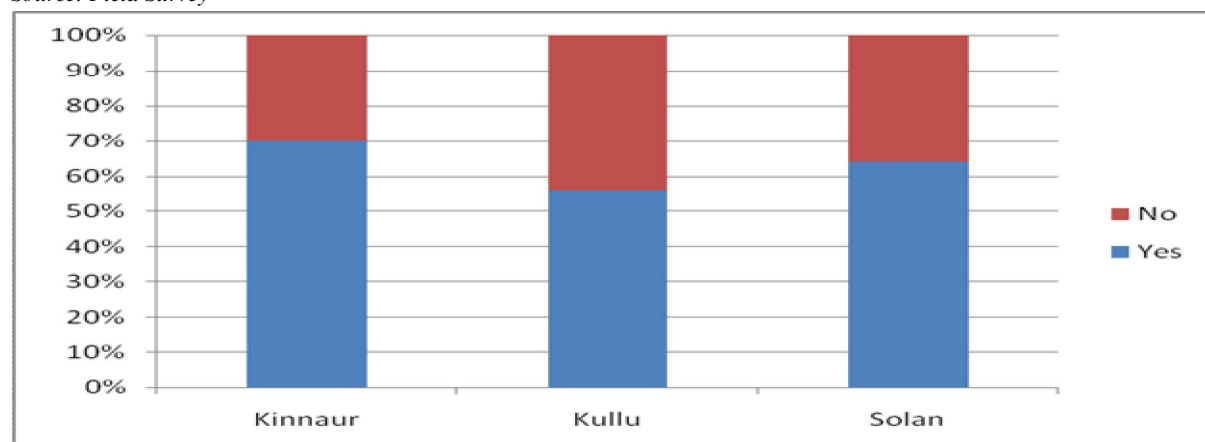
5.5 Fairness of Panchayats while giving decision

More than 63 percent respondents are of the opinion that Panchayats are fair in announcing the decision because, they generally know the facts of the case more accurately. In PESA district (Kinnaur) 70 percent respondents are of the opinion that Panchayat are fair while hearing the cases at village level.

Table 5.8
Fairness of Panchayat decisions

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	35 (70.00)	28 (56.00)	32 (64.00)	95 (63.33)
2	No	15 (30.00)	22 (44.00)	18 (36.00)	55 (36.66)
Total		50 (100.00)	50 (100.00)	50 (100.00)	150 (100.00)

Source: Field Survey



5.6 Reasons for the Un-fairness of Panchayats

As more than 36 percent respondents reported that Panchayats are not fair in announcing the decision on dispute cases, it became necessary to know why they have such opinion about Panchayat decisions. The reasons cited by them are:

- Political Intervention, which is more in Non-PESA districts.
- Personal/ Business relations of one party with Pradhan or other elected members. It is true for both PESA and Non-PESA area.
- Lack of proper knowledge regarding judicial functioning according to the act in both PESA as well as Non-PESA districts.
- Panchayats did not give sufficient time to both parties. This was mostly told by the Non-PESA district respondent.

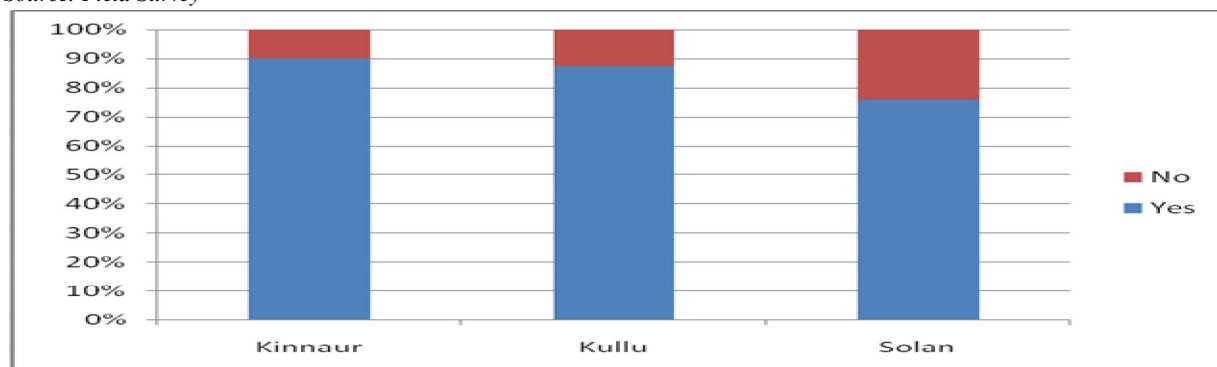
5.7 Women Empowerment through Gender Justice

Justice for crime against women is one of the key concerns, particularly in the rural areas. Panchayat should be sensitive to females and provide justice if any harm is done to them. Therefore it was asked from respondents that whether women in their villages are getting justice from Panchayats whenever they approach for settlement of dispute. In response to this question 83 percent of the respondents reported 'Yes' while 17 percent reported 'No' (see table 5.9). In district Solan, nearly one-fourth of the respondents said that women are not getting proper justice from the panchayats. The reason for the injustice against women in rural areas, particularly remote areas, as reported by the respondents, are: women are soft target; they do not express their point of view effectively in front of gram Panchayats; male dominated society; lack of education, awareness and self confidence in women and self-denial among females. In the PESA district 90 percent respondents feel that women are getting justice from their Panchayats.

Table 5.9
Justice to women

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	45 (90.00)	42 (84.00)	38 (76.00)	125 (83.33)
2	No	05 (10.00)	08 (12.00)	12 (24.00)	25 (16.66)
Total		50 (100.00)	50 (100.00)	50 (100.00)	150 (100.00)

Source: Field Survey



5.8 Justice to the Scheduled Castes and Scheduled Tribe

Do SCs and STs get justice from Panchayat when they approach these for dispute settlement? Response of all the respondents to this question was positive. According to them SCs and STs have fair representation in the Gram Panchayats and these representatives take care of the interests of the SCs and STs.

Table 5.10
Justice to SCs and STs

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	50 (100.00)	50 (100.00)	50 (100.00)	150 (100.00)
2	No	00 (00.00)	00 (00.00)	00 (00.00)	00 (00.00)
Total		50 (100.00)	50 (100.00)	50 (100.00)	150 (100.00)

Source: Field Survey

5.9 Empowerment of Panchayat for Dispute Settlement

With regard to the questions asked about the empowerment of the Panchayats for dispute settlement, the views of the respondents are as follows:

- All the respondents are in favour of providing proper training to the members of the Gram Panchayat regarding judicial functions of the Panchayats as per the Panchayati Raj Acts.
- Majority (about 65%) of the respondents are in favour of the formation of Justice Committees in each Panchayat. At presently Nyaya Panchayat is not functional in the state and the judicial function is delegated to gram panchayat. Therefore, Justice Committee can be constituted like other standing committees of GPs in which Pradhan or up-pradhan is ex-officio member and 2-4 other nominated members. The decision of the committee can be forwarded to the GP for the final decision. The benefit of this committee will be that members can devote sufficient time to hear both the parties. The role of the committee will be exclusively dealing with the judicial functions.
- Likewise more than two third of the respondents are in favour of fixing some minimum qualification for the members of Nyaya Panchayat.
- All respondents are in favour of enhancing the highest limit for imposing the fine on the guilty.
- 49% of the respondents are in favour of appointing only well experienced and capable persons as members of Nyaya Panchayat.

However, there are vast inter district variations in the opinion of respondents on some of the issues as are revealed in Table 5.11.

Table 5.11
Empowerment of Panchayat for dispute settlement

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Proper Training on Judicial Functions should be provided to GP.	50 (100.00)	50 (100.00)	50 (100.00)	150 (100.00)
2	Justice committee should be formed in each Panchayat	28 (56.00)	31 (62.00)	38 (76.00)	97 (64.67)
3	At least some Minimum Qualification should be set for GP members/justice committee member.	24 (48.00)	32 (64.00)	45 (90.00)	101 (67.33)
4	The highest limit to impose fine should be increased.	50 (100.00)	50 (100.00)	50 (100.00)	150 (100.00)
5	Only well experienced and capable person should be made member of Nyaya Panchayat	14 (28.00)	23 (46.00)	36 (72.00)	73 (48.67)
Total		50 (100.00)	50 (100.00)	50 (100.00)	150 (100.00)

Source: Field Survey

5.10 Coordination between Panchayats and other organizations in Dispute Settlement

At the panchayat level, there are many other organisations like Mahila Mandal, Youth Club, Self-Help Groups and certain NGOs which are active and very effective in the overall development of the villages. Therefore it was interesting to know whether these organisations have any role in dispute settlement by Panchayats. The data revealed that only about 8 percent respondents reported that their panchayats are coordinating with these organizations for dispute settlements. Although coordination between other organizations and Panchayats on dispute settlement issues is very low in the entire district but it is lowest in PESA district (see table 5.12).

Table 5.12
Panchayat coordination with other Organizations

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	02 (4.00)	05 (10.00)	06 (12.00)	13 (8.66)
2	No	48 (96.00)	45 (90.00)	44 (88.00)	137 (91.33)
Total		50	50	50	150

Source: Field Survey

5.11 Measures suggested for increasing the role of other organizations

To promote participatory approach in dispute settlement by the Panchayats the role of organizations like Mahila Mandals, SHGs, Youth Clubs and NGOs have to be increased. The response of the respondents to the various suggestions for increasing the role of these organizations in dispute settlement is as follows:

- Organization like Mahila Mandal, SHGs, and Youth Club and also of NGOs working in the areas of providing justice should also be provided training on judicial functions of gram panchayats.
- Mahila Mandal should be involved in solving the disputes, particularly those which are related to women. This was stated by 56 percent respondents of PESA districts.
- 50% of the respondents agree that NGOs can play important role in providing guidance to GPs on some legal issues.

However, there are some inter-district variations in the views of the respondents which have been shown in table 5.13.

Table 5.13
Suggested measures for increase in Participation of other Organization

Source: Field Survey

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	SHGs, Mahila Mandal, Youth club & NGOs should be involved in Judicial Training.	30 (60.00)	31 (62.00)	27 (54.00)	88 (58.67)
2	Mahila Mandal should be involved in solving disputes related to women.	28 (56.00)	20 (40.00)	25 (50.00)	73 (48.67)
3	NGOs can play important role in providing guidance to the Panchayats on legal issues.	30 (60.00)	25 (50.00)	19 (38.00)	74 (49.33)
Total		50 (100.00)	50 (100.00)	50 (100.00)	150 (100.00)

5.12 Usefulness of Nyaya Panchayats

At the time of interviews and discussions the research team explained to the respondents the concept of Nyaya Panchayats Bills and then asked that will it be useful. About 89.3 percent respondent said 'Yes' and 2.7 percent said 'No' and the remaining 8 percent said 'can't say'. Table 5.14 shows the inter-district variations in the response to the question asked above.

Table 5.14
Usefulness of Nyaya Panchayats

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	44 (88.00)	40 (80.00)	50 (100.00)	134 (89.33)
2	No	00 (00.00)	04 (8.00)	00 (00.00)	04 (2.66)
3	Can't say	06 (12.00)	06 (12.00)	00 (00.00)	12 (8.00)
Total		50 (100.00)	50 (100.00)	50 (100.00)	150 (100.00)

Source: Field Survey

5.13 Legitimacy of the decision of Nyaya Panchayats

To the question whether the people will accept the decision of Nyaya Panchayats if formed according to the new bill, 78 percent of the respondents said yes. They think that it will be cost effective, speedy, and more beneficial for the disadvantaged sections of the society who can't afford to go to Police or Court for settlement of their disputes. About 9 percent of the respondents answered in the negative and about 13 percent were not sure (see table 5.15).

Table 5.15
Acceptance of decisions by people

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	36 (72.00)	40 (80.00)	41 (82.00)	117 (78.00)
2	No	08 (16.00)	00 (00.00)	06 (12.00)	14 (9.3)
3	Can't say	06 (12.00)	10 (20.00)	03 (6.00)	19 (12.6)
Total		50 (100.00)	50 (100.00)	50 (100.00)	150 (100.00)

Source: Field Survey

5.14 Characteristics of Nyaya Panchayat required for solving dispute

The opinion regarding characteristics of Nyaya Panchayats were sought from each respondent. The following inputs were provided in this regards.

- Well educated members should only be eligible to become members of Nyaya Panchayats.
- Nyaya Panchayat members should be able to devote more time and attention to judicial matters/disputes.
- Member should be impartial in Nature and well versed on judicial proceedings.
- Members should be easily approachable and available to Gram Panchayat residents.
- Nyaya Panchayats should be cost effective and a quick system of delivery of justice. (For detail see table 5.16).

Table 5.16
Characteristics of Nyaya Panchayats required to solving disputes

Sr. no	Details	PESA	Non-PESA		Total
		Kinnaur	Kullu	Solan	
1	Well educated members should only be eligible to become members of Nyaya Panchayat.	50 (100.00)	50 (100.00)	50 (100.00)	150 (100.00)
2	Nyaya Panchayat member should be able to devote more time and attention to judicial matters.	20 (40.00)	32 (64.00)	45 (90.00)	97 (64.67)
3	Impartial in Nature, well versed on judicial proceedings.	45 (90.00)	46 (92.00)	40 (80.00)	131 (87.33)
4	Easily approachable and available to GP residents.	50 (100.00)	50 (100.00)	50 (100.00)	150 (100.00)
5	Cost effective and Quick Justice System.	48 (96.00)	41 (82.00)	43 (86.00)	132 (88.00)
Total		50	50	50	150

Source: Field Survey

5.15 Need for Educational Qualification for becoming a member of Nyaya Panchayat

All the respondents were of the view that there must be some educational qualification to become members of Nyaya Panchayats for tackling the judicial functions of Gram Panchayat.

Chapter 6

Nyaya Panchayats: Present status, Functioning and Suggestions for Improvement

In this chapter the focus is on the present status of Nyaya Panchayats and their mode of functioning in the selected districts of Himachal Pradesh. This is based on the data and information collected from gram panchayats. It includes socio-economic background of the elected members of the gram panchayats, infrastructure and facilities available with the Panchayats, awareness about the judicial functions of the Panchayats and facility of training in judicial functioning for the members of the Panchayats. The mode of functioning of these Panchayats includes process and procedures adopted for hearing appeals and making decisions, formation of functional committees, recording of proceedings of the meetings and impositions of fines etc. The chapter also includes suggestions for the improvement of functioning of Nyaya Panchayats and making them more acceptable to the people.

6.1 Socio-Economic Background of the Respondents

A total number of 218 elected members of Gram Panchayats were selected for this survey from the three districts. It includes 30 Pradhans (10 from each district) and 188 Ward Members. Their socio-economic characteristics have been provided in Table 6.1 which is as follows:

6.1.1 Caste: - Whereas all the respondents from Kinnaur districts belong to ST category, in district Kullu their proportion among General Caste, SC, ST, and OBC is in the ratio of 53:36: 7:4 respectively. In district Solan the respondents are almost equally divided into General Caste and SC.

Table 6.1

Socio- Economic Background of Elected Members of Surveyed GPs

Sr	Districts			Total
	Kinnaur	Kullu	Solan	
Caste				
General caste	00	40 (53.33)	39 (50.64)	79 (36.23)
Scheduled caste	00	27 (36.00)	38 (49.35)	65 (29.82))
Scheduled tribes	66 (100.00)	05 (06.67)	00 (00.00)	71 (32.57)
OBC	00 (00.00)	03 (04.00)	00 (00.00)	03 (1.37)
Designation				
Pardhan	10 (15.15)	10 (13.33)	10 (12.98)	30 (13.76)
Ward Members	56 (84.85)	65 (86.67)	67 (87.01)	188 (86.24)

Sex				
Male	36 (54.54)	48 (64.00)	45 (58.44)	129 (59.17)
Female	30 (45.45)	27 (36.00)	32 (41.56)	89 (40.83)
Age				
Less than 30	12 (18.18)	06 (08.00)	04 (05.19)	22 (10.09)
30 to 40	31 (46.96)	26 (34.67)	35 (45.45)	92 (42.20)
40 to 50	13 (19.70)	28 (37.33)	21 (27.27)	62 (28.44)
50 & above	10 (15.15)	15 (20.00)	17 (22.07)	42 (19.27)
Total	66 (100.00)	75 (100.00)	77 (100.00)	218 (100.00)

Source: Field Survey

6.1.2 Sex: 59 percent respondents were male and remaining 41 percent female.

6.1.3 Age: 71 percent of the respondents were in the age group of 30-50 years, 10 percent below 30 years and about 19 percent above 50 years.

6.2 Facilities available at Gram Panchayat Level

6.2.1 Panchayat Ghar: - All the selected Gram Panchayats have their own Panchayat Ghar building.

6.2.2 Meeting Hall: - All the Panchayats except one have the meeting hall to hold Panchayat and Gram Sabha meetings.

6.2.3 Computer in Gram Panchayats: - Computer facility was available in 80 percent of the selected gram panchayats but internet and e-mail facility was available only with one Gram Panchayat. All the panchayats, where computer facility was available recruited computer operator under NREGA to make the computer facility functional.

6.2.4 Panchayat Secretary/ Sahayak: - All the selected Panchayats have filled up post of either panchayat secretary or panchayat sahayak.

From the above, we can say that basic facilities are available at gram panchayat level which can be helpful for effectiveness of Nyaya Panchayats in the state of Himachal Pradesh.

Table 6.2
Facilities available at selected Gram Panchayats

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Panchayat Ghar	10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)
2	Meeting hall	10 (100.00)	09 (90.00)	10 (100.00)	29 (96.67)
3	Computer in GP	09 (90.00)	06 (60.00)	09 (90.00)	24 (80.00)
4	Internet / E-mail facility	00 (0.00)	01 (10.00)	00 (0.00)	01 (3.33)
5	Computer operator recruited under NREGA	09 (90.00)	06 (60.00)	09 (90.00)	24 (80.00)
6	Panchayat Secretary/ Sahayak	10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.3 Panchayats Income

Own source of income of panchayat is very meager. While only one-third of the panchayats have annual income more than Rs. 30,000, 40 percent of the Panchayats have annual income between Rs. 10,000-20,000. Only 1 panchayat out of 30 is having income between Rs. 20,000-30,000. The remaining about 23 percent of the panchayats are having annual income less than Rs. 10,000. Table 6.3 shows inter-district variations in the annual income of panchayats from their own sources. Some panchayats (6 out of 30) reported that they also have income from performing judicial functions. Out of 6 such panchayats 5 had income less than Rs. 500 and one Gram Panchayats had income between Rs. 500-1000 during the year 2008-09.

Table 6.3
Panchayat Income (2008-2009)

Sr	Districts			Total
	Kinnaur	Kullu	Solan	
Own Sources				
Rs.0-10,000	05 (50.00)	02 (20.00)	00 (0.00)	07 (23.33)
Rs.10,000-20,000	03 (30.00)	03 (30.00)	06 (60.00)	12 (40.00)
Rs.20,000-30,000	00 (0.00)	01 (10.00)	00 (0.00)	01 (3.33)
30,000 & above	02 (20.00)	04 (40.00)	04 (40.00)	10 (33.33)
From Dispute & Judiciary				
Nil	05 (50.00)	10 (100.00)	09 (90.00)	24 (80.00)
Upto 500	04 (40.00)	00 (0.00)	01 (10.00)	05 (16.67)
500 to 1000	01 (10.00)	00 (0.00)	00 (0.00)	01 (3.33)
1000 & above	00 (0.00)	00 (0.00)	00 (0.00)	00 (0.00)
Total	10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.4 Awareness about Judicial Functions

In all the Panchayats, it was asked and discussed, whether they know the judicial functions enshrined in Himachal Panchayati Raj Act, 1994. Interestingly all the panchayats reported that they have the basic awareness/knowledge about such functions.

6.5 Training on Judicial Functions

Apart from Himachal Institute of Public Administration (HIPA), other two institutes, one at Baijnath and another at Mashobra, cater the training needs of panchayats functionaries and elected representatives of PRIs. Therefore, it was enquired whether or not Panchayat members have received training in judicial functions. Data in table 6.4 shows that 90 percent of selected panchayats member received training in judicial functions of Nyaya Panchayats.

Table 6.4
Training on Judicial Functions in selected Panchayats

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	10 (100.00)	08 (80.00)	09 (90.00)	27 (90.00)
2	No	00 (0.00)	02 (20.00)	01 (10.00)	03 (10.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.6 Content of Training Programmes

Following were the contents of training programmes as reported by the panchayats:

- Knowledge of Judicial Powers, Proceedings and Jurisdiction of Gram Panchayat. (80 percent Gram Panchayats). In PESA district 70 percent reported it as a content of training.
- How to use and execute these powers (2.67 percent). In PESA district this content was reported by 30 percent GPs.
- Constitution of judicial bench to deal with cases. (70 percent)
- Knowledge of IPC, Legal Terms, Law Policies, difference between civil and criminal cases (10 percent). In PESA district one fifth Panchayat reported this as a content of training.

Table 6.5
Content of Training Program

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Knowledge of Judicial powers, proceedings & Jurisdiction of Gram Panchayat	07 (70.00)	08 (80.00)	09 (90.00)	24 (80.00)
2	How to use & execute these powers	03 (30.00)	03 (30.00)	02 (20.00)	08 (2.67)
3	Constitution of Judicial Bench to deal a cases	06 (60.00)	07 (70.00)	08 (80.00)	21 (70.00)
4	Knowledge of IPC, Legal terms, law Policies, difference between civil and criminal cases	02 (20.00)	00 (0.00)	01 (10.00)	03 (10.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.7 Processes and Procedures Adopted for Hearing of Appeals and Decision

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

- Study the nature of the case to determine whether it needs to be recorded or to be taken up for verbal solution. (All Panchayats).
- Formation of judicial bench to deal with the case (All Panchayats).
- Issuing of summons to the parties (All Panchayats).
- Hearing of case (All Panchayats).
- Decision of case (All Panchayats).

6.8 Reasons for Effectiveness of Panchayat in Solving Disputes

An efforts was made to know in which ways panchayat is more effective in executive its judicial functions. Following responses were reported in this regard:

- Panchayat is easily available and approachable to the village residents, especially the poor and the women.
- Panchayat has a deep knowledge of factual position of both the parties involved in disputes.
- Low cost and less time is taken to solve the cases.
- Respectable and satisfactory system.
- Impartial decision.

In PESA district following two were the main reasons reported by Panchayats for effectiveness of Panchayats in solving disputes:-

- Easy availability and approachability
- Deep knowledge of disputes.

Table 6.6
Reason for effectiveness of panchayats in solving disputes

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Panchayat is easily available & approachable to village residents	8 (80.00)	9 (90.00)	8 (80.00)	25 (83.33)
2	Deep knowledge of parties involved in the case	7 (70.00)	6 (60.00)	6 (60.00)	19 (63.33)
3	Low cost & less time is taken by GP in solving disputes	0 (0.00)	3 (30.00)	3 (30.00)	6 (20.00)
4	Respectable & satisfactory system	0 (0.00)	1 (10.00)	2 (20.00)	3 (10.00)
5	Impartial decisions	0 (0.00)	1 (10.00)	1 (10.00)	2 (6.67)
6	No hassles of Courts , Lawyers & Police stations	5 (50.00)	1 (10.00)	0 (0.00)	6 (20.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.9 Difficulties faced by GPs in disposal of the cases

The survey revealed that GPs while performing judicial functions faces many difficulties in disposal of cases brought to its notice. Some of these difficulties are as follows:

Difficulty: About 30 % of the panchayats reported that parties summoned do not appear before the NPs. They rather approach the influential persons within the GP. The NP has no power to take any action against an accused if he fails to appear before it. The NP can at best report the matter to the nearest Magistrate. Only the magistrate, on the receipt of a report from the NP, using powers vested on him, can force the accused to appear before the NP. However due to the pressure of influential persons Nyaya Panchayats generally avoid reporting the matter to the magistrate.

Action: The NPs must be empowered to take some punitive action against a person who, after being summoned do not appear before the NP on the fixed date.

Difficulty: Nearly half of the total panchayats are not fully aware about their judicial powers and how to execute them. Since many elected representatives of PRIs are not well educated or well informed they find it difficult to comprehend the judicial powers of the GP and the execution of those powers.

Action:

- Provide proper training in the judicial functioning of GP to the elected representative of PRIs and Make the training programme more vigorous.
- Hold refresher programmes in judicial functioning of the GPs from time to time.
- Constitute justice committees to perform judicial functions of the GPs.
- Only learned persons with some minimum qualification and who have time for such work should be nominated to such committees.

Difficulty: Forty four percent of the Panchayats reported that because of low pecuniary limits and very limited jurisdiction in revenue matters, most persons have no fear of NPs. They don't take the NP seriously. Moreover, since most revenue matters are technical in nature and also require looking into the records, many NPs feel handicapped in handling such cases.

Action: Enhance the pecuniary limits in civil as well as criminal matters to ten thousand rupees and revise these limits after every two or three years. Revenue jurisdiction, especially with regard to mutation, boundary disputes and correction of records should also be granted to the NPs. Revenue officer (Patwari or Kanoongo) be deputed to assist the NPs whenever there is any case relating to revenue matter.

Difficulty: About one third of the GP reported that they have very little time to perform judicial functions. As we know, after the 73rd Constitutional Amendment Gram Panchayats have become the main agents of socio-economic development of rural areas. Thus their work and

responsibilities have increased enormously. Implementation of MGNREGA has further enhanced their work load. Thus, they have very little time to attend to judicial functions.

Action: Separate judiciary from executive. Revive old system of Nyaya Panchayat. Till that time, constitute Judicial Committees in each village under the chairmanship of Pradhan or Up-Pradhan. The committee should have, in addition to chairperson, 4-6 nominated or elected persons. These persons should be well educated, conversant with legal aspect of civil, criminal and revenue matters, commanding confidence and respect of the villagers and they should have time to undertake this responsibility. All judicial functions of the GP should be entrusted to this committee. However decision taken by this committee may be sent to the GP for ratification.

Difficulty: - Some panchayats also reported that it is very difficult to find witnesses, as a result NPs face problems in reaching at a right decision.

Action: - The responsibility of producing reliable witnesses before the panchayat must remain with the complainants and the defendants. Panchayats cannot do anything in this regard.

Table 6.7
Difficulties faced by GPs in disposal of the cases

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Parties Summoned by panchayat do not appear before them	02 (20.00)	02 (20.00)	05 (50.00)	09 (30.00)
2	Panchayat don't have enough knowledge of Judicial powers & how to execute them	04 (40.00)	07 (70.00)	03 (30.00)	14 (46.67)
3	People/disputed parties don't have any fear of GPs judicial powers	02 (20.00)	08 (80.00)	03 (30.00)	13 (43.33)
4	Very less amount of fine imposed by GP to Parties found guilty	01 (10.00)	00 (0.00)	00 (0.00)	01 (3.33)
5	Land & revenue case are too complex to be handled by GP	01 (10.00)	00 (0.00)	00 (0.00)	01 (3.33)
6	GP has less time to devote on Judicial functions and it is already overburdened by other development works especially NREGA	03 (30.00)	00 (0.00)	06 (60.00)	09 (30.00)
7	It is difficult to find witnesses, as a result GP face problems in reaching on a conclusion/decision	00 (0.00)	01 (10.00)	01 (10.00)	02 (6.66)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

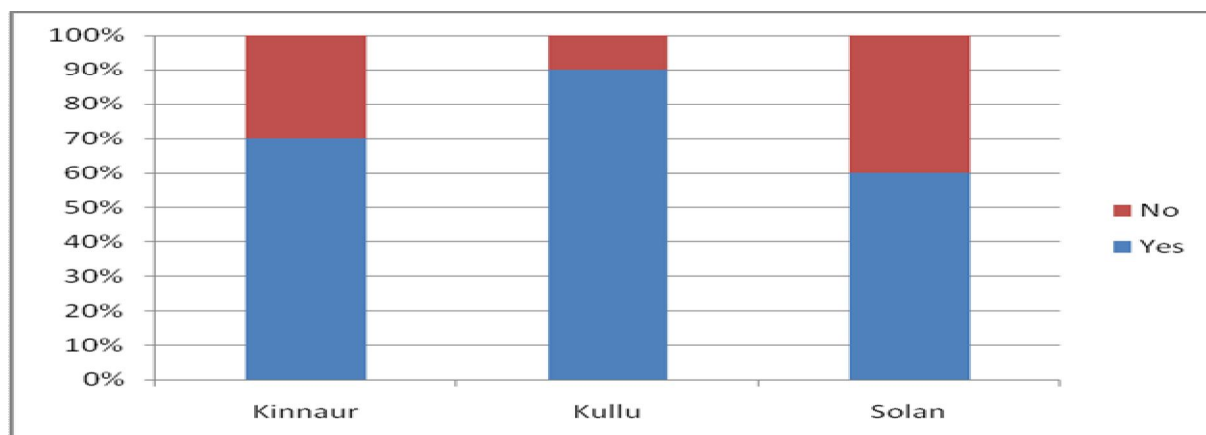
6.10 Provision of Proceeding of Meetings

More than 73 percent Panchayats reported that there is a provision for writing the proceedings of the cases heard by Panchayats. But as most of the cases are solved verbally, proceedings of very few cases are written in register.

Table 6.8
Provision for writing of the proceeding of meeting regarding the disputes

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	07 (70.00)	09 (90.00)	06 (60.00)	22 (73.33)
2	No	03 (30.00)	01 (10.00)	04 (40.00)	08 (26.67)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey



6.11 Written Agreement

Although most panchayats avoid recording the proceedings of various meetings conducted to resolve the disputes, yet then an agreement is reached between the two parties the terms and conditions of that agreement are recorded in written form and signatures/thumb impression of both the parties are taken on that agreement. Copies of that agreement are provided to both the parties. Data in table 6.9 shows that 93 percent of the panchayats do record the final agreement in written form. In PESA districts 90 percent of the Panchayats record agreements in written form.

Table 6.9
Written agreement

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	09 (90.00)	09 (90.00)	10 (100.00)	28 (93.33)
2	No	01 (10.00)	01 (10.00)	00 (0.00)	02 (6.67)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.12 Signature of Witness

Out of 30 Panchayats, 28 reported that whenever some decision is taken they take signatures of atleast two persons as witnesses. In PESA district 9 out of 10 Panchayats took signatures of witnesses whenever they heard the dispute cases.

Table 6.10
Signature of witness

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	09 (90.00)	09 (90.00)	10 (100.00)	28 (93.33)
2	No	01 (10.00)	01 (10.00)	00 (0.00)	02 (6.67)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.13 Provision of Fine

According to the Himachal Pradesh Panchayati Raj Act, 1994, there is a provision for imposing fine on the guilty by the Panchayat. The quantum of fine depends upon the nature of the case. Effort was made in this survey to know whether or not the Panchayats impose fine on guilty. Data in table-6.11 show that 70 percent of the Panchayats do impose fines on the guilty. The amount of fine in most cases however varies between Rs. 75-100. In some cases it is even less than Rs. 50. In PESA districts 90 percent selected Panchayats reported imposition of fine and 80 percent Panchayats had imposed fine between Rs.75-100.

The table 6.12 shows that the selected panchayats resolved 184 cases, out of which more than half the cases were of civil nature, about one third of criminal nature and only about 11.4 % cases related to revenue matter. The breakup of cases into civil, criminal and revenue related at the district level is also more or less on the same pattern. The table also reveals that fine was imposed in about 28 % of all cases. The incidence of fine imposition is comparatively more (37.7 %) in cases of civil nature and low (15.3 %) in cases of criminal nature. In revenue related cases fine was imposed in 23.8 % of the cases. The pattern at the district level however slightly varies from one district to another.

Table 6.11
Provision of fine

Sr. no	Details	PESA	Non-PESA		Total
		Kinnaur	Kullu	Solan	
1	Yes	09 (90.00)	09 (90.00)	03 (30.00)	21 (70.00)
2	No	01 (10.00)	01 (10.00)	07 (70.00)	09 (30.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

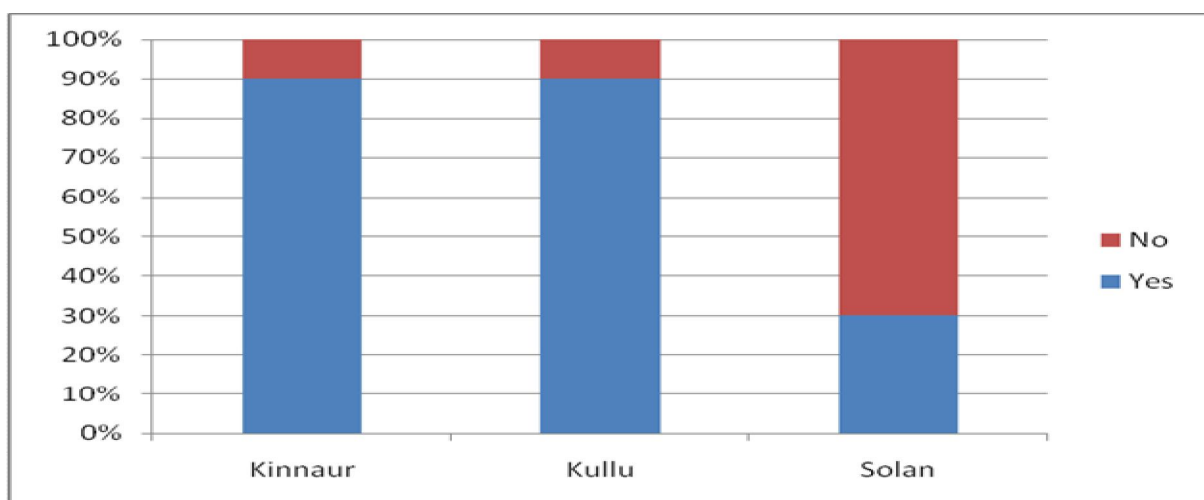
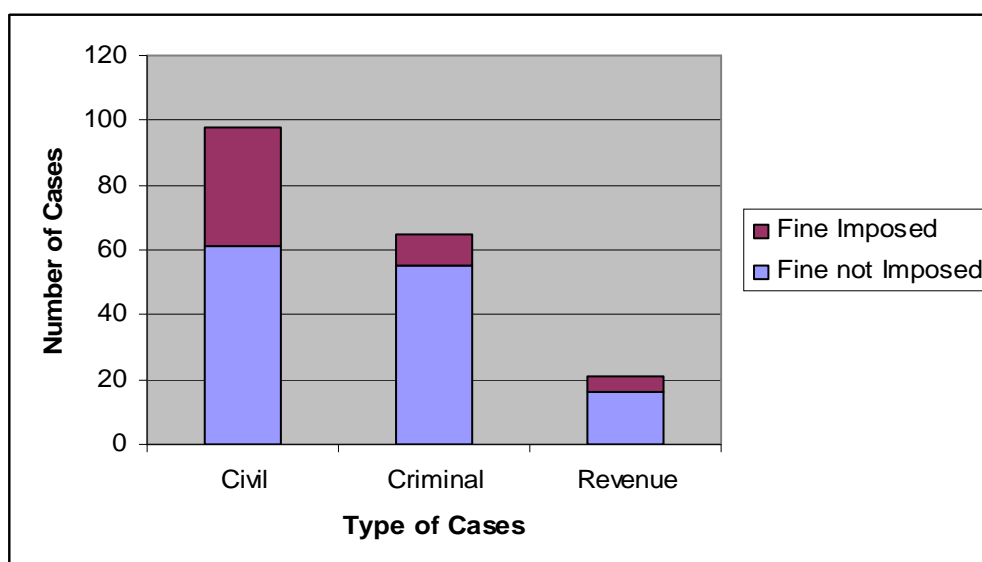


Table 6.12
Classification of Total Cases and those in which Fine was Imposed

Sr	Kinnaur		Kulla		Solan		Total	
Nature of Cases	Total cases	Fine imposed	Total cases	Fine imposed	Total cases	Fine imposed	Total cases	Fine imposed
Civil	61 (68.54)	18 (29.51)	37 (57.81)	12 (32.43)	21 (67.74)	7 (33.33)	119 (64.67)	37 (37.7)
Criminal	23 (25.84)	8 (34.78)	17 (26.56)	0 (00)	4 (12.90)	2 (50.00)	44 (23.91)	10 (15.3)
Revenue Related	5 (5.62)	2 (40.0)	10 (15.63)	2 (20.0)	6 (19.35)	1 (16.6)	21 (11.41)	5 (23.8)
Total	89 (100%)	28 (31.4)	64 (100%)	14 (21.8)	31 (100%)	10 (32.2)	184 (100%)	52 (28.3)

Source: Field Survey



6.14 Awareness about the Nyaya Panchayat Bill, 2009

Our survey revealed a very important finding that no Panchayat has awareness about the Nyaya Panchayat Act, 2009. It therefore becomes necessary that awareness about this Bill must be created among the Panchayat members.

6.15 Need of Training

All the selected Panchayats in PESA & Non-PESA districts reported for the need of rigorous and detailed training on judicial functions enshrined in Himachal Pradesh Panchayati Raj Act, 1994.

6.16 Training Venue

Eighty percent Gram Panchayats wants training to be provided at block level, where as 13.33 percent wants it at Gram Panchayat level, so that gram Sabha members can also become aware of it. Only 2 panchayats suggested training at district level. In PESA district 90 percent of selected GPs wants training at block headquarter.

Table 6.13
Training venue on Judicial functions

Sr. no	Details	PESA	Non-PESA		Total
		Kinnaur	Kullu	Solan	
1	GP level	01 (10.00)	01 (10.00)	02 (20.00)	04 (13.33)
2	Block level	09 (90.00)	08 (80.00)	07 (70.00)	24 (80.00)
3	District level	00 (0.00)	01 (10.00)	01 (10.00)	02 (6.67)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.17 Community Role

The role of community in facilitating the Panchayats in resolving dispute was also enquired. Only one-fifth of the Panchayats reported active role of community in this regard, while 70 percent of the panchayats reported that the community played no role in this regard. In PESA district, all Panchayats reported that community has no role in facilitating Panchayats on this issue.

Table 6.14
Community role in facilitating Panchayat in solving disputes

Sr. no	Details	PESA	Non-PESA		Total
		Kinnaur	Kullu	Solan	
1	No role	10 (100.00)	08 (80.00)	03 (30.00)	21 (70.00)
2	Limited role	00 (0.00)	00 (0.00)	03 (30.00)	03 (10.00)
3	Active role	00 (0.00)	02 (20.00)	04 (40.00)	06 (20.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.18 Role of NGOs/ Civil Society Organization in Dispute Settlement

NGOs or some other civil society organizations are playing a very vital role in the development of rural areas. But according to the panchayats they have no role in facilitating the panchayats in dispute solving. NGOs/ Civil Society organisation can provide better input if involved in the awareness and other issues.

Table 6.15
NGOs/ Civil organisations role in facilitating Panchayats

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	No role	10 (100.00)	10 (100.00)	09 (90.00)	29 (96.66)
2	Limited role	00 (0.00)	00 (0.00)	00 (0.00)	00 (0.00)
3	Active role	00 (0.00)	00 (0.00)	01 (10.00)	01 (3.33)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

An NGO, the Society for Social Uplift through Rural Action (SUTRA), is functioning in the Solan district on the issues of Nyaya Panchayats particularly on the gender justice. The organization prepared a detailed document on 'Nyaya Panchayats and Gender Justice in Himachal Pradesh'. The main recommendations of the study are:-

- *Separation of judiciary from executive even if still under Panchayati Raj Institution. Process of election or selection needs to be carefully worked out.*
- *Enhancement of execution power and make them exclusive to the Nyaya panchayat.*
- *Increase the pecuniary values of cases, fines and penalties.*
- *Provision of adequate infrastructure and financial resources for effective functioning of the Nyaya Panchayats.*
- *Provision of law officers to Nyaya Panchayat for taking legal advice.*
- *Gender sensitive training must be made mandatory.*
- *Reservation of seats for women and minority in Nyaya Panchayat benches.*
- *Involvement of community members in the benches or in decision making process.*
- *In women related cases, the Mahila Mandal, Ekta Naree Shakti Sangathans and other women's bodies should be involved in decision making process and their participation must be ensure.*
- *Pradhan should be made less powerful in Nyaya Panchayats and all members must be given equal powers.*

6.19 Type of cases, Panchayat should not hear

Gram Panchayats suggested that panchayat should not handle certain type of cases because of the sensitivity involved in such cases. These are:-

- Rape Case/ Sexual Harassment/ Molestation (43.33 percent of selected GPs)
- Dispute involving threat to, persons life (10.00 percent of selected GPs)
- Murder Cases (100 percent of selected GPs)
- Land and revenue related cases (63.33 percent of selected GPs)
- Water disputes (10.00 percent of selected GPs)

In PESA district followings type of cases has been suggested which should not be considered by the Panchayats:

- Murder cases (All selected Panchayats)
- Land & revenue cases (70 percent of the selected GPs)

Table 6.16
Restricted cases for Panchayats

Sr. no	Details	PESA	Non-PESA		Total
		Kinnaur	Kullu	Solan	
1	Rape cases/ Sexual Harassment /Molestation	07 (70.00)	02 (20.00)	04 (40.00)	13 (43.33)
2	Disputes involving Life threat	01 (10.00)	00 (0.00)	02 (20.00)	03 (10.00)
3	Murder cases	10 (100.00)	10 (100.00)	10 (10.00)	30 (100.00)
4	Land & revenue	07 (70.00)	08 (80.00)	04 (40.00)	19 (63.33)
5	Water disputes	01 (10.00)	01 (10.00)	00 (0.00)	03 (10.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.20 Poor People getting Justice from Panchayat

Most vulnerable sections of the society is the poor people, who can't afford costly system of justice by approaching court, police station or any other organisation set-up for the purpose. For them Nyaya Panchayat is the most suitable, cost effective and accessible system of justice. Therefore it was discussed with the panchayats that whether poor people are getting justice from the panchayat in the matter of their disputes. Response shown in the table-6.17 affirms this faith and all the panchayat reported it in positive manner i.e. poor are getting justice from the panchayats. Therefore, there is a need to strengthen the Nyaya Panchayats with more power and responsibilities.

Table 6.17
Poor Getting Justice according to elected members of GPs

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)
2	No	00 (0.00)	00 (0.00)	00 (0.00)	00 (0.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.21 Role of Government Functionaries

No doubt, government functionaries are integral part of the Panchayati Raj System and with the active support of them panchayat can play a very significant role in the development of society with social justice. It was also discussed with the Panchayats, the role of government functionaries in the matter of dispute settlement. Though they have no direct role, yet they make important contribution indirectly by maintaining the records and also by providing technical support on judicial matter. In PESA districts responses are almost similar. (For detail see table- 6.18)

Table 6.18
Government functionaries as a facilitator in solving disputes

Sr. no	Details	PESA	Non-PESA		Total
		Kinnaur	Kullu	Solan	
1	No role	02 (20.00)	00 (0.00)	00 (0.00)	02 (6.67)
2	Record maintaining /written work	08 (80.00)	10 (100.00)	10 (100.00)	28 (93.33)
3	Technical support on judicial matter	03 (30.00)	02 (20.00)	03 (30.00)	08 (26.67)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

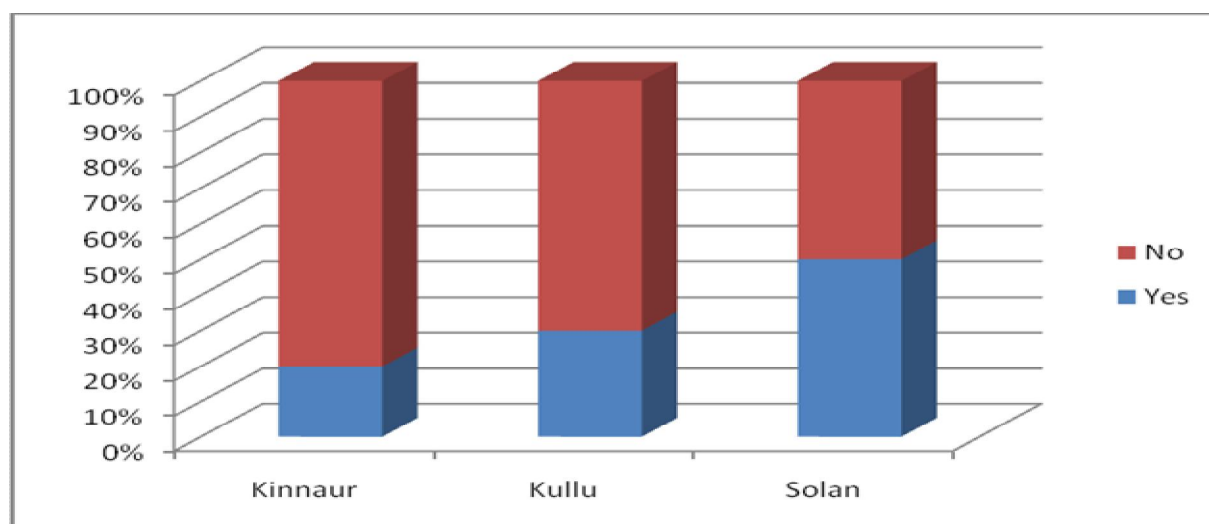
6.22 People are not obeying Panchayat Decisions

Sixty six percent of the selected Panchayats reported that people generally obey Panchayat decisions. Such proportion was found more in PESA areas, where 80 percent Panchayats reported that people were obeying the Panchayats' decisions.

Table 6.19
People disobeying decisions according to GP members

Sr. no	Details	PESA	Non-PESA		Total
		Kinnaur	Kullu	Solan	
1	Yes	02 (20.00)	03 (30.00)	05 (50.00)	10 (33.33)
2	No	08 (80.00)	07 (70.00)	05 (50.00)	20 (66.67)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey



6.23 Panchayat is biased while solving disputes

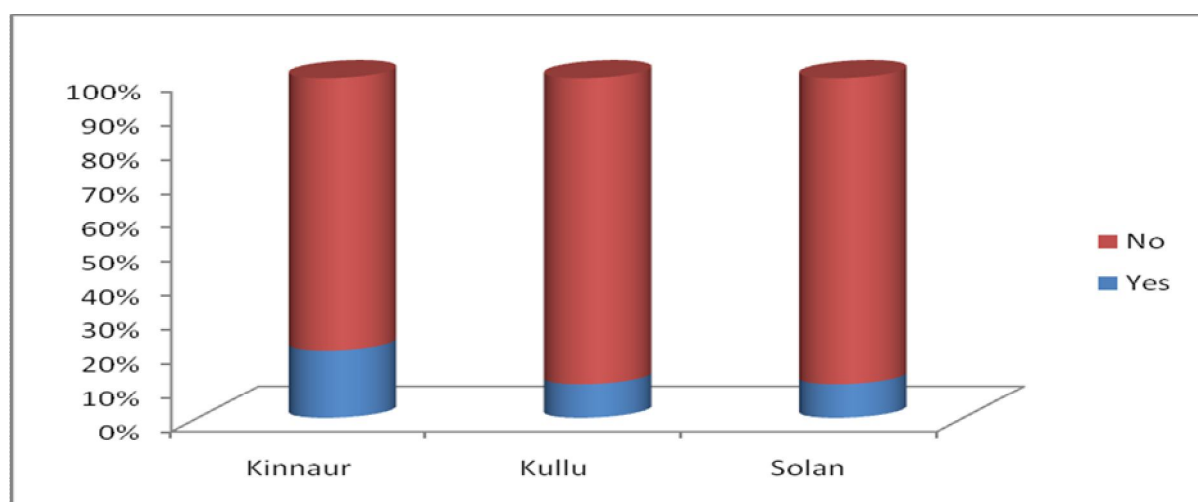
Eighty six percent of selected panchayats did not agree on the statement that panchayats are some time biased when taking decision. This is admitted by only 14 percent of the respondents. In

PESA district about one-fifth of selected Panchayats reported the biasness of Panchayats in solving disputes.

Table 6.20
Panchayat biased in solving disputes

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	02 (20.00)	01 (10.00)	01 (10.00)	04 (13.33)
2	No	08 (80.00)	09 (90.00)	09 (90.00)	26 (86.67)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey



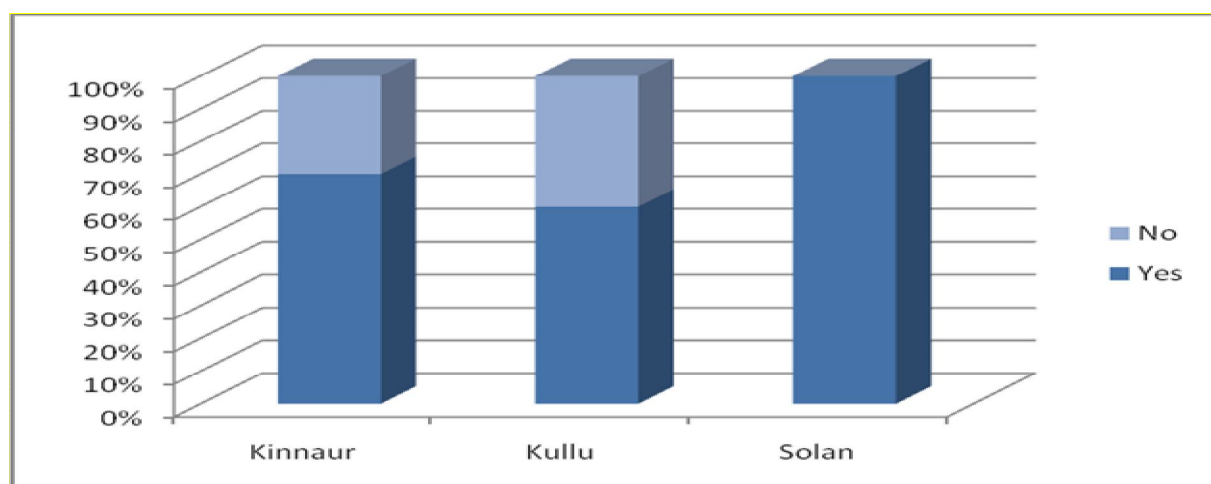
6.24 Domestic violence against women

Three-fourth of the panchayats reported that their panchayats hardly care about the domestic violence against women and take it as a routine matter or dispute between husband and wife is not serious thing and it is common. In PESA district 30 percent of selected Panchayats reported that their Panchayats took serious view when there is a domestic violence against women.

Table 6.21
Domestic violence against women took as a routine matter

Sr. no	Details	PESA	Non-PESA		Total
		Kinnaur	Kullu	Solan	
1	Yes	07 (70.00)	06 (60.00)	10 (100.00)	23 (76.67)
2	No	03 (30.00)	04 (40.00)	00 (0.00)	07 (23.33)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey



6.25 Suggestions for Minimizing Disputes

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

- Spread of education among villagers (46.67 percent Gram Panchayats). In PESA district one-fifth Panchayats reported the spread of education for minimizing disputes.
- Social harmony should be spread in villages (20.00 percent of selected GPs)
- Political intervention or factionalism should be minimized (56.67 percent of selected GPs)
- Don't know much about it (13.33 percent of selected GPs).

Table 6.22
Suggestions for minimizing the disputes

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Spread of education among villagers	02 (20.00)	09 (90.00)	03 (30.00)	14 (46.67)
2	Social harmony should be spread in village	01 (10.00)	02 (20.00)	03 (30.00)	06 (20.00)
3	Political intervention or factionalism should be minimized	05 (50.00)	06 (60.00)	06 (60.00)	17 (56.67)
4	Don't know	01 (10.00)	01 (10.00)	02 (20.00)	04 (13.33)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.26 Suggestions to Solve Disputes

Following suggestions were provided by the elected members of Gram Panchayats:-

- Sixty three percent of selected Panchayats suggested that Panchayat member should acquire deep knowledge about the case and then take the decision rather than taking it in a hurry. (Only one Panchayat in PESA district and all selected panchayats in Solan district gave this suggestion)
- Sixty three percent of the selected Panchayats suggested that Panchayat members should give impartial decision and be capable of executing its decision to satisfy both the parties. Only one Panchayat in PESA district provided this suggestion, whereas all the Panchayats in district Solan suggested this.

Table 6.23
Suggestions for solve disputes

Sr. no	Details	PESA	Non-PESA		Total
		Kinnaur	Kullu	Solan	
1	Deep knowledge about the case	02 (20.00)	09 (90.00)	08 (80.00)	19 (63.33)
2	Panchayats should give decision on impartial basis/ and should be capable of executing its decision to satisfy both the parties	01 (10.00)	02 (20.00)	10 (100.00)	19 (63.33)
3	Don't know	08 (80.00)	01 (10.00)	00 (0.00)	02 (6.66)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.27 Existence of earlier Nyaya Panchayats

All selected panchayats reported that Nyaya Panchayats were functional prior to 1979 in their areas.

6.28 Main Functions of earlier Nyaya Panchayats

According to present gram panchayats, earlier Nyaya Panchayats were performing following functions:-

- Providing justice at low cost and in less time. It was reported by 70 percent respondent in PESA district.
- Impartial decision, because there was no vote politics or factionalism. This was stated by half of the selected Panchayats of PESA districts.
- Preventing the villagers from the harassment of courts, lawyers and police.
- Maintaining social harmony among different groups and castes in the village.
- Providing fair and acceptable decision as reported by 50 percent selected Panchayats of PESA districts.

Table 6.24
Main functions of earlier Nyaya Panchayats

Sr. no	Details	PESA	Non-PESA		Total
		Kinnaur	Kullu	Solan	
1	The function of Nyaya Panchayat was to give justice at low cost and in less time	07 (70.00)	02 (20.00)	06 (60.00)	15 (50.00)
2	Nyaya Panchayat given impartial decision	05 (50.00)	00 (0.00)	01 (10.00)	06 (20.00)
3	Preventing the villagers from the harassment of court lawyer and police station	02 (20.00)	02 (20.00)	00 (0.00)	04 (13.33)
4	Maintaining social harmony	01 (10.00)	08 (80.00)	09 (90.00)	18 (60.00)
5	Fair and acceptable decision	05 (50.00)	03 (30.00)	05 (50.00)	13 (43.33)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.29 Acceptability of decisions taken by the Nyaya Panchayats to the Residents

All the selected panchayats reported that decisions taken by Nyaya panchayats were much more acceptable to the people, because generally the decisions taken were impartial and people respected and trusted the member of the Nyaya Panchayats. Hardly any resident went against the panchayat decisions. Another reason is that Nyaya Panchayat members were easily available and

approachable and one could tell the truth to them. In PESA district all Panchayats emphasized on compromises but only one Panchayat reported the imposition of fine. (For details see tables 6.25, 6.26 & 6.27)

Table 6.25
Types of decision generally taken by earlier Nyaya Panchayats

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Compromises	10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)
2	Impose fine	01 (10.00)	09 (90.00)	04 (40.00)	14 (46.67)
3	Case forward to CJM or SDM	02 (20.00)	02 (20.00)	03 (30.00)	07 (23.33)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Table 6.26
Acceptability of Nyaya Panchayat decisions

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)
2	No	00 (0.00)	00 (0.00)	00 (0.00)	00 (0.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

Table 6.27
Reasons for acceptance of Nyaya Panchayats decision

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Cheep and fast	10 (100.00)	08 (80.00)	09 (90.00)	27 (90.00)
2	Easily available and approachable	10 (100.00)	09 (90.00)	10 (100.00)	29 (96.67)
3	People trust and respect the members of Nyaya Panchayat	08 (80.00)	08 (80.00)	08 (80.00)	24 (80.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.30 Relevance of Earlier Type of Nyaya Panchayat System in Present Day Context

About 83 percent of the selected panchayats reported that earlier type of Nyaya Panchayat System was very good and acceptable to the people and it will be relevant even in present time. 16.67 percent of the selected GPs reported that since now time have changed and people do not have much faith on the panchayats and even respect of elder have come down, therefore old system of Nyaya Panchayat have no relevance in the present time. They further believe that there should be some system, which may have more powers like our judiciary, and then it will be more relevant. In PESA districts all the Panchayats reported that earlier Nyaya Panchayat system was very good and it is workable in their areas.

Table 6.28
Nyaya Panchayat system workability in present

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	10 (100.00)	08 (80.00)	07 (70.00)	25 (83.33)
2	No	00 (0.00)	02 (20.00)	03 (30.00)	05 (16.67)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.31 Types of Powers should be given to Nyaya Panchayats

According to the elected members of Gram Panchayats to make the, Nyaya Panchayats fully functional the following needs to be done:-

- Judicial powers and jurisdiction should be increased. This was stated by 40 percent Panchayats of PESA districts and 30 percent Panchayats of Non-PESA districts.
- Amount of fine imposed is very meager, it should be increased appropriately. This is stated by 70 percent GPs of PESA districts and 50 percent GPs of Non-PESA districts.
- Limit in case of financial dispute should be enhanced from the present level of Rs. 2000/-
- Police should provide assistance when needed in complicated cases/disputes. Only one selected Panchayat of PESA and 30 percent of Non-PESA reported in this case.
- Honorarium should also be provided to Nyaya Panchayat members. This was stated by 70 percent Panchayats of PESA as well as Non-PESA districts.
- Eighty percent Panchayats of PESA district and 70 percent Panchayats of Non-PESA districts suggested that sufficient staff should be provided to the newly established Nyaya Panchayats.
- Free legal experts should be made available for consultation. This was stated by 70 percent Panchayats of PESA district and 80 percent by GPs of Non-PESA districts.

Table 6.29
Type of powers to be given to Nyaya Panchayats

Sr. no	Details	PESA	Non-PESA		Total
		Kinnaur	Kullu	Solan	
1	Its judicial power and jurisdiction criteria should be increased	04 (40.00)	02 (20.00)	04 (40.00)	10 (33.33)
2	Amount of fine should be increased	07 (70.00)	06 (60.00)	09 (90.00)	22 (73.33)
3	Financial limit should be raised in case of financial dispute and should be above Rs. 2000/-	05 (50.00)	05 (50.00)	07 (70.00)	17 (56.67)
4	Police should provide assistance when needed in complicated disputes	01 (10.00)	05 (50.00)	01 (10.00)	07 (23.33)
5	Honorarium should be provided to Nyaya Panchayat members	07 (70.00)	06 (60.00)	08 (80.00)	21 (70.00)
6	Sufficient staff should be provided	08 (80.00)	08 (80.00)	09 (90.00)	25 (83.33)
7	Free legal experts should be available for consultation	07 (70.00)	08 (80.00)	08 (80.00)	23 (76.66)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.32 Benefits of Nyaya Panchayats

The selected Gram Panchayats of PESA and Non-PESA districts listed the following benefits to the residents if Nyaya Panchayats are revived:-

- Sixty percent of selected Panchayats of each PESA and Non-PESA districts stated that Nyaya Panchayats will focus only on judicial matters; it will have considerable time at its disposal to settle the disputes.
- Half of the selected Panchayats of PESA district and three –fourth Panchayats of Non-PESA district reported that Nyaya panchayats will be cost effective and speedy, especially for the disadvantaged section of the society.
- Nyaya Panchayat members would be easily available and approachable as stated by 70 percent Panchayats of PESA district and 80 percent of Non-PESA district.
- No harassment at court and police station. This was stated by 50 percent GPs of PESA districts.
- No need to hire lawyers as stated by 60 percent GPs of PESA and 30 percent of GPs of Non-PESA district.
- Self-representation by the concerned parties.
- Nyaya Panchayat will reduce burden of courts as well as of gram panchayats which is already overburden with development and other work assigned to them.

Table 6.30
Benefits of Nyaya Panchayats according to Panchayats

Sr. no	Details	PESA	Non-PESA		Total
		Kinnaur	Kullu	Solan	
1	It will focus only on judicial matters and will spend considerable time to settle disputes	06 (60.00)	06 (60.00)	06 (60.00)	18 (60.00)
2	Cost effective and speedy justice	05 (50.00)	08 (80.00)	07 (70.00)	20 (66.67)
3	Nyaya Panchayats members would be easily available and approachable	07 (70.00)	09 (90.00)	07 (70.00)	23 (76.67)
4	No harassments at court and police station	05 (50.00)	01 (10.00)	02 (20.00)	08 (26.67)
5	No need to do lawyer	06 (60.00)	03 (30.00)	03 (30.00)	12 (40.00)
6	Self representation of parties	03 (30.00)	00 (0.00)	01 (10.00)	04 (13.33)
7	Reduce burden of courts as well as of gram panchayats which are over burdened with developmental and other work assigned to them	02 (20.00)	01 (10.00)	00 (0.00)	03 (10.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.33 Types of Infrastructure Required for Nyaya Panchayats

All the selected Panchayats of PESA and Non-PESA districts reported that following infrastructure is required for functioning of Nyaya Panchayats.

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

Table 6.31
Types of Infrastructure required for Nyaya Panchayats

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1.	Manpower	10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)
2.	Meeting Hall/Nyaya Panchayat Office	10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)
3.	Nyaya Sahayaks/Secretary	10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)
4.	Computer and Legal expert for advise	10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

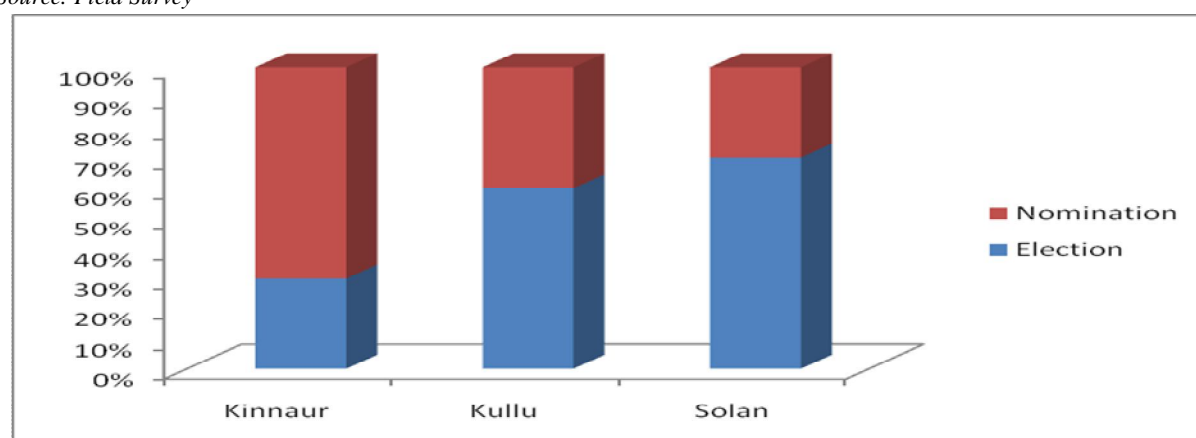
6.34 Procedure to constitute Nyaya Panchayats

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

Table 6.32
Procedure to constitute Nyaya Panchayat

Sr. no	Details	PESA	Non-PESA		Total
		Kinnaur	Kullu	Solan	
1	Election	03 (30.00)	06 (60.00)	07 (70.00)	16 (53.33)
2	Nomination	07 (70.00)	04 (40.00)	03 (30.00)	14 (46.67)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey



6.35 Does a copy of FIR is provided to the gram panchayat when any case is transferred to it by the police

All the selected Panchayats of PESA and Non-PESA districts admitted that police provide a copy of FIR to Gram Panchayat when any case is transferred to Gram Panchayats.

6.36 Should Nyaya Panchayat constitute a bench to deal a case?

All the panchayats are of the opinion that Nyaya Panchayat should constitute a bench to deal with the cases and the constituted bench should also have women, SCs and STs as its members.

6.37 Role of Women, SCs, STs and Elected members in solving disputes

Seventy percent selected Panchayats of Non-PESA districts and 80 percent GPs of PESA districts reported that women, SCs and STs Members of panchayats are playing very active role in solving disputes. Village people prefer to approach them rather than to Pradhan or Up-Pradhan.

Table 6.33
Role of women/SC/ST/ GP members in solving disputes

Sr. no	Details	PESA	Non-PESA		Total
		Kinnaur	Kullu	Solan	
1	No role	00 (0.00)	01 (10.00)	01 (10.00)	02 (6.67)
2	Limited role	02 (20.00)	03 (30.00)	02 (20.00)	07 (23.33)
3	Active role	08 (80.00)	06 (60.00)	07 (70.00)	21 (70.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.38 Maintenance of Records

As most of the cases are discussed by panchayats orally, 53 percent of the panchayats reported that they do not record such orally heard cases. The remaining 47 percent of the selected GPs reported that they make a proper record of the cases and take the signature of witnesses on these records. In PESA districts 60 percent of selected Panchayats did not make the record of the cases and neither took any signature or thumb impression of the concerned parties

Table 6.34
Panchayat record and signature/thumb impression of the concerned party

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	04 (40.00)	04 (40.00)	06 (60.00)	14 (46.67)
2	No	06 (60.00)	06 (60.00)	04 (40.00)	16 (53.33)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.39 Does Fee is charged for recorded case

Seventy percent panchayats reported that they don't charge any fee from the disputed parties. Forty percent Panchayats in PESA district reported that they do charge fee from the disputed parties. (See table 6.35)

Table 6.35
Fee charge for recording of case

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	04 (40.00)	02 (20.00)	03 (30.00)	09 (30.00)
2	No	06 (60.00)	08 (80.00)	07 (70.00)	21 (70.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.40 Issuing of Summons

All the selected Panchayats in PESA and Non-PESA districts reported that they issue summon to the person, against whom other party gives written complaint and that panchayat also charges summon fee from the party to whom summons are sent.

6.41 Action taken against a person who do not appear before Gram Panchayats on the date communicated through Summons

All the selected Panchayats reported that in such situation they refer the case to SDM/CJM or seek police intervention.

6.42 Does Panchayat take *ex-party* decision?

In a situation when one party deliberately do not appear before the panchayat despite repeated communications then 23 percent of the selected panchayats reported that they do give *ex-party* decision. The remaining Panchayats reported that in such a situation they refer the case either to police or court. No much difference was found on doing ex-party decisions in PESA and Non-PESA districts.

Table 6.36
Ex- party decisions of Panchayat

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	02 (20.00)	03 (30.00)	02 (20.00)	07 (23.33)
2	No	08 (80.00)	07 (70.00)	08 (80.00)	23 (76.67)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.43 Availability of Register of records with Surveyed Gram Panchayats

According to Himachal Pradesh Panchayati Raj Act, 1994, Panchayats have to maintain eight register exclusively for the purpose of dealing with the judicial functions. It was verified from the selected panchayats and findings are given as under:-

- All the selected panchayats have the register of civil suits, register of processes and summons of gram panchayats and receipt book.
- 66 percent Gram Panchayats were having register of criminal cases.
- 30 percent Gram Panchayats were having register of revenue proceedings.
- Only one panchayats have a register of execution of decree.
- Ninety percent Gram Panchayats were having register of recovery of fine.
- Not a single panchayat possesses register of diet money.

In record keeping there was not any significant difference between PESA and Non-PESA district.

Table 6.37
Record / Registers available with selected GPs

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Register of civil suit	10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)
2	Register of criminal cases	05 (50.00)	08 (80.00)	10 (100.00)	20 (66.67)
3	Register of revenue proceeding	03 (30.00)	04 (40.00)	02 (20.00)	09 (30.00)
4	Register of execution of decree	01 (10.00)	00 (0.00)	00 (0.00)	01 (3.33)
5	Register of recovery of fine	10 (10.00)	08 (80.00)	09 (90.00)	27 (90.00)
6	Register of diet money	00 (0.00)	00 (0.00)	00 (0.00)	00 (0.00)
7	Register of processes and summons of gram panchayats	10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)
8	Receipt book	10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.44 Community Panchayat (Biradari, Khangi etc) Working in Gram Panchayats Area

Ninety percent of the selected panchayats reported that community panchayats are working in their Gram Panchayat area. All the panchayats of district Kullu (Non-PESA) and Kinnaur (PESA) reported working of such panchayats in their Gram Panchayat areas.

The procedures adopted for justice delivery system by traditional Panchayat which is still prevalent in Kinnaur, Lahaul Spiti and Kullu is quoted as under

Devta institution and its judicial system: - The village Devta in Himachal Pradesh is not simply objects of worship. It rather, constitutes an institute which governs all social, cultural, moral, economic, religious and political life of the village folk. The Devta influence the village in many ways. Before the British period the village Devta had all the spiritual and temporal authority and source of all power and there was absolutely no necessity of a court or a judicial system. Every problem of an individual or of the society as a whole was decided by the verdict of the Devta whether through its spokesman 'Goor' or through its own indications. During British Rule and even today, civil and revenue (of course not criminal) cases pending in the court could be decided by resorting to the old tradition. In such a case the two parties agree before the court to settle their case by '*deo dhoya pina*' i.e. drinking water obtained after washing the Devta's idol. The Devta court appoints an oath commissioner. On the fixed date each of the parties takes one he-goat and accompanies the oath commissioner to the temple of Devta. On reaching there, first of all the goors of the Devta, in the presence of oath commissioner, the Kardar, Pujara and other attendants of Devta, warns both the parties of the dire consequence of taking a false oath. When both parties agree to face the consequences, the goor brings water after washing the idol of the Devta and recites mantras over akshats (unbroken grains of rice) placed in Kanse-ri-thali (plate made of bronze) with incense burning in a pot. He worships the Devta and after the puja is over he puts some "*akshats*" into the ears of both the he-goat brought by the parties. This is called '*Pochi Pana*'. The party whose he-goat first shake its body and drinks the water wins the case, although

the actual decision is read out by the Devta court on a fixed date in the presence of oath commissioner. The people are still sticking to follow the old traditions and they have force and sanction of social law. (*Myths, rituals, and beliefs in Himachal Pradesh By Molu Ram Thakur*)

Though traditional justice delivery system is still functioning yet, new generation which is mostly educated prefers formal system i.e. Nyaya Panchayats/courts for their disputes settlements as this system has legal sanctity and based on the principles of justice. Therefore formation of Nyaya panchayat has an impact on the traditional system.

Table 6.38
Presence of Community Panchayats in selected GPs

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	Yes	10 (100.00)	10 (100.00)	07 (70.00)	27 (90.00)
2	No	00 (0.00)	00 (0.00)	03 (30.00)	03 (10.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.45 Reasons for Low registration of the Cases

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

- Panchayats don't want to register the case in order to maintain dignity and harmony among the parties, because most of the people don't want that their case come in the panchayat records. This is stated by 40 percent GPs of PESA districts and only one GP of Solan district.
- In many cases both the parties are interested in solving the dispute verbally, because it is hassle free and no written formalities are required. This is stated by all the Panchayats of Kullu (Non-PESA) district.
- In order to avoid various hassles of judicial proceeding and written work, Gram Panchayats prefer not to register the case. This is stated by 30 percent GPs of PESA districts.
- In order to maintain their supremacy some members, of the panchayat prefer solving the case on the spot rather than registering them in panchayat record.
- Sixty percent of the Panchayats of PESA districts reported that people prefer family disputes should not appear in written records of the panchayats.

Table 6.39
Reasons for the less registration of cases by panchayats

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	In order to maintain dignity and harmony among parties	04 (40.00)	00 (0.00)	01 (10.00)	05 (16.67)
2	Both parties prefer to solve the case verbally on spot and do not want their case to be recorded in the register	05 (50.00)	10 (100.00)	03 (30.00)	18 (60.00)
3	Some times in order to avoid hassles of judicial proceeding and written work, GP do not register the cases	03 (30.00)	05 (50.00)	07 (70.00)	15 (50.00)
4	In order to maintain their supremacy over GP resident, GP members whether Pradhans or ward members prefer to solve the cases on the spot rather then registering them	01 (10.00)	01 (10.00)	04 (40.00)	06 (20.00)
5	People prefer that family dispute should not come in written form	06 (60.00)	05 (50.00)	07 (70.00)	18 (60.00)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

6.46 Reasons for Compromises in Many Cases

During discussion with panchayats and other members of the civil society, it is observed that the focus of panchayats is always on the compromises, rather than advising parties to do some other action. Followings were the reasons reported by panchayats for this:-

- People have faith and trust in the panchayats.
- Most of the time both the parties are satisfied from the decision of gram panchayats.
- People know that there are so many hassles in approaching court, lawyers and police station.
- Parties/people do not wish to take their cases above the level of gram panchayats as they have to maintain their self-respect in the society.
- There is some kind of social pressure on the parties which forces them to do compromise at the panchayat level.
- Most of the cases are of minor nature, for which compromise is the best solution.

Table 6.40
Reasons for compromises in many cases

Sr. no	Details	Kinnaur	Kullu	Solan	Total
1	People have faith and trust in the panchayat	09 (90.00)	09 (90.00)	04 (40.00)	22 (73.33)
2	Both parties are mostly satisfied with gram Panchayat decisions	04 (40.00)	07 (70.00)	07 (70.00)	18 (60.00)
3	GPs prevent the hassles of court, lawyer and police station	01 (10.00)	05 (50.00)	07 (70.00)	13 (43.33)
4	Parties do not wish to take their cases above the level of gram panchayat as they have to maintains their self respect in society. There is always some kind of social pressure on the parties which force them to do compromise at the panchayat level	03 (30.00)	02 (20.00)	05 (50.00)	10 (33.33)
5	Mostly the nature of the case is such that both parties came to compromise and the reason for this is that most cases are of minor disputes	02 (20.00)	03 (30.00)	02 (20.00)	07 (23.33)
Total		10 (100.00)	10 (100.00)	10 (100.00)	30 (100.00)

Source: Field Survey

Chapter 7

Disputes and their Settlements

Judicial Function and Powers of Gram Panchayats have been prescribed in chapter-IV of Himachal Pradesh Panchayati Raj Act, 1994.

7.1 Judicial Cases

During the year 2005-06, there were 5151 judicial cases with Gram Panchayats out of which 3749 (72.78 percent) cases were decided. In the year 2007-08 the number of such cases increased to 5204 out of which 3511 cases (67.47 Percent) were decided. The outstanding judicial cases with panchayats further increased to 5882 (including 1693 pending cases of the previous year) in 2008-09 out of which only 2281 (38.80%) cases were resolved. This shows that where as the number of fresh cases reported to panchayats are increasing every year, the number of cases decided by the panchayats is declining, both in terms of numbers as well as percentage to total cases. As a result the number of pending cases with panchayats is increasing every year. The district wise break up of cases with the panchayats and cases decided, both in absolute numbers as well as percentage for the years 2005-06, 2007-08 and 2008-09 are provided in table 7.1.

Table 7.1
District wise total and decided cases (2005-06 & 2007-08)

District	Village in GP	Judicial Functions								
		(2005-06)			(2007-08)			(2008-09)		
		Total Cases	Decided	%	Total Cases	Decided	%	Total Cases	Decided	%
Bilaspur	934	835	428	51.26	549	357	65.03	451	280	62.08
Chamba	4276	234	154	65.81	192	110	57.29	2197	119	5.42
Hamirpur	1661	1696	1462	86.20	1766	1484	84.03	1197	945	78.95
Kangra	3650	458	373	81.63	257	170	66.15	202	123	60.89
Kinnaur	162	113	90	79.65	207	95	45.89	198	21	10.61
Kullu	2915	150	93	62.00	264	142	53.79	280	145	51.79
Lahul Spiti	292	25	17	68.00	9	8	88.89	9	8	88.89
Mandi	3109	964	690	71.65	1083	684	63.16	771	386	50.06
Shimla	2966	298	177	59.40	296	127	42.91	164	77	46.95
Sirmaur	1469	27	12	44.44	48	28	58.33	23	7	30.43
Solan	2502	301	214	71.10	447	257	57.49	287	126	43.90
Una	690	50	39	78.00	86	49	56.98	103	44	42.72
Total	24622	5151	3749	72.78	5204	3511	67.47	5882	2281	38.80

Source: Year-wise reports on the "Finances of gram Panchayats in the state of Himachal Pradesh (2005-06, 2007-08 & 2008-09)

Note: No data is available for the year 2006-07.

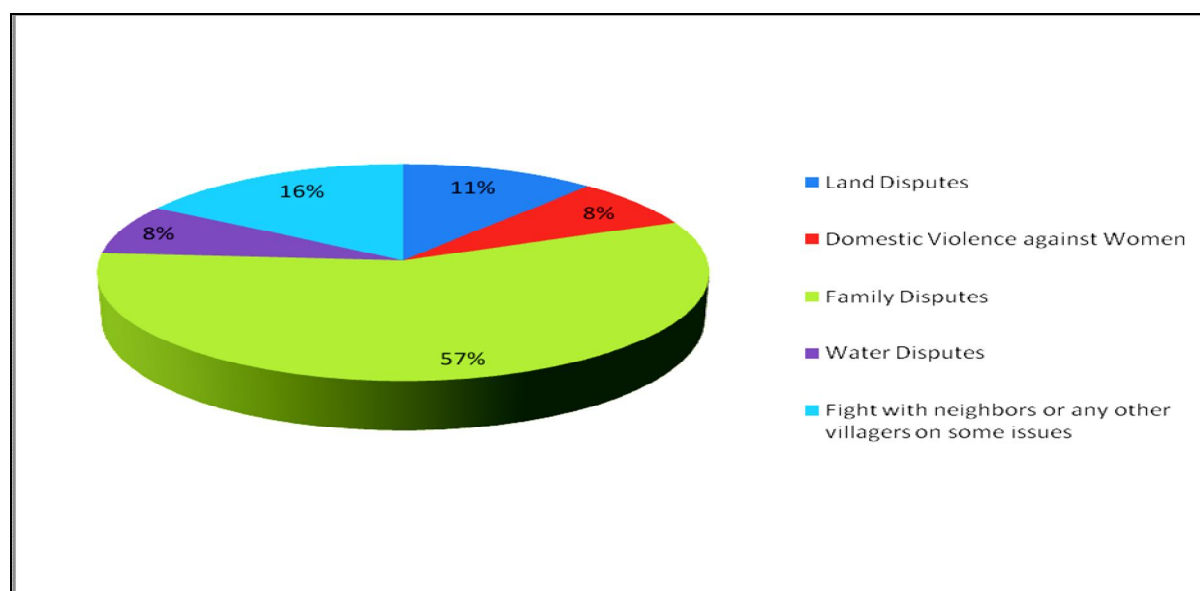
7.2 Type of Disputes in Selected Panchayats

In this study an effort has been made to know the most common types of disputes which are reported to the Panchayats for resolving. The data from the selected Panchayats reveal that about 57% of the total reported cases relate to family disputes, 16% to quarrel with neighbors or co-villagers and 11.4% to land disputes. Domestic violence against women and disputes relating to water sharing accounts for 7.5% in each case. District wise detail of these disputes is provided in table 7.2. Gram panchayat wise detail on types of disputes is also provided in the *Annexure-III*.

Table- 7.2
Type of Disputes

Sr. no.	Type of Disputes	Kinnaur	Kullu	Solan	Total
1.	Land Disputes	5 (5.61)	10 (15.62)	6 (19.35)	21 (11.41)
2.	Domestic Violence against Women	10 (11.23)	4 (6.25)	0	14 (07.60)
3.	Family Disputes	51 (56.18)	37 (57.81)	17 (54.84)	105 (57.06)
4.	Water Disputes	10 (11.23)	0 (0.00)	4 (12.90)	14 (07.60)
5.	Quarrel with neighbors or co- villagers on some issue	13 (14.61)	13 (20.31)	4 (12.90)	30 (16.30)
	Total	89 (100.00)	64 (100.00)	31 (100.00)	184 (100.00)

Source: Field Survey



7.3 Nature of Disputes & Parties involved in Disputes

The above mentioned cases can also be classified as civil, criminal and revenue related. Family disputes and water disputes are civil in nature whereas domestic violence against women and quarrel with neighbor or co-villagers on some issue are of criminal nature. Land disputes are classified as revenue related.

Table -7.3
Nature of Disputes

Nature of Disputes	Kinnaur	Kullu	Solan	Total
Civil	61 (68.54)	37 (57.81)	21 (67.74)	119 (64.67)
Criminal	23 (25.84)	17 (26.56)	4 (12.90)	44 (23.91)
Revenue Related	5 (5.62)	10 (15.63)	6 (19.35)	21 (11.41)
Total	89 (100.0)	64 (100.0)	31 (100.0)	184 (100.0)

Note: Figures in brackets are percentage to total cases in the districts.

Table 7.3 shows that out of the total 184 cases 119 (64.67%) are of civil nature, 44 (23.91%) of criminal nature and the remaining 21 (11.41%) cases are revenue related. At the district level the percentage of civil cases is almost equal in Kinnaur (68.54%) and Solan (67.74%) districts. Similarly the percentage of criminal cases is almost equal in Kinnaur (25.84%) and kullu (26.56%) districts. The revenue related cases however varies from district to district ranging from 5.62% in Kinnaur district to 19.35 % in Solan district.

Parties involved in Disputes

Although no data is available with regard to the nature of parties involved in disputes, yet some inferences about it can be drawn from the nature of disputes because the nature of parties involved in disputes is generally associated with the nature of disputes. For example land disputes are generally between the neighbouring land owners having a common boundary or between the co-villagers. It can also be between land owner and his tenant or between the land seller and land purchaser or between the legal heirs of the land owner after his death.

In cases of domestic violence against women the persons involved are generally husband and wife or in-laws and daughter-in-law. However in certain cases parents of a grown up girl or her brothers may be involved in committing violence against her for an act which is not to the liking of her parents or brothers or which is against the social norms of the society.

Family disputes are generally between brothers or all the siblings who are co-sharer of parental property (mainly land and house). The dispute emerges at the time of distribution of the parental property. The dispute between husband and his estranged wife also falls in the category of family disputes.

The water related disputes are mainly of two types, that is, either about sharing of water among the farmers or regarding the alignment of water courses. In both the cases the parties involved are the farmers, especially the land owners.

The nature of parties involved in the disputes classified as quarrel with neighbor or co-villagers on some issue is self explanatory. However the neighbours or co-villagers involved in dispute may be from the same caste or different castes, from same gender or different gender, from the same socio-economic strata or different strata, etc.

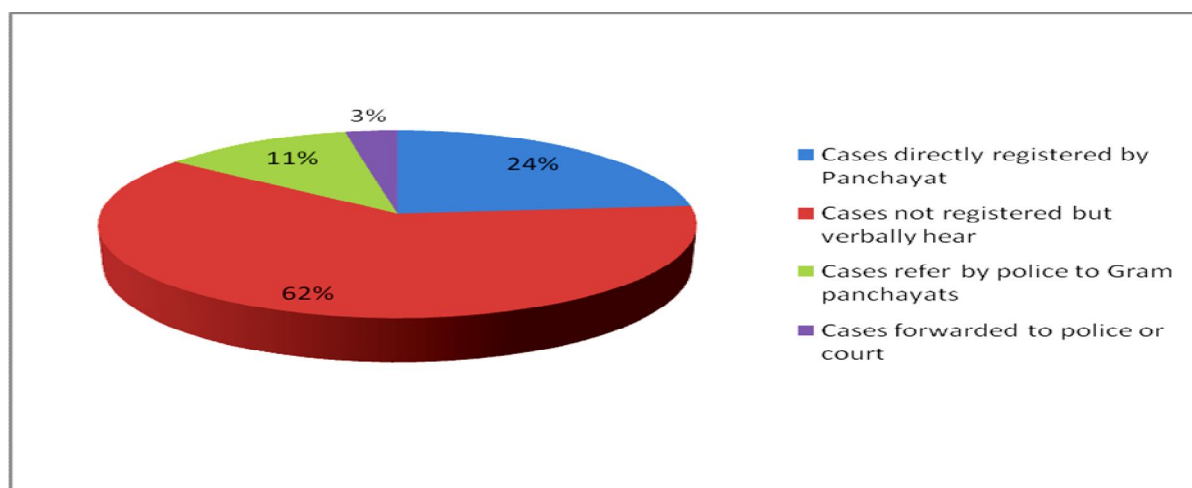
7.4 Registration of Cases

The data revealed that in the surveyed districts only about one fourth of the total reported cases were directly registered by the Panchayats and a proper procedure was adopted to settle these cases. About 12% of the cases were referred to the Panchayats by the police. The Panchayats also referred about 3% of the cases, which they could not resolve, to the police. This shows that about 60% of the cases were not registered by the Panchayats. These cases were verbally heard. There are many reasons for low registration of cases. Firstly Panchayats do not have sufficient staff. Settlement of registered cases requires many formalities, therefore people as well as Panchayats prefer settlement of cases verbally. Many persons also do not want to bring their disputes on record. There fore, panchayat prefer to settle majority of the cases verbally. About 12 percent of total cases, occurred in selected panchayats were referred by police to gram panchayats. Six cases in district Kullu were sent to police or court because the parties involved in disputes failed to reach any compromise. (For district wise detail see table-7.3). Panchayat wise detail regarding registration of cases is given in *Annexure-IV*.

Table- 7.4
Nature of cases

Sr. no.	Nature of Registration	Kinnaur	Kullu	Solan	Total
1.	Cases directly registered by Panchayat	15 (16.85)	24 (34.28)	12 (38.71)	51 (26.84)
2.	Cases not registered but verbally heard	68 (76.40)	34 (53.12)	15 (48.39)	117 (61.58)
3.	Cases referred by police to Gram panchayats	6 (6.74)	12 (18.75)	4 (12.90)	22 (11.58)
Total		89 (100.00)	70 (100.00)	31 (100.00)	190 (100.00)

Source: Field Survey



7.5 Gram Panchayats Decision

In 84 percent of total cases panchayats succeeded in persuading parties involved in disputes for compromises. In 12 percent cases fines were imposed on the defaulting parties. About 3 percent cases were referred to police or court by the Gram Panchayats and about 1 percent of the cases remained pending with the panchayats (For detail see table-7.5 and Figure)

Table- 7.5
Gram Panchayats decision on disputes

District	Total Cases	Compromises	Fine imposed	Case forward to court or police station	Cases Pending with GP
Kinnaur	89 (100.00)	77 (86.52)	12 (13.48)	0 (0.00)	0 (0.00)
Kullu	64 (100.00)	46 (71.87)	10 (15.62)	6 (9.37)	2 (3.12)
Solan	31 (100.00)	31 (100.00)	0 (0.00)	0 (0.00)	0 (0.00)
Total	184 (100.00)	154 (83.69)	22 (11.96)	6 (3.26)	2 (1.08)

Source: Field Survey

CASE STUDY FROM THE FIELD SURVEY IN DISTRICT KINNAUR VILLAGE BARI

This case is related to a land dispute, falling under village Bari, Block Nijjar of district Kinnaur, filed by one Mr. Narjipur, s/o Deyang, during June 2009. It was filed by him (viz. Plaintiff), against Mr. Narsukh (viz. Defendant), before the Pradhan (President) of Gram Panchayat. Mr. Narjipur complained that his land has been usurped by Mr. Narsukh. The land, originally owned by Mr. Narsukh, was bone of contention between the two parties. The plaintiff, in his first letter to the Pradhan, dated 09/06/2009, alleged that some part of the total land purchased by him from the defendant (and also signed by witnesses) was shown in records as his own land (by the defendant). When the plaintiff started cultivating the land, the defendant, out of despair, started collecting/amassing Gobar (animal dung) in order to level that part of land with Gobar. When plaintiff tried to discuss and sort out that matter with defendant, the latter began quarreling with him and warned him about the wrath of the village Devta which he may have to face later on. Left with no other alternative the plaintiff filed a case in Gram Panchayat.



DISCUSSION WITH PRI MEMBERS IN GP BARI, KINNAUR .(H.P)

The GP, decided to call witnesses on a particular day to verify the statement/petition and claims put forward by both the parties. After having a detailed discussion the members of the GP decided to send summons to the Defendant for next hearing in Gram Panchayat meeting on 23/06/2009 in the village. On that day the defendant placed before the Panchayat his point of view regarding the case, but the Gram Panchayat members were not satisfied. The Defendant was asked to bring his witnesses on the next hearing on 08/07/2009. Since on that day no witnesses turned up, the parties were asked to appear before the Gram Panchayat on 23/07/2009 for final hearing. On the last hearing, after considering arguments of both parties and hectic discussion, the senior members of Gram Panchayat, Mr. Vinod Kumar, President, Mr. Sher Singh, Vice-president, Mr. Rakesh Kumar, Member, decided that the Defendant would pay compensation to the Plaintiff, for the land usurped, within a short period. The Panchayat members also warned both parties, not to enter any such type of land dispute in future. The meeting ended with both parties agreeing to this decision.

Focus Group Discussion

Focus group discussions were organized with the elected representatives at District Solan and District Kullu in which 80 participants discussed their views and gave suggestions. Inferences drawn from them are as under:

- Only few cases are registered with Gram Panchayats. Most of the cases are verbally discussed. Most cases are settled through compromises. Such cases mostly relate to land disputes (irrigated and Non-irrigated), and problems within the family, especially domestic violence
- During the year 2008-09, 25 cases came up for hearing in all GPs of Dharmpur block. Out of these only one case was registered. The unregistered cases were amicably settled in peaceful atmosphere. The single case which got registered is still not settled and is presently pending in the court.
- Lack of sufficient awareness among the GPs members about the Nyaya Panchayat- rules
- Imparting of training to GPs members relating to judicial aspect has become quite necessary.
- There is a suggestion for imposing more fines and penalties.
- The tendency to disobey the orders of the Gram Panchayats is more common among the people involved in the disputes. Such persons are mainly responsible for delay in the settlement of cases.
- In the cases where the defendants are a female, the gram Panchayat tries to settle the case verbally through mutual agreement between plaintiff and defendants.
- Cases relating to revenue collection are coming up, but are less in number.
- The Sarpanches of GPs do not want case to be appealed in the court because in such cases they are compelled to be present in the courts/sub-courts with all the records which they feel is a type of harassment. They argue that munshis or sub judges should not call Panchayats while hearing any appeal in court.
- All participants were in favour of separate Nyaya panchayats as GPs are already overburdened with developmental work
- All participants wanted sufficient infrastructure and adequate staff for effective functioning of Nyaya Panchayat.
- Participants suggested that for the time being (until the formation of Nyaya panchayat) a judicial committee at each Panchayat level can be constituted which should comprise of members of elected GPs, village elders, women and SCs, STs and other eminent person of the village.
- Eighty percent participants suggested that minimum age of the members of the judicial committee should be 30 years and maximum 70 years.
- Honorarium to the members of newly created Nyaya Panchayats should also be given as the elected Panchayat members are getting.



Focus group discussion, District Solan



Focus group discussion, District Kullu

Enforcement of Panchayat decision by the High Court of Himachal Pradesh

- The case of the petitioners is that having been deserted by the respondent, they filed an application under Section 125 of the Code of Criminal Procedure, 1973 (Cr. P.C. in short) for grant of maintenance in the Court of Addl. Chief judicial Magistrate, Theog on 7-5-1996, who referred the matter to Gram Panchayat, Basa, Tehsil Theog, District Shimla, on 5-6-1996 for decision. The Gram Panchayat passed order dated 6-6-1997 granting maintenance of Rs. 300/- per month each to petitioners Nos. 1 and 2 and Rs. 200/- per month to petitioners Nos. 3 and 4. In all, an amount of Rs. 1000/- per month was granted as maintenance to the petitioners.
- On the failure of the respondent to pay the maintenance as per order of the Gram Panchayat, the petitioners filed an application for execution of the order of the Gram Panchayat dated 6-6-1997 and asked for payment of arrears of maintenance allowance amounting to Rs. 3400/-. The Gram Panchayat asked the respondent to deposit the arrears of maintenance allowance within ten days, failing which the matter would be transferred to the Judicial Magistrate 1st Class. The respondent failed to appear before the Gram Panchayat and the application for execution was sent to the Judicial Magistrate, Theog for further action showing its inability to execute its order.
- The petitioners again filed an application under Section 125, Cr. P.C in the Court of the Additional Chief Judicial Magistrate, Theog on 9-4-1999 on the ground that since the earlier order passed by the Panchayat could not be executed, fresh order of maintenance may be passed by the said Court. The respondent filed reply to the petition and after recording evidence of the parties, the Addl. Chief Judicial Magistrate passed orders dated 17-7-2001, holding that the petition was not maintainable as the order of Panchayat granting maintenance still existed and the petitioners have not assailed the same. Hence the present petition.
- Court observed that Sub-section (2) of Section 32 specifically provides for application for maintenance under Section 125, Cr. P. C. by a Gram Panchayat, which may grant maintenance allowance not exceeding five hundred rupees per month without prejudice to any other law for the time being in force in this behalf.
- Court further observed that a perusal of Section 71 shows that it pertains to the decree or order passed in civil matters because it refers to the property of the defendant. In case of any difficulty in executing a decree, a Gram Panchayat may forward it to the Sub-Judge, who is required to execute the decree as if it were a decree passed by him as required to execute the decree as if it were a decree passed by him as provided under sub-section (2). Though the “order” does not occur in sub section (2), yet it can be read therein as this sub-section is in continuation of Sub-section (1). So far criminal matters are concerned, Section 72 provides for recovery of fines as the Gram panchayat can only impose a fine and that too not exceeding one hundred rupees as provided under Section 33.
- Therefore, if after issuance of notice by the Gram Panchayat, the defaulter does not come forward to pay the amount of maintenance, it is difficult for the Gram Panchayat to execute the order of maintenance and the only course left for it is to forward the order of maintenance for execution to the Judicial Magistrate in whose jurisdiction it is situated.
- Therefore the Court observed that the Gram Panchayat had rightly forwarded its order of maintenance for execution to the Addl. Chief Judicial Magistrate, Theog, but he took cognizance of it in his capacity as Sub-Judge and wrongly passed the order that the Gram Panchayat had no powers to forward the order of maintenance passed by it for execution to his Court. Even while passing the second order dated 17-7-2001 dismissing the second petition, the Addl. Chief Judicial Magistrate, has not cared to examine the provisions of law, with the result that the petitioners even after obtaining the order of maintenance in their favour as far back as on 6-6-1997 could not get a penny as maintenance from the respondent and the very purpose of the provisions of Section 125, Cr. P. C. is defeated.

Source:2003CriLJ237

Chapter 8

Comparison with other States Act

8.1 Structure and Composition

The structure and composition of NPs vary from one state to another. Many of the states have adopted election as a mode of constituting NPs while some combine nomination with election. In Himachal Pradesh the Gram Panchayat (GP) members are directly elected. A three-member bench of a GP as appointed by the Pradhan or Up-Pradhan is empowered to exercise judicial functions. In Punjab similarly the GP, which is directly elected, exercises judicial functions. In Jammu and Kashmir the prescribed authority nominates the members of the Panchayati Adalat out of a panel prepared and recommended by the *Halqa* Panchayat out of its electorate. In Chhattisgarh the Gram Nyayalaya consists of ordinary residents of the circle with requisite qualifications as nominated by the Janpad Panchayat unanimously. In Uttar Pradesh the members of the NP are appointed by the prescribed authority Sub-Divisional Officer from amongst the members of the GP. The Sarpanch in accordance with the directions issued by Director of Panchayats constitutes a Bench consisting of five Panches each. In case the requisite number of GP members is not available the Gaon Panchayat proposes names from amongst the members of the Gaon Sabha. The District Magistrate then fills the vacant seats from the names proposed. In Bihar the members of the Gram Katchahry are elected directly.

The principle of reservation has not been taken into account by some states when they constitute judicial bodies. For example in Himachal Pradesh, Uttar Pradesh, Jammu and Kashmir and Punjab there is no specific provision for reservation in the body or bench exercising judicial functions though reservation has been provided in the executive body. But contrary to this Chhattisgarh and Bihar provide for proportional representation of SCs, STs and OBCs along with one-third reservation for women in the bodies exercising judicial functions. **The special provisions mandating proportionate representation to women, SCs, STs, and OBCs for the GP should be applicable to the NPs. The same should be made applicable to the benches also. This will not only empower the marginalized but also enhance credibility and legitimacy of the Panchayati Raj Institutions.**

In Himachal Pradesh the Pradhan and in his absence the Up-Pradhan of the GP shall form a bench of three Panches to exercise judicial functions taking care that no panch has any interest in the dispute. Jammu and Kashmir provides that a Panchayati Adalat shall comprise of five members, three of whom shall form the quorum. In Chhattisgarh the GN consists of seven members and the prescribed quorum is three for any proceeding. **As per the state acts each State determine the size of its bench and Quorum depending on the population of the area covered and the workload so that the NP is easily accessible to the seekers of justice.**

In case of minimum age limit of NPs members there are variations. In Himachal Pradesh, Bihar and Punjab the minimum age for being a member of a NP is twenty-one years. Whereas in Chhattisgarh it is forty-five years, in Uttar Pradesh and Jammu and Kashmir it is thirty years. **Besides many other qualities, village elders are held in respect for their just, mature and**

dispassionate approach to all matters of the village. The same are possibly the most important qualification of a NP member. Majority of the Acts prescribed that a person should have attained the age of 21 years to be eligible for membership to a Panchayat as well as the Nyaya Panchayat. Some states have legislated for a minimum age of 30 years to qualify as a member of the NP. But none of the states provide for an upper age limit. **In the focus group discussion the members unanimously suggested an age of 30 and 70 for minimum and maximum respectively.**

Himachal Pradesh with the exception of Chhattisgarh is the only state where law is quite exhaustive on disqualifications. Grounds mentioned include-disqualifications under law governing election to the state legislature, conviction of a moral turpitude offence, guilty of corrupt practices or convicted of an electoral offence under the Act, has encroached on any land belonging to State Government, Municipality, Panchayat or Cooperative, disqualified for appointment in public service, registered as Habitual Offender, has not paid or is in arrears of any Panchayati tax, has any due towards a Panchayati Fund or has retained any money of the fund, disqualified by any other State law, convicted under the Protection of Civil Rights Act, 1955, etc. Similarly, Chhattisgarh by extending the application of the disqualifications of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (No. 1 of 1994) to GN deals with the issue satisfactorily. Bihar has common grounds of disqualifications for the GP as well as the Gram Katchahri. In comparison in Jammu and Kashmir the disqualification is limited to only two grounds- being a Sarpanch, Naib-Sarpanch or a Panch and employed by the Government or any local body or corporation.

In Jammu and Kashmir there is a Panchayat Adalat for each Halqa. The Halqa is determined in such a manner that the population of any Halqa does not exceed 3,000 in hilly areas and 4,500 in plain areas. In Himachal Pradesh there is a GP for a GS consisting of a village or group of contiguous villages with a population not less than one thousand and not more than five thousand. In Punjab a GP is formed for every Sabha area, which consists of any village or group of contiguous villages with a population of not less than two hundred. In Bihar a Gram Katchahry is established for every GP. A GP comprises of a village or group of contiguous villages or part thereof with a population within its territory, as nearly as seven thousand, excepting the areas falling in the divisions of North Chotanagpur, South Chotanagapur, Palamau and Santhal Paraganas wherein as far as possible the population shall be five thousand. Further, each Panch shall represent a population of five hundred. In Uttar Pradesh there is a NP in every circle, which is established by the District Magistrate as directed by the Director of Panchayats. Similarly, in Chhattisgarh the State Government may declare any area comprising ten or more GP to be a circle and there is a NP for every circle. In Jammu and Kashmir, Bihar, Chhattisgarh and Uttar Pradesh judicial functions are exercised by the Nyaya Panchayats, which is separate and independent of the administrative wing. In Punjab and Himachal Pradesh there is no such distinction, members of the GP exercise judicial functions. **Himachal confers powers on the Government to increase the limit of pecuniary jurisdiction upto a maximum provided in the Acts. Some also contain provisions that the NPs can deal with matters above the prescribed monetary limit if the**

parties to the dispute express consent. Chhattisgarh does not have either of these provisions. Both provisions have merit and need to be retained.

Jurisdiction in Civil and Criminal Matters

In Himachal Pradesh Pecuniary Jurisdiction of Nyaya Panchayat in civil matters is two thousand rupees and two hundred fifty rupees in criminal matters. In Uttar Pradesh the pecuniary jurisdiction in civil matters is hundred rupees while in criminal matters it is fifty rupees. In Bihar it is ten thousand rupees for both-civil and criminal matters. In Chhattisgarh, it is thousand rupees in civil matters and five hundred for criminal. In Punjab it is five hundred rupees in civil and revenue matters and in Jammu and Kashmir in civil matters it is three thousand rupees. The issue of jurisdiction has always been linked to the pecuniary value of the matter. Ridiculously low pecuniary limits deprived the NP of any relevant role in the village society eroding the very respectability and legitimacy of the institution. Though recent amendments have enhanced pecuniary jurisdiction considerably it is still quite low in the context of the current purchasing power of the rupee.

In states like Jammu and Kashmir, Chhattisgarh and Bihar the NP can impose a fine upto rupees one thousand, whereas in Himachal Pradesh a fine of maximum of Rs.100 only can be imposed. Only in Bihar, in case of default in payment of fine, the Gram Katchahry can sentence a person to a simple imprisonment not exceeding fifteen days. Himachal Pradesh, Chhattisgarh and Jammu & Kashmir Acts provide for attendance of the accused. If the accused absconds or fails to appear on the date of hearing before the NP, in Chhattisgarh and Himachal, it shall report the matter to the nearest Magistrate, who shall issue a warrant for the arrest of the accused. In J & K an application to this effect can be made to the Tehsildar who shall compel the attendance of the accused. The GN in Chhattisgarh can also file a complaint under section 173 of IPC, 1860 if a person refuses to receive and sign summon or notice issued by it without reasonable reason. While in Himachal a complaint of such refusal can be made to a Magistrate and is punishable with fine that may extend to Rs.25. Himachal Pradesh and Punjab grant extremely restricted jurisdiction in revenue matters. **Petty revenue jurisdiction especially as to mutations, boundary disputes, correction of records needs also to be granted to the NPs so that villagers do not have to travel too far to settle such matters. Presently very few NPs have the jurisdiction over revenue matters. It is suggested that a Revenue Officer be deputed to sit along with the bench whenever there is a case relating to revenue matters as it requires looking into records and is technical in nature.**

8.3 Execution of decisions

With regard to the execution of a decree in civil matters each state has made different rules. In Himachal, in case of any difficulty in execution the Panchayat can send the decree to the Sub-Judge who shall execute the decree as if it were a decree passed by him. Similarly, to recover fines a request may be sent to the Judicial Magistrate or to Sub-Divisional Judicial Magistrate. In Chhattisgarh a decree of the GN is deemed to be a decree passed by the Civil Court and is executed in the manner by the court having jurisdiction to execute that decree. However, if the GN finds it difficult to execute a decree, it can be sent to the Civil Court of competent jurisdiction. In J&K the decree is to be executed by the District Officer and to facilitate the speedy disposal of

execution the Director, rural Development may direct the Inspector Panchayats, at the Headquarters of each Block to function as “Parokar” in addition to his duties.

But in practice, Nyaya Panchayats do not possess adequate power to execute decrees or recover fines. For this the competent authority is the munsif in civil cases and the sub-divisional Magistrate in criminal cases. **A simple and effective mode of execution of the order of NPs is necessary. The nature of execution would depend on the relief granted by the decision. To give teeth to the provision it should be made obligatory on the revenue and the police department to provide all assistance to the NP in furtherance of the execution. Any non-cooperation on the part of the authorities should be considered as dereliction of duty under service rules.**

8.4 Miscellaneous

It is to be noted that the Nyaya Panchayat in Himachal Pradesh, Punjab, Chhattisgarh, Bihar, Jammu & Kashmir are competent to accord a compromise between parties. The same is applicable to criminal offences too. It can be seen that Nyaya Panchayats are conciliatory rather than adjudicatory in nature. It is only when they fail to bring about a compromise amongst the disputants they opt for judicial course. Moreover their acceptance in society was not only due to the fact that they existed from time immemorial but also that they continued to be functionally relevant to society at all time. These are due to the fact that people in general accept its decisions and are willing participants. **In Himachal Pradesh a decree or order in any suit or case or proceeding is final, subject to only the appeal procedure.** An appeal can be made to the Judicial Magistrate/Sub-Judge. Bihar is an exceptional case wherein appeal is made to full bench of Gram Katchahry. It would be best to have a limited revision jurisdiction to correct errors of law and to prevent miscarriage of justice. However, it should not be allowed to replace its own decision in the place of the NP or interfere with decision for any other reason. Such a revision petition should lie to the nearest district court or session’s court.

Some states stipulated educational criteria to become members of Nyaya Panchayat. But Himachal Pradesh did not lay down any such regulations with regard to educational qualifications. Jammu and Kashmir merely requires a person to be literate where as Chhattisgarh insists on matriculation as a minimum educational qualification, but for SC, ST, and women some relaxation is given by lowering it to passing of the fifth standard. On the non-availability of such qualified persons there are further relaxations. In Uttar Pradesh requisite qualification is the ability to read and write in Devnagri script. In Bihar and Punjab also **there are no prescribed educational qualifications.**

In a democratic set up where education and literacy levels are varying to a great extent throughout the country it would perhaps be difficult to set any minimum qualification level as a prerequisite to be a member of NP. However at the same time it needs to be emphasized that the ability of a member to read and write in their regional language would be a great asset. This will not only help in upgrading the whole system but also gain respect for the

institution in the eyes of the villagers. No doubt Education will help members to conduct the affairs more confidently, independently and impartially.

In states like Himachal it confers powers on the Government to increase the limit of pecuniary jurisdiction upto a maximum provided in the Acts. Some also contain provisions that the NPs can deal with matters above the prescribed monetary limit if the parties to the dispute express consent. Presently jurisdiction is limited to matters concerning movable properties only. Panchayats should be granted powers to deal with all local matters concerning, village land and property- common or personal- inclusive of possession, ownership, tenancies, encroachments, boundaries, use, easements, etc; water- irrigation or personal use, right to draw water from wells/ taps/ tubewells or any other common source, etc., irrigation, cattle, forest, etc. As to criminal jurisdiction the limitations have to be kept in mind. In some acts there is the mandate that no person who is arrested shall be denied the right to be defended by a legal practitioner and the second is the lack the manpower or infrastructure to either arrest or confine or imprison a person. Yet another hurdle is the effectiveness in exercising criminal jurisdiction. The fine that can be imposed is low. To give any credence or seriousness to their power the limits of this amount need to be enhanced substantially. Petty revenue jurisdiction on mutations, boundary disputes, correction of records need also to be granted to the Panchayats so that villagers do not have to travel too far to settle such matters. A law expert may be nominated to the bench which can at least once in a month deal with revenue matters and decide on complicated civil and criminal cases as it requires looking into various aspects of law. It is of utmost importance that all jurisdictions granted should be exclusive. Lack of exclusivity is one of the primary reasons that have led to the ineffectiveness of the present institution. To facilitate the speedy disposal of execution the panchayat can send the decree to the Sub- Judge who shall execute the decree as if it were a decree passed by them. Similarly, to recover fines a request can be sent to the Judicial Magistrate or to Sub-Divisional Judicial Magistrate. This has not become effective because of lack of co-ordination between the lower courts and panchayats. Nyaya Panchayats by nature have been conciliatory rather than adjudicatory. Their acceptance in society was not only due to the fact that they existed from time immemorial but also that they continued to be functionally relevant to society at all time. This in turn was due to the fact that people in general could participate and understand the proceedings due its simplicity. Panchayats always try for a compromise and that process involves consultation with village elders and 'wise men'. Conciliatory proceedings should not be tied down to any particular form or manner. The Panchayats should evolve their own procedure as per the circumstances of each case. However it cannot be denied that the procedure to be followed by them should be in compliance with well-established principles of natural justice as well as fulfill all constitutional requirements.

Best Practices in other States Acts

With the comparison of other states act, it is clear that there are some deficiencies in the performance of judicial functions in Himachal Pradesh. Induction of the relevant sections from other acts and framing rules accordingly can help to redeem such lapses to certain extent.

- The prime necessity here is the constitution of separate Nyaya Panchayats. Here the experiences of Bihar and Chhattisgarh can be taken into account where judicial functions are exercised by Nyaya Panchayats which is a separate and independent of the administrative wing.
- In Himachal Pradesh the principle of reservation is not taken into account when bench is constituted. But Chhattisgarh and Bihar provide proportionate representation to SCs, STs and OBCs along with one-third reservation for women in the bodies exercising judicial functions. Representation of SCs, STs, OBCs and women on judicial bench will not only empower the marginalized sections but also enhance the credibility and legitimacy of the Panchayati Raj Institutions.
- It has limited jurisdiction in revenue matters as well. The jurisdiction, in this regard, can be extended to such areas like mutations, boundary disputes, and correction of records, as existing in Bihar Act.
- There is a need to enhance civil and criminal jurisdiction by enlarging the pecuniary limits. It has been well accepted in Chhattisgarh that a decree passed by Gram Nyayalaya is at par with the decree of a civil court. This relevant part, if incorporated, can enhance credibility of the NP.
- The full bench system as existing in Bihar can also be adopted, for appealing to avoid unnecessary delays and reduce expenditure.
- Himachal Pradesh can also follow examples of other states which have made low in harmonization with the concerned acts.

Chapter 9

Major Findings, Suggestions and Recommendations

Major Findings

The Nyaya Panchayats (the elected Gram Panchayats when performing judicial functions have been referred to here as the Nyaya Panchayats) in Himachal Pradesh are playing a very useful role in dispute resolution in rural areas, especially in remote and inaccessible areas. The main advantages of the Nyaya Panchayats are as follows:-

- **Easy accessibility:** - Being hilly state, regular courts in Himachal Pradesh are not easily accessible to many people, especially those who are residing in remote and inaccessible villages, because these courts are generally located in urban centres or large sized villages. By contrast Nyaya Panchayats (NPs) are located in the villages itself. Thus, these courts (NPs) are easily accessible to all villagers.
- **Low cost:** - Seeking justice through NP is highly cost effective as one neither has to engage a lawyer nor has to pay the court fee. Also no cost is incurred on traveling. Moreover, there is no major loss of work as one does not have to leave the village to attend the case in the court.
- **Quick redressal of the complaint:** - It is generally said that “justice delayed is justice denied.” Regular courts take very long time to decide a case because they are over burdened with work and the procedure is very lengthy and cumbersome. Certain cases in the regular courts linger on for years, some times for decades without any result. The Nyaya Panchayats by contrast provide justice to the complainant at the shortest possible time - in many cases within a week.
- **Just decisions:** - Since the members of the Nyaya Panchayat and the parties involved in a dispute belong to the same village, the Nyaya Panchayat members are in a much better position to know the true facts of the case, moreover they also understand the nuances of every act, action or utterance in the socio-cultural context of that village. Thus they take more just decisions. It is therefore not surprising that most decisions of the NPs are happily accepted by the people and they feel satisfied with these decisions.
- **The poor and the weaker sections friendly:** - The real beneficiaries of the NPs are the poor and the weaker sections of the society, because these people cannot approach the regular courts for the redressal of their complaints. But the NPs are easily accessible to them because these are located in the villages it self and do not require any expenses. The poor and the weaker sections do approach the NPs for the redressal of their complaints.
- **Maintaining social harmony:** - It has been observed that NPs are conciliatory rather than adjudicatory in nature. They always try to strike an amicable compromise between the parties involved in dispute. They opt for judicial course only when they fail to strike a compromise between the disputants. Such an approach helps in maintaining social harmony in the village.

No doubt NPs in Himachal Pradesh are playing a very useful role in resolving disputes and maintaining social harmony in villages, yet, because of certain limitations, the potential of this institute is not fully exploited for the benefit of the people. Some of these limitations are as follows:-

- **Judicial and executive functions are entrusted to a single body:** - In a democratic setup judicial and executive functions are generally not entrusted to a single body. But in Himachal Pradesh after the enactment of HPPR (Amendment) Act 1977, the Gram Panchayat, which is an executive body, was also given the authority to discharge the judicial functions as well. This transfer of judicial functions to the elected panchayats was against the constitutionally prescribed principle of separation of the judiciary from the executive which cannot be compromised (Article 50, Constitutions of India).
- **Very little time for judicial functions:** - After the 73rd Constitutional Amendment the functions and responsibilities of Gram Panchayats have increased enormously. They have to act as the main agent of socio-economic development in the rural areas. With the implementation of MGNREGA their burden of responsibilities has further increased. In the changed scenario Panchayats have been left with hardly any time for performing judicial functions in a satisfactory manner.
- **Limited knowledge about judicial functions:** - Although training to Panchayat functionaries and elected representatives of PRIs is arranged by the state government at Himachal Institute of Public Administration (HIPA) and two other institutes, one of which is located at Baijnath and the other at Mashobra, yet it was observed that the understanding of most of the panchayat functionaries and elected representatives of PRIs regarding judicial functions is very very limited. Such person cannot perform the judicial functions with competence.
- **Gender bias in decision making:** - It has been observed that most NPs do not take any serious view of domestic violence against women. In a male dominated society of Himachal Pradesh physical or mental torture of woman by her husband is not viewed as an offence worth consideration of the NP. Any woman making such complaint is rather reprimanded for sullyng the reputation of the family. Thus in most cases of domestic violence women are generally denied justice.
- **Limited powers:** - Nyaya Panchayats in Himachal Pradesh have very limited powers. Extremely low pecuniary limits deprive the NP of any relevant role in the village society, eroding the very respectability and legitimacy of the institution. The maximum fine which the NP can impose is so low that it has no effect on the guilty. The revenue jurisdiction, especially regarding mutation, boundary dispute and correction of records is also very very limited.
- **Disposal of certain cases is problematic:** - Certain panchayat have reported that they face many difficulties while disposing certain cases. Limited jurisdiction of NPs, extremely low pecuniary limits which do not instill fear of NP in the minds of the guilty, interference by the influential persons into its functioning, non compliance of Nyaya Panchayats orders by certain persons, difficulty in finding reliable witnesses, limited knowledge of law and judicial functions on the part of members of NP, lack of time for judicial functions, etc. make the disposal of certain cases very difficult.

Suggestions and Recommendations

- **Suggestion/ Recommendations:-** Nyaya Panchayats independent of the elected Gram Panchayats as were functional in the state prior to 1977, be revived. However, till that time, Justice Committees under the chairmanship of Pradhan or Up-pradhan be constituted in each panchayat on the pattern of other Standing Committees of the Gram Panchayat. Such a committee should have, in addition to its chairman, minimum of four and maximum of six nominated or elected members (as was recommended under HPPR Act, 1968). The committee should also provide due representation to SC/ST population and women. The role of the committee will be to exclusively deal with the judicial cases. The decisions taken by the committee may be sent to Gram Panchayat for ratification.

Justification: - About 83% of surveyed panchayats reported that the earlier system of Nyaya Panchayat was very good and it was acceptable to the people. They are of the opinion that the system will be relevant even in the present time. The revival of old system of Nyaya Panchayats have become all the more necessary because the elected Gram Panchayats now have very little time for dispute resolution as they are over burdened with developmental and other works of the village. Moreover it is very difficult for an elected person to take impartial decisions when the supporters of his party are involved in a dispute. In case revival of old system of Nyaya Panchayat is not possible or will take time, constitution of justice committees as suggested above can also serve as a good alternative for NPs as such a committee will comprise of learned persons who have better understanding of law and judicial functioning and on whose ability and impartiality people have full faith. Such committees will also have more time to deal with the judicial functions. Moreover, constitution of such a committee does not violate the HPPR (Amendment) Act, 1977, as all decisions taken by the committee will go to the gram panchayat for ratification.

Action:- Efforts should be made to revive the old system of Nyaya Panchayats which are independent of Gram Panchayats. Till that time Justice Committees on the pattern of standing committees of the Gram Panchayat be constituted by making relevant amendment in the HPPR Act, 1994 (if required)

- **Suggestion/ Recommendations:-** The training programme organized by the State Government in the judicial functioning of the panchayats for elected members of PRIs and other functionaries of the panchayats need to be upgraded and made more rigorous. Refresher programmes in the judicial functioning of GPs should also be organized for them from time to time. Services of Law Officer at the district or lower level may also be made available to the NPs free of cost as and when required.

Justification:- Although most of the elected members of PRIs who were interviewed during the survey had attended the training programme in the judicial functioning of panchayats organized by the state government, yet, it was observed that in most cases their knowledge about civil, criminal and revenue laws and functioning of Nyaya Panchayat was very very limited. In order to retain the faith and confidence of the people in Nyaya Panchayat, it is imperative that the members of Nyaya Panchayat must discharge their duties competently. For that it is necessary that the training programme in judicial functioning of panchayats must be upgraded and made more rigorous. Refresher programmes in judicial functioning of GPs will further enhance their

competence. Technical Support Institutes (TSIs) may be involved in training and refresher programmes. The legal opinion/guidance provided by the law officer as and when sought can further enhance the credibility of NPs.

Action:- Reputed TSIs may be involved in upgradation of course content and for imparting training. Training must be made rigorous. Moreover, as per the wishes of the people, training programmes for elected representatives of PRIs and others be organized at the block level. Regular monitoring of functioning of the Nyaya Panchayats is also very essential. The office of the state Advocate General should instruct its Law Officers at the district level to provide legal assistance to the NPs.

- **Suggestion/ Recommendations:-** Revenue jurisdiction of NPs especially with regard to mutation, boundary disputes and correction of records need to be extended on the pattern of Bihar.

Justification:- To settle petty revenue matters villagers have to run after revenue officers and have to travel to far off places. They have to waste their time and money for small matters. Bringing such matters within the jurisdiction of NPs will provide a great relief to the people.

Action:- Since revenue matters are technical in nature and require looking into records, Revenue Officer be deputed to sit along with the bench whenever there is a case regarding revenue matters.

- **Suggestion/ Recommendations:** The civil and criminal jurisdiction of NPs be enlarged by enhancing the pecuniary limits.

Justification:- Low pecuniary limits deprive the NP of any relevant role in the village society, eroding the very respectability and legitimacy of the institution. In Himachal Pradesh pecuniary jurisdiction of NP after recent enhancements in case of civil cases is two thousand rupees and in criminal cases two hundred and fifty rupees. Even after recent enhancements these limits are too low in the context of the current purchasing power of the rupee. As a result fines imposed by NPs do not serve as deterrent to check domestic violence or other disputes. Infact, because of low pecuniary limits people have hardly any fear of NPs.

Action:- The pecuniary limits for both civil and criminal matters be enhanced to ten thousand rupees as in Bihar and these limits should be revised after every two or three years.

- **Suggestion/ Recommendations:-** A simple and effective mode of execution of the orders of NPs is necessary. A decree passed by the NP should be deemed to be a decree passed by the Civil Court and be executed in the manner it is executed by the court having jurisdiction to execute that decree as is being done in Chhattisgarh.

Jurisdiction:- Nyaya Panchayats in Himachal Pradesh do not possess adequate powers to execute decrees or recover fine. They have to seek the help of the Sub-Judge for the execution of decree and of judicial Magistrate or Sub-Divisional Judicial Magistrate to recover the fines. That erodes the power and the credibility of the NP.

Action:- To provide teeth to the suggestion provided above it should be made obligatory on the part of the revenue and police departments to provide full assistance to the NP in furtherance of

the execution of its orders. Any non-cooperation on the part of the authorities should be considered as dereliction of duty under service rules.

- **Suggestion/ Recommendations:-** The conciliatory approach of the NPs in dispute resolution which play a very important role in maintaining social harmony within the village as well as within family/families must be appreciated and encouraged.

Justification:- It has been observed that most cases reported to the NPs usually end in a compromise because most parties involved in dispute are also keen to reach at some amicable compromise. The disputes are resolved in the shortest possible time and without incurring any cost and inconvenience. That plays a very vital role in maintaining social harmony in the society and peace within families as well as between spouses.

Action:- The NPs which succeed in striking compromises in all or most of the cases reported to it should be awarded cash prizes by the state government and a letter of appreciation should be issued to them. They may be honoured at some function organized by the state.

- **Suggestion/ Recommendations:-** Keeping in view the sentiments of the people and sensitive nature of certain cases, registration of every case which is reported to the NP may not be insisted upon. If the complainant do not want to register his or her complaint, his/her sentiments must be respected and the case be taken up verbally.

Justification:- It has been noticed that many persons do not want that their complaint should become part of the NP's record. Sometime such records become stigmatic for the families or individuals, thus they want to avoid recording their complaint. Moreover verbal resolution of complaints takes less time. In most cases of violence against women, the effected women do not want to record their complaint and want the redressal of their complaint verbally. Most family disputes too require verbal resolution.

Action:- NPs may be allowed to resolve case verbally if the parties involved in the dispute so want Relevant amendment in the act (if required) may be made.

- **Suggestion/ Recommendations: -** If the matters relates to SC/ST or woman, especially SC/ST woman proportionate representation in keeping the provision of Draft Nyaya Panchayat Bill should be considered. Moreover all decisions should be in writing and should have binding effect to prevent recurrence of disputes.

Justification: - To protect the interests of weaker sections of society whether they are SC/ST or women or SC/ST woman, due representation of SC/ST or women, or SC/ST woman as per the provisions of the Draft Panchayat Bill should be made in the Nyaya Panchayat hearing their case.

Action: - Make provision for reservations of seats in case of the Nyaya Panchayat as prescribed in Nyaya panchayat Bill 2009 which is as follows:

In case of Scheduled Castes and the Scheduled Tribes in every Nyaya Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of

seats to be filled by direct election in that Nyaya Panchayat as the population of the Scheduled Castes or, the Scheduled Tribes in the Nyaya Panchayat area bears to the total population of that area and such seats may be allotted by rotation, as prescribed by the State Government.

Provided that as nearly as may be, fifty percent of the total number of seats reserved for Scheduled Castes and the Scheduled Tribes shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes:

Provided that as nearly as may be, fifty percent of the total number of seats to be filled by direct election in every Nyaya Panchayat shall be reserved for women and such seats may be allotted by the rotation, as prescribed by the State Government: Provided that the legislature of a State may make provision for reservation of seats in the Nyaya Panchayat in favour of backward classes of citizens.

Annexure-I (Panchayat rules of H.P. Act 1952)

**Form-9
Decree Form**

Claim for.....

This suit coming on this day for final disposal before the panchayat..... in presence of the plaintiff/plaintiff's mukhtar and/or the defendant or defendant's mukhtar, it is ordered that.....do pay to the.....the sum of rupees.....

Given under my hand and seal of the panchayat this.....day of.....19.....

Signature of the Sarpanch

Panchayat.....

**Form-10
Form of Receipt**

.....nyaya panchayatnyaya panchayat
No.....dated.....	No.....dated.....
Received from Shri.....	Received from Shri.....
A sum of rupees.....	A sum of rupees.....
On account of.....	On account of.....
Court fee	Court fee
Execution fee	Execution fee
Copying fee	Copying fee
..... <i>Signature of Sarpanch</i> <i>Signature of Sarpanch</i>

**Form-12
Summons**

Serial No.....	Serial No.....
Name of the parties.....	Name of the parties.....
Nature of offence or claim.....	Nature of offence or claim.....
Date of institution.....	Date of institution.....
Name and description of the persons summoned.....	Name and description of the persons summoned.....
Whereas this case will be placed before the Nyaya panchayat.....on (date and time).....at place.....	Whereas this case will be placed before the Nyaya panchayat.....on (date and time).....at place.....
You.....are hereby required to attend as an accused/defendant/judgment debtor/other party/witness, for giving evidence/to procedure the following documents.	You.....are hereby required to attend as an accused/defendant/judgment debtor/other party/witness, for giving evidence/to procedure the following documents.
Seal. <i>Signature of the chairman or any panch</i>	Seal. <i>Signature of the chairman or any panch</i>
Date.....19.....	Date.....19.....

Form-13
Register of Diet Money

Number of case 1	Date of deposit 2	By whom deposited 3	Amount paid 4	To whom paid 5	Date of payment 6	Signature of sarpanch or member before whom payment is made 7
			Rs. P.			

Schedule-I
Offences cognizable by Gram Panchayat

Sr. no.	Name of Act or Code 2	Offence 3	Section 4
1	Indian Penal Code	Committing affray	160
2	do	Absconding to avoid service of summons or other proceedings of the Panchayat	172
3	do	Non-attendance in obedience to an order from public servant	174
4	do	Refusing oath or affirmation when duly required by a public servant	178
5	do	Intentional insult or interruption to public servant sitting in judicial proceeding in so far as it may relate to Nyaya Panchayat	228
6	do	Offences relating to weight and measures mentioned in Chapter XIII	264 to 267
7	do	Defiling the water of a public spring or reservoir	227
8	do	Driving or riding on a way so rashly or negligently as to endanger human life etc.	279
9	do	Danger of obstruction in public way or line of navigation	283
10	do	Dealing with fire or any combustible matter as to endanger human life etc.	285
11	do	Dealing with any explosive substance so as to endanger human life etc.	286
12	do	Omitting to guard against probable danger to human life from a building over which a person has right to pull down or repair	288
13	do	Negligent conduct with respect to any animal	289
14	do	Committing a public nuisance	290
15	do	Obscene Acts and Songs	294
16	do	Voluntarily causing hurt	323
17	do	Voluntarily causing hurt on provocation	334
18	do	Doing any act which endangers human life or the personal safety of others	336
19	do	Wrongfully restraining any person	341
20	do	Assault or use of criminal force otherwise than on grave provocation	352
21	do	Assault or use of criminal force to a woman with intent to outrage her modesty	354
22	do	Assault or use of criminal force on grave and sudden provocation	358
23	do	Dishonest misappropriation	403
24	do	Criminal breach of trust	406
25	do	Dishonestly receiving or retaining stolen property	411
26	do	Cheating	417
27	do	Mischief when the damage or loss caused does not exceed fifty rupees in value	426
28	do	Mischief by killing or maiming a cattle etc. of any value or any animal of the value of Rs. 50	429
29	do	Delected under section 20 of Himachal Pradesh Panchayati Raj Act, 1956	
30	do	Delected under section 20 of Himachal Pradesh Panchayati Raj Act, 1956	
31	do	Adultery ...	497
32	do	Enticing or take away or detaining with a criminal intent a married woman	498
33	do	Insult intended to provoke breach of the peace	504
34	do	Punishment for criminal intimidation etc.	506
35	do	Uttering any word or making any gesture intended to insult the modesty of a woman.	509
36	do	Misconduct in public by a drunken person	510
37	The Vaccination Act, 1880 (Act, XIII of 1880)	Punishment of offences covered by clauses (a), (b) and (d) of section 22	22 except clause 'c'
38	Cattle Trespass Act, 1871	Forcibly opposing the seizure of cattle or re-securing the same.	24
39	do	Causing damage to land or crops or public roads by pigs	26
40	Prevention of Cruelty to Animals Act, 1890 (XI of 1890)	Penalty for cruelty to animals in public places and for sale in such places of animals killed with	3

		unnecessary cruelty	
41	Prevention of Cruelty to Animals Act, 1890 (XI of 1890)	Penalty for overloading animals	3A
42	do	Penalty for killing animals with unnecessary cruelty anywhere	5
43	do	Penalty for practicing Phuka	4
44	do	Penalty for being in possession of the skin of goat killed with unnecessary cruelty	5A
45	do	Presumptions as to possession of the skin of a goat	5B
46	do	Penalty for employing anywhere animals unfit for labour	6
47	do	Penalty for permitting diseased animals to go at large or die in public places	7
48	Offences under this Act or under any rule or by Laws made their under		

Annexure-II (H.P.P.R. Act 1968)

**Form-IX
Decree Form**

Claim for.....

This suit coming on this day for final disposal before the panchayat..... in presence of the plaintiff/plaintiff's *mukhtar* and/or the defendant or defendant's *mukhtar*, it is ordered that.....do pay to the.....the sum of rupees.....

Given under my hand and seal of the panchayat this.....day of.....19.....

Signature of the Pradhan

Gram Panchayat.....

**Form-X
Form of Receipt**

.....nyaya panchayatnyaya panchayat
No.....dated.....	No.....dated.....
Received from Shri.....	Received from Shri.....
A sum of rupees.....	A sum of rupees.....
On account of.....	On account of.....
Court fee.....	Court fee.....
Execution fee.....	Execution fee.....
Copying fee..... <i>Signature of Pradhan/ Up-Pradhan/ Secretary.</i>	Copying fee..... <i>Signature of Pradhan/ Up-Pradhan/ Secretary.</i>

**Form- XIV
Register of Revenue Proceedings
Gram Panchayat.....**

1. Serial Number.
2. Date of Institution.
3. Name of applicant with father's name and address.
4. Name of the respondent with father's name and address.
5. Description of proceedings.
6. Valuation of the case.
7. Date of decision.
8. Result of decision.
- 8 (a). Whether any appeal or revision petition filed.
9. Decision in appeal or revision.
10. Date of consignment of the file to record room.
11. Signature.
12. Remarks.

Form- XVI

Register of Criminal Cases of Gram Panchayat.....

1. Serial Number.
2. Date of Institution.
3. Name, father's name and address of the complainant.
4. Name, father's name and address of the accused.
5. Offence.
6. Date of decision..
7. Result of decision.
8. Whether any appeal filed.
9. Decision in appeal.
10. Date.
11. Signature.
12. Remarks.

Form- XVII

Register of Recovery of Fine Gram Panchayat.....

1. Serial Number.
2. Number of case.
3. Description of the case.
4. Particulars of the parties.
5. Date of decision.
6. Amount of fine.
7. Name of the party on which fine imposed.
8. The amount of fine recovered by the Gram Panchayat.
9. Date of receipt.
10. Date of presentation of application to the Court.
11. (a) Amount recovered by the Sub-Divisional Judge.
(b) Date of recovery by the Sub-Divisional Judge.
12. Balance of fine.
13. Remarks.

Type of Disputes in selected Panchayats

Sr. no.	Gram Panchayat Name	Total Cases	Land Disputes	Domestic Violence against Women	Family Disputes	Water Disputes	Fight with neighbors or any other villagers
Kinnaur							
1.	Sudarang	12	3	3	06	00	00
2.	Duni	14	-	-	08	04	02
3.	Khawangi	20	-	2	11	02	05
4.	Kothi	18	-	-	14	00	04
5.	Purbani	06	1	-	03	01	01
6.	Ponda	08	-	2	02	03	01
7.	Bari	02	1	1	-	00	00
8.	Sungra	03	-	-	03	00	00
9.	Nichar	06	-	2	04	-	-
10.	Taranda	00	-	-	-	-	-
Total		89	5	10	51	10	13
Kullu							
1.	Bajaura	7	1	-	4	-	2
2.	Bara Bhuin	12	2	-	8	-	2
3.	Bhuin	3	1	-	2	-	0
4.	Kalehali	2	-	-	2	-	-
5.	Balh	1	1	-	-	-	-
6.	Gojra	5	-	-	4	-	1
7.	Naggar	25	2	3	14	-	6
8.	Pargan	5	2	1	2	-	-
9.	Katrain	1	-	-	-	-	1
10.	Duwara	3	1	-	1	-	1
Total		64	10	4	37	-	13
Solan							
1.	Domehar	5	2	-	-	3	-
2.	Sanan	1	1	-	-	-	-
3.	Kothi	3	1	-	1	1	-
4.	Devra	4	-	-	4	-	-
5.	Bakhalag	4	2	-	-	-	2
6.	Patta Barian	0	-	-	-	-	-
7.	Dharampur	3	-	-	1	-	2
8.	Darwa	3	-	-	3	-	-
9.	Goela	8	-	-	8	-	-
10.	Anji-Mattal	0	-	-	-	-	-
Total		31	6	-	17	4	4

Nature of cases

Sr. no.	Gram Panchayat Name	Total Cases	Cases directly registered	Cases verbally settled	Cases refer by police to GP	Cases forwarded
Kinnaur						
1.	Sudarang	12	2	9	1	-
2.	Duni	14	2	12	0	-
3.	Khawangi	20	0	19	1	-
4.	Kothi	18	2	15	1	-
5.	Purbani	06	2	3	1	-
6.	Ponda	08	2	5	1	-
7.	Bari	02	2	0	0	-
8.	Sungra	03	1	1	1	-
9.	Nichar	06	2	4	-	-
10.	Taranda	00	0	0	0	0
Total		89	15	68	6	0
Kullu						
1.	Bajaura	7	5	0	2	1
2.	Bara Bhuin	12	2	7	3	5
3.	Bhuin	3	1	2	0	0
4.	Kalehali	2	0	2	0	0
5.	Balh	1	0	1	0	0
6.	Gojra	5	0	5	0	0
7.	Naggar	25	7	13	5	0
8.	Pargan	5	2	3	0	0
9.	Katrai	1	1	0	0	0
10.	Duwara	3	0	2	1	0
Total		64	18	34	12	6
Solan						
1.	Domehar	5	1	4	0	0
2.	Sanan	1	1	0	0	0
3.	Kothi	3	3	0	0	0
4.	Devra	4	0	4	0	0
5.	Bakhalag	4	4	0	0	0
6.	Patta Barian	0	0	0	0	0
7.	Dharampur	3	2	0	1	0
8.	Darwa	3	0	0	3	0
9.	Goela	8	1	7	0	0
10.	Anji-Mattal	0	0	0	0	0
Total		31	12	15	4	0

People Perception on Nyaya Panchayat

1. Name of the District _____
2. Block _____ Panchayat _____
Village _____
3. Name of the Respondent _____
4. Sex. **(Male-1, Female-2)**
5. Age. **(< 30-1, 31 to 40 -2, 41 to 50 -3, 51 to 60 -4, > 61- 5).**
6. Occupation. **(Farmer-1, Labourer-2, Service-3, Ex. Service-4, Self Business -5, House work-6, any other (specify) -7)**
7. Education. **(Illiterate -1, Primary-2, Middle-3, Matric-4, 10+2-5, B.A. -6, M.A.-7).**
8. Caste – **(General -1, SC-2, OBC-3, ST-4).**
9. Religion. **(Hindu-1, Sikh-2, Muslim-3, Christen -4, Buddhist -5)**
10. Have you involved in any dispute during last one year? (Yes-1, No-2)
(If no, skip to question no.-17)
11. If yes, which type of dispute?

12. Did you approach to panchayat for this? (Yes-1, No-2)
13. If yes, did panchayat solve your dispute? (Yes-1, No-2)
14. If yes, are you satisfied with the decision of panchayat? (Yes-1, No-2)
15. If no, why, give reason

16. In your opinion panchayat should solve the dispute in how many days. (immediately -1, within 2-3 days-2, with in week-3, fortnight-4, one month-5, more than month-6)
17. Are you aware that government is trying to establish Nyaya Panchayats for dispute settlement? (Yes-1, No-2)
18. Do you think, panchayats are fair when giving decision to any dispute at village?
(Yes-1, No-2)
19. If no, what are the reason

20. Do you think, women are getting justice from panchayats, when they approach for settlement of dispute? (Yes-1, No-2)
21. If no, why?

22. Whether SCs and STs come forward to panchayats for their dispute settlement? (Yes-1, No-2)
23. If no, why?

24. How panchayat can be empower to settle dispute at village level?

25. What is the role of village older in dispute settlements?

26. Whether other organizations like SHGs, Mahila Mandal and Youth Club playing any coordinating role with panchayat in dispute settlement? (Yes-1, No-2)

27. If no, how their participation can be increased?

28. Do you think implementation of Nyaya Panchayat will be useful? (Yes-1, No-2, Can't say-3)

29. Are people accepting the decision of Nyaya Panchayat/ Panchayat? (Yes-1, No-2, Can't say-3)

30. In your opinion which type of panchayat kacheri/ Nyaya Panchayat is require to solve dispute.

31. Do you think there is a need of some educational qualification to tackle the judicial functions of GPs?

32. Any other relevant information:

Signature of the Respondent

Signature of the Investigator

PANCHAYAT QUESTIONNAIRE

1. Name of the District _____ Block _____
2. Panchayat _____ Village _____
3. No. of village in the Panchayat.
4. Population of Panchayat area
5. No. of SCs H.H
6. No. of ST H.H
7. Panchayat Information
 - i. Panchayat Ghar - Yes 1 , no - 2
 - ii. Meeting Hall - Yes 1 , no - 2
 - iii. Computer - Yes 1 , no - 2
 - iv. Internet and Email facilities - Yes 1 , no - 2
 - v. Computer operator/Trained manpower - Yes 1 , no – 2, NA- 3
 - vi. Panchayat Secretary Panchayat Sabha available - Yes 1 , no – 2
8. Status of Panchayat Members

Sr. no	Name	Caste	Desi.	Sex	Age	Edu

Code list :- Designation: - Sarpanch -1, Panch-2, **Sex:** - Male -1, Female-2, **Education :-** Illiterate-1, Up to Primary-2, Up to Middle-3, Metric-4, Senior Secondary -5, Graduation -6, Post Graduation -7 ,Caste: Gen .1 , S.C – 2 , ST -3 , OBC -4

9. Total Panchayat Income from all sources for the year 2008-09.
10. Income received from fees and fines of settlement of dispute (2008-09)
11. Are you aware that panchayats has a judicial function enshrined in Himachal Panchayati Raj Act, 1994? (Yes-1, No-2)
12. Whether your panchayat got training on Judicial Functions. (Yes-1, No-2)
13. If yes, no. of panchayat members got training.
14. What was the content of the training?

15. No. of standing committees in your Panchayats.
16. Whether Judicial Committee has been formed. - Yes 1 , no - 2
17. Processes and procedures followed for hearing of appeals and decision making by your GPs

18. Type of disputes (Last one- year)

Sr. No.	Type of Dispute	Time take to settle cases	No of case	No. of cases registered/ or hear by panchayat		No. of cases settled at panchayat level	No. of cases refer to	
				Registered	Hearing verbally		Police	Court
1	Land dispute							
2	Family dispute							
3	Domestic violence against women							
4	Dowry Dispute							
5	Matrimonial Dispute							
6	Inter caste Dispute							
7	Sexual harassment of women							
8	Property like house Dispute							
9	Custody and maintenance of children and dependents							
10	Divorce Dispute							
11	Forest land related Dispute							
12	Mineral related Dispute							
13	Water related Dispute							
14	Theft refuse to return loan							
15								

19. In your view, how panchayat is effective in solving the disputes at panchayat level.

20. What is the approach of panchayat while dealing the cases regarding women disputes

21. If there any problem faced by the Panchayat regarding solving dispute case. (Yes-1, No-2)
If yes, which type?

22. Is there any provision for the proceeding of meeting regarding the dispute case? (Yes-1, No-2)

23. Is there any written agreement between both parties? (Yes-1, No-2)

24. Is the panchayat taking any signature of witness person? (Yes-1, No-2)

25. Is any provision of fine to dispute parties? (Yes-1, No-2)

If yes, how much (in Rs.) _____

26. Are you aware about the Nyaya Panchayat Bill 2009? (Yes-1, No-2)

27. Do you think that is there a need of training to the members on functions of Nyaya Panchayat? (Yes-1, No-2)

28. If yes, what level? (Panchayat Level-1, Block Level-2, District Level-3)

29. What kind of role of community role is performing in facilitating the Panchayat for dispute settlement?

30. What kind of role play by NGOs/Civil organization.

31. Which type of cases panchayat should not hear because of the sensitivity involved in the matter?

-
-
32. Whether poor people getting justice from the panchayat when some cases regarding them is to be hearing by your panchayat? (Yes-1, No-2)
33. What kind of role play by Government functionaries.
-
-
34. Do you think, people are not obeying panchayat decision? (Yes-1, No-2).
-
-
35. Do you think panchayat becomes some time bias when solving the disputes? (Yes-1, No-2)
-
-
36. Do you think panchayat hardly care about the domestic – violence against women and take it as a routine matter? (Yes-1, No-2)
-
-
37. Give your suggestions to solve the dispute of village peoples.
-
-
38. Whether Nyaya Panchayats was in existence of your panchayat area? Yes-1, No-2
If yes, what was the structure of Nyaya Panchayats?
39. What were the main functions of Nyaya Panchayats?
-
-
40. What types of decision usually were taken by Nyaya Panchayats?
-
-
41. Whether decision of Nyaya Panchayats were acceptable to people.
- If Yes – why
- If No- why
-
-
42. In your opinion, whether earlier type of Nyaya Panchayat system is workable now?
Give reason.
-
-
43. What type of power should be given to Nyaya Panchayats?
-
-
44. What will be the benefits of Nyaya Panchayats?
-
-
45. What type of infrastructure is required to fully functional of Nyaya Panchayats?
-
-
-
46. How Nyaya Panchayat should be constituted?
- Through Election
- Through Nomination

47. Whether police provide the copy of FIR to Nyaya Panchayat, which is depend to be while trying criminal cases.
Yes-1,
No-2
48. Whether GP constituted a bench to deal the dispute cases at the GP areas?

49. Whether bench has a woman SCs and STs Members.

50. What is the role of women, SCs and ST in decision making?

51. If a case is instituted orally, whether Pardhan or up Pardhan, record such cases and take thumb impression of the complaint.

52. Whether fee is charged for institution of a case if yes, how much?

53. Whether summon are issued to the concerned party.

54. Whether summon fee is charged from the party if yes, how much?

55. If any of party fails to appear before GPs what action you took?

56. Whether panchayat do ex party decision if one party absent in the hearing despite of receiving summons and were informed about the date of hearing
Yes -1
No -2
57. Record keeping.
Whether panchayat has following register?
- Register of civil suit
 - Register of criminal cases
 - Register of revenue proceeding
 - Register of execution of decree
 - Register of recovery of fine
 - Register of diet money
 - Register of processes and summons of gram panchayats
 - Book of receipt of money received
59. In case of non-compliance of the GP decision by the party then what action panchayat do?

60. Is the community panchayat (Bradari, Khangri etc) working in your panchayat areas.

61. Why the number of registered cases is less as compared to the handled by panchayats.

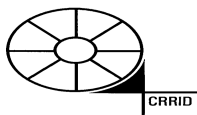
62. Reasons for compromises of many cases heard at panchayat level

Signature of the Respondent

Signature of the Investigator



Centre for Research in Rural and Industrial
Development



**(CRRID), Sector 19-A, Madhya Marg
Chandigarh – 160019**