CHAPTER - IX

Judicial System under the Panchayat.

The report of the banian tree justice was not at all rare in the history of Indian politics. Ancient India had furnished abundant references relating to the working of indigenous unsophisticated judiciary down to the British era. Even the Report of the Royal Commission on Decentralisation 1909 recommended that the village Panchayat should have Civil and criminal jurisdiction in petty cases arising within the village. The procedure in Panchayat Courts should be very simple and the parties to the dispute should appear in person and not through lawyers and appeals should not be allowed. The regular courts might be given special revisional jurisdiction in cases where there appears to have been some grave miscarriage of justice. To do more than this, and to allow the decisions of the Panchayat to be governed by the technicalities of ordinary legal procedure, with full facilities for appeal, would, it is assumed, be fatal to the success of the Panchayat System. What we desire is a village court of equity, and not a necessarily bad imitation of the regular law courts.

In compliance with the aforesaid recommendations Section 65 of the Bengal Village Self-Government Act 1919 provided that "Whenever a Union Board has been established for any Union, the Local Government may, by notification, appoint any two or more members of the Board to be a Union Bench, during their term of office as members of the Board, for the trial of specific offences in the whole of any part of the Union. Section 73 similarly provided for the appointment by the same authority of two or more members of the Board as the Union Court for the trial of some specific classes of civil suits.

The Bengal Village Self-Government Act was passed in the days of the dictatorial regime of the British executive and thus they witnessed very little what is called the independence of the judiciary. The separation of the judiciary from the executive was less popular at that time than which it is today. Thus the amalgamation of the executive and the judiciary in one single organ was a noticeable feature in the Act.

The advent of independence and the growth of democratic consciousness of the people have accentuated the modern idea of independence of the judiciary as a weapon for safeguarding individual liberty. The West Bengal Panchayat Act, 1957 armed the Anchal Panchayat with the power of constituting a Nyaya Panchayat for the trial of some

civil and criminal cases arising within the local limits of the Anchal Panchayat. Section 70 of the Act stipulates that "every Anchal Panchayat established under this Act shall, if, authorised by the State Government by notification to do so, constitute a Nyaya Panchayat, consisting of five members to be called vicharaks, elected by it from amongst the members of the Gram Sabha within its jurisdiction". The Vicharaks thus elected by the Anchal must be approved by the prescribed authority. Though the election of Vicharaks lies in the hands of the Anchal, the removal of them falls within the orbit of the State Government. The Act in its Section 111 lays down that the State Government may, by an order in writing, at any time, for good and sufficient reason to be stated in such order, remove a member of a Nyaya Panchayat; but before removing a member the State Government shall allow the member concerned an opportunity of being heard in accordance with such rules as may be prescribed.

In view of the present exigencies for the separation of judiciary from the executive the Panchayat lawmakers in West Bengal have provided that no member of the Anchal or the Gram Panchayat can sit as a Vicharak in the Nyaya Panchayat, and if such a member is elected to a Nyaya Panchayat he shall cease to be a member of the Anchal Panchayat or the Gram Panchayat concerned.

1. Sec. 70 Sub-sec. (2) of the W.B. Panchayat Act, 1957.
But the Act has entrusted the Anchal Panchayat with the responsibility for the proper constitution and administration of the Nyaya Panchayat. Moreover, the Act has also stipulated that the cost of administration of the Nyaya Panchayat shall be borne out of the Anchal Panchayat Fund.

Furthermore, the Secretary to the Anchal Panchayat shall act as the Secretary to the Nyaya Panchayat for the purpose of keeping the records of its proceedings and decisions, and doing such other duties as may be prescribed. Thus the Act in making the Nyaya Panchayat separate from the clutches of the Anchal has ultimately admitted certain provisions whereby the influence of the executive might supervene on several occasions.

The period of office of the members of the Nyaya Panchayat is generally four years but they are to continue to hold office till the selection of the new members of the said Nyaya Panchayat by the newly constituted Anchal Panchayat after a General Election.

The Panchayat Act in West Bengal has not prescribed any distinctive qualifications for membership of the Nyaya Panchayat. Thus, under the provisions of the Act a person with requisite qualifications for membership of either the Gram or the Anchal Panchayat:

1. Sec.46 sub-sec.(1) cl.(d) ibid.
2. Sec.50F sub-sec.(2) cl.(b) ibid.
3. Sec.70 sub-sec.(7) cl.(b) ibid.
4. Sec.70 Sub-sec.(5) Ibid.
is equally qualified to be a member of the Nyaya Panchayat if he is duly elected thereto. But in some quarters it has been suggested that in the performance of their duties the members of the Nyaya Panchayat must be sufficiently instructed without having to make constant references to the Panchayat Secretary. They must know the procedure to be followed. Although the technical rules contained in the Evidence Act do not apply to them, they must be in a position to understand and weigh the evidence put before them. For all these reasons, it is necessary that they must possess some educational qualifications. On the other hand, if they are illiterate, the Panchayat Secretary may intervene every now and then and assume a most undesirable role.

But there are some people who hold the view that "Villagers imbued with a sense of honesty and integrity and endowed with robust common sense would be able without any difficulty to weigh the facts placed before them and arrive at equitable and fair decisions, there being no subtle or intricate points of law involved in such matters. The importance attached to the system of dispensation of justice by Nyaya Panchayat in the villages lies in the availability of the local knowledge.

1. Sec.70, Sub-sec.(i), Cl.(b) Second proviso.
which could be brought to bear upon the facts of each case so that truth could be discerned without any difficulty.

Thus, it may be recommended that

the best course to adopt would be to provide that a person to be eligible to serve as a Nyaya Panchayat should be able to read and write the regional language fairly fluently. This should be regarded as a bare minimum except in very backward areas for which special provisions may be made. In the absence of this bare minimum, the panches would not be able even to go through the manual that may be supplied to them or be in a position to record the gist of evidence or the decision which has to be given. Nor can they intelligently follow any instructions or lectures given to them during the training period. It is stressed evidently desirable that a basic minimum qualification like the knowledge of regional language should be insisted upon for members of the Nyaya Panchayat for the fair dispensation of justice. But to claim the reading and writing of regional knowledge as a pre-requisite for membership of the Nyaya Panchayat would be to exclude many honest and right thinking persons from the areas of the Panchayat judiciary. To read and write

1. Ibid.
2. Ibid, P-64.
the regional language cannot be the sine-qua-non of membership of the village judiciary when, it is often found, that educated persons are not free from corruption, dishonesty and malpractices.

In England the Justice of the Peace - an almost identical organisation of Nyaya Panchayat were appointed mainly from country gentlemen; but men (and since 1919, women also) are now appointed freely from all the professions and social classes, with the result that the magistracy is far less aristocratic than even a generation ago. The noticeable thing is that a legal education is not required for them and few appointees have such.

The appointment of the members of the union courts and the Union Benches from amongst the members of the Union Board was in vogue prior to the emergence of the present Panchayat System. But with the advent of independence the consensus of opinion has decided the election of the local judiciary. In this aspect the Indian system follows almost the Russian pattern of judiciary working in local areas. In Soviet Russia the peoples' courts which are very close to the people are elected for a three year term by the citizens of the district by secret ballot on the basis of Universal, direct and equal suffrage.

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1. Ogg and Zink - Modern foreign Governments, 1956, Ch.XVI, P-347.
But in the English pattern of local judiciary the justice of the Peace in any given county (or borough) are appointed at the pleasure of the crown by the Lord Chancellor, formerly on recommendation of the Lord Lieutenant of the county (who himself is chief of the justices and keeper of county records), but nowadays on recommendation of a local committee. Thus, the practice of choosing the judiciary varies from country to country. It is true that nomination or appointment of the judiciary has several advantages. The system of nomination or appointment might ensure the selection of the right type of persons and ensure greater impartiality in the discharge of judicial functions. But any system whereby persons are nominated will not fit into the scheme of democratic decentralisation of justice. When democratic decentralisation of justice forms company with impartiality and, thereby, it proves its efficiency and dignity, the system will be highly welcome. But democratic decentralisation of justice at the cost of impartiality and efficiency should always be detestable.

A member of a Nyaya Panchayat may resign his term of office by notifying in writing his intention.

1. Ogg and Zink - Modern Foreign Governments, 1956, Ch.XVI, F-347.
to do so to the prescribed authority.

The Act has provided for the election of a Pradhan Vicharak from amongst the members of the Nyaya Panchayat whose business will be to preside over the sittings of the Nyaya Panchayat. Of course, the Act has liberalised the aforesaid provision by incorporating the clause that in the absence of the Pradhan Vicharak the Vicharaks present at the sitting of the Nyaya Panchayat shall elect one of them to be the Pradhan Vicharak for the purpose of that sitting. The presence of a majority of the members of the sitting is essential for the trial of any suit or case or other proceeding pending before a Nyaya Panchayat.

Jurisdiction of the Nyaya Panchayat:

A Nyaya Panchayat constituted under the West Bengal Panchayat Act, 1957 shall have two types of jurisdiction: criminal and civil. During the days of the Union Board the conferment of both the Civil and Criminal jurisdictions to the Board Judiciary was found to be rare and the latter would very often try criminal cases. The new Panchayat system

2. Sec. 70, Sub-secs. (4) & (6) Ibid.
moves a step forward in acknowledging both the Civil and Criminal Jurisdictions to the village judiciary. It is observed that the jurisdiction of Nyaya Panchayats in relation to cases or suits within their cognizance has been made exclusive in most of the State Acts and it is suggested that the aforesaid practice ought to be followed everywhere. If the purpose is to make these courts efficient, it can be done so only by investing them with complete responsibility in the exercise of such jurisdiction as they possess and give them opportunities to acquire knowledge and experience. It is unfair to criticise these courts as inefficient and at the same time deny them exclusive jurisdiction which step alone can lead to their improvement and satisfactory working.

Under the panchayat Act a Nyaya Panchayat in West Bengal shall have jurisdiction within the local limits of the Anchal Panchayat to try/offences like:

1. Offences under Sections 26 and 27 of the Cattle Trespass Act, 1871.
2. Offences under enactments (other than the Indian Penal Code and this Act) or any rules or bylaws

1. Report of the Study Team on Nyaya Panchayats, April, 1962, p-76.
made thereunder which are punishable with fine only up to a limit of twenty-five rupees.

3. Offences under Section 34 of the Police Act, 1961.

4. Offences under the Bengal Ferries Act, 1865, except those under sections 28 and 30.

5. Offences under the following sections of the Indian Penal Code namely:

Sections 160, 269, 277, 289, 290, 394, 323, 334, 341, 352, 358, 426, 447, 448, 504 and 510 and when the value of the property in the opinion of the Nyaya Panchayat is not over twenty rupees, Sections 359 and 411.

On its criminal jurisdiction a Nyaya Panchayat has the power to try offences under the following sections of the Indian Penal Code if such a case is transferred to it by a District Magistrate, Sub-divisional Magistrate or any other Magistrate empowered to receive petitions under section 190 of the code of Criminal Procedure, 1898.

The offences as aforesaid may be enumerated thus:

1. Sec.71, Sub-Sec.(1) of the W.B. Panchayat Act, 1957.
Offences under sections 283, 428, 430, 431, 506 and 508; and when the value of the property in the opinion of the Magistrate is not over twenty rupees section 403.

The analysis of the foregoing provisions relating to the criminal jurisdiction of the West Bengal Panchayat has made it palpably clear that the trial of offences of minor in nature fall within the jurisdiction of the Nyaya Panchayat and the exclusiveness of its jurisdiction in those spheres is also subject to limitations. The Act if guaranteeing powers to the Nyaya Panchayat in the trial of specific offences under section 71, sub-section (1) has also limited it by incorporating the provision under section 97 that 'no Nyaya Panchayat shall try any case or suit or other proceeding to or in which the Anchal Panchayat concerned or any Gram Panchayat within the Anchal Panchayat or any member of such Nyaya Panchayat is a party or is interested.' This restrictive clause might be justified in order to ensure fair and impartial justice but the power of the District Magistrate or the Sub-divisional Magistrate to take away the case 'of his own motion' from the Nyaya Panchayat for the trial of the same does seriously limit the autonomy of the Nyaya Panchayat.

1. Sec.71 sub-sec.(2) of the W.B.Panchayat Act,1957.
2. Sec.98 sub-sec.(1) of the W.B.Panchayat Act,1957. The Sub-sec.(1) of section lays down: "The District Magistrate or the Sub-divisional
Section 80 sub-section (1) of the Act has guaranteed the Civil Jurisdiction to the Nyaya Panchayat by virtue of which the latter shall have the authority to try the following classes of suits when the value of the suit does not exceed one hundred rupees.

The Suits are:

(a) Suits for money due on contracts;
(b) Suits for the recovery of moveable property or the value of such property;
(c) Suits for compensation for wrongful taking or improving moveable property;
(d) Suits for damages by cattle-trespass.

It is also to be observed in this connection that sub-section (3) of Section 80 has laid down that no other court shall have jurisdiction to try any suit of the classes mentioned above. But the same restrictive clause as applied in the case of criminal jurisdiction is found to be operating here, the difference being that the District Judge within the local limits of whose

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Magistrate within the legal limits of whose jurisdiction the Nyaya Panchayat is situated, may, of his own motion or on the application of any of the parties to a case or on the motion of the Nyaya Panchayat concerncd withdraw the case pending before a Nyaya Panchayat if, for reasons to be recorded by him in writing, he is of the opinion the case is one which should not be tried or heard by the Nyaya Panchayat and may try or hear the case himself or transfer it for disposal to another Magistrate who would have had jurisdiction to try the case but for the provisions of this Act.
Jurisdiction as a Nyaya Panchayat is situated may of his own motion withdraw the suit for the trial of the same.

Thus, with regard to the withdrawal of any criminal case from the jurisdiction of a Nyaya Panchayat the District Magistrate or the Sub-divisional Magistrate has been given the authority, but in the case of civil suit the said authority has been conferred on the District Judge.

In its criminal jurisdiction the power of a Nyaya Panchayat to sentence an offender has been limited to the payment of a fine not exceeding fifty rupees only, and the Act has categorically declared that 'no sentence of imprisonment, simple or rigorous, whether substantive or in default of payment of fine shall be inflicted by any Nyaya Panchayat.' On its Civil jurisdiction a Nyaya Panchayat is prohibited to try the following suits, namely -

1) On a balance of partnership account;
2) for a share or part of a share under an intestacy,
or for a legacy or part of a legacy under a will;

**Foot note - A perusal of sub-sec.(2) of sec.98 of the W.B. Panchayat Act,1957 will bring out the truth. It is laid down: "The District Judge within the local limits of whose jurisdiction a Nyaya Panchayat is situate, may, of his own motion or on the application of any of the parties to a suit or on the motion of the Nyaya Panchayat concerned, withdraw the suit pending before a Nyaya Panchayat if, for reasons to be recorded by him in writing, he is of opinion that the suit is one which should not be tried or heard by the Nyaya Panchayat, and may try or hear the suit himself or transfer it for disposal to the court of the Munsif who would have had jurisdiction to try the suit but for the provisions of this Act."**

1. Sec.98 sub-secs.(1) & (2) Ibid.
3) by or against the Union of India or a State Government or a local authority or public officers for acts done in their official capacity,

4) by or against miners or persons of unsound mind or when any such persons of unsound mind or when any such person is in the opinion of the Nyaya Panchayat a necessary party;

5) for the assessment, enhancement, reduction, abatement, apportionment or recovery of rent of immoveable property;

6) by a mortgagee of immoveable property for the enforcement of the mortgage by foreclosure or sale of the property or otherwise, or by a mortgagor of immoveable property for the redemption of the mortgage.

Generally the appeal against the decision of the Nyaya Panchayat is forbidden but in the case of a criminal case the District Magistrate or Sub-divisional Magistrate, within the local limits of whose jurisdiction the Nyaya Panchayat is situate, may of his own motion, or on the application of any of the parties concerned made within thirty days from the date of the order of the Nyaya Panchayat, cancel or modify any order of

1. Sec. 81 Ibid.
conviction or of compensation" if he is satisfied that failure of justice has occurred. With regard to the civil suits decided upon by a Nyaya Panchayat the Munsif who would have had jurisdiction to try the suit but for the provisions of this Act, may, on the application of any party to the suit made within thirty days of the decree or order of the Nyaya Panchayat, cancel or modify or direct a retrial of the suit by the same or any other Nyaya Panchayat if he is satisfied that there has been a failure of justice. It goes beyond doubt that decisions of Nyaya Panchayats should be capable of being tested in a court of law and the question is whether such tests should be carried out through appeals or revisions. A right of appeal would appear to be ruled out on the face of it for several reasons. Nyaya Panchayats being essentially conciliatory bodies, most of the cases coming up before them are likely to end in compromises. The cases which are within the cognisance of Nyaya Panchayats are expected to be simple and petty, involving no complicated issues. Further, Nyaya Panchayats are not and should not be expected to record the evidence in great detail. A simple procedure is prescribed to enable them to arrive at the truth in a rough and common sense way. A right of appeal does not go well with such circumstances. In fact, the Royal

1. Secs.77 & 93 Ibid.
Commission on Decentralisation suggested that appeals should not be allowed although the regular courts might be given special revisional jurisdiction where there appears to have been a miscarriage of justice. Thus, in compliance with the recommendations of the Royal Commission on Decentralisation and subsequently supported by the Study Team on Nyaya Panchayats, appeals against the decisions of the Nyaya Panchayats are generally denied. What the ordinary law courts have been given is the power of revising the decisions of the Nyaya Panchayats and not to entertain appeals. But the distinction between the appeal and revision of decision of the Nyaya Panchayat practically vanishes when any one of the parties aggrieved by the decision of the Nyaya Panchayat is empowered to make an application before the Sub-divisional Magistrate or Sub-divisional Munsif for proper remedy.

PROCEDURE

It should not go without saying that the procedure for the disposal of matters coming before the Nyaya Panchayats should be as simple as possible and it is observed that the utility of these institutions


*Foot note: In the case of criminal cases the application is entertained either by the District Magistrate or by the Sub-divisional Magistrate, but in the case of Civil suit the application is entertained by the Sub-divisional Munsif. (Sec. ante Secs. 77 & 93 of the W.B. Panchayat Act, 1957).*
would be considerably reduced if the Acts relating to civil and criminal procedure and the technical rules of evidence contained in the Indian Evidence Act, 1872, are made applicable to them. Sec. 96 sub-section (1) of the West Bengal Panchayat Act, 1957 has totally prohibited the application of the Court fees Act, 1870; the code of criminal procedure, 1898, the code of civil procedure, 1908, and the Indian Evidence Act, 1872 to any trial before a Nyaya Panchayat. The principle underlying the prohibition of the application of the aforesaid complicated judicial procedure is, perhaps, that the proceedings of the Nyaya Panchayat ought to be conducted in compliance with the well established principles of natural justice. These principles are the products of accumulated experience and are as it were the sine qua non of the judicial process.

It is essential for every Nyaya Panchayat that a brief record of the evidence of each witness would be kept. The judgement should also give briefly the reasons for the decisions and here again it is happy to note that in most cases the Nyaya Panchayats are fully alive to their responsibility. Though Nyaya Panchayat in

2. Ibid, p-100.
West Bengal is still at premature stage but the recording of evidence and the reasons for awarding the judgements were found in the days of the Uhlan Beard. But today it has been reported in some quarters that in West Bengal the judges of the Nyaya Panchayat are in many cases premature and they do not generally follow the regular procedure of recording the evidence and reasons for awarding the judgement but pass judgements verbatim. The method of conciliation or 'Sulis' - a primordial practice of settling the village disputes - is not at all rare even today.

The prohibition of the appearance of the legal practitioners before the Nyaya Panchayat testifies the simplified procedure of judicial system of the Nyaya Panchayat. The Act has stipulated that the parties to criminal cases triable by a Nyaya Panchayat shall appear personally before such panchayat although they can appear through agents if they are permitted to do so by the Nyaya Panchayat. In the case of civil suits the parties to the suit may appear either personally or through agents, and if a party appears through an agent he need not require any prior permission of the Nyaya Panchayat. The reasons for prohibiting the

1. Sec. 103 of the W.B. Panchayat Act, 1957.
2. Sec. 102 Ibid.
legal practitioners to practice before such Panchayat are palpable because to allow legal practitioners to appear before them would only tend to create confusion. The facts and issues which to the Untrained mind and common sense eyes present no difficulties would assume a totally different appearance when presented to them through the skilful hands of a trained practitioner in law. The kind of simple and natural justice which the villagers expect from these tribunals would become technical, complicated and expensive if lawyers are allowed to intervene.

The comparison of the Indian system of Nyaya Panchayat with that of the justices of Peace in England reveals the fact that in England, the justices have to exercise their jurisdiction not under the 'banyan tree' but in full compliance with set forms and procedure and with profound respect to the fundamental principles of administration of justice. Broadly speaking, the procedure followed in criminal cases is similar to that adopted in summary trials under our code of criminal procedure. Proceedings are initiated on complaint by police or a private individual. Summons are served. Lawyers can appear.

The incorporation of a clause in the

2. Ibid, P-20.
West Bengal Panchayat Act, 1957 that parties to a civil suit may appear through agents damages the sanctity of the purpose for which the Nyaya Panchayat is constituted. It has been observed in Kerala that lawyer's clerks or guanasthas appearing before Nyaya Panchayats in the guise of agents of one or the other of the parties and arguing cases in such the same manner as lawyers do in a court of law, raising legal issues, citing authorities and so on. But the very purpose of the ready and common sense administration of justice through these courts without regard to technicalities would be defeated if legal practitioners are allowed to appear before them in any form.

Another feature of the simplified procedure of both the criminal cases and civil suits triable by a Nyaya Panchayat in West Bengal is observed when the Act in its section 72 and section 84 sub-section (1) allows the institution of case or a suit by a petition made either orally or in writing to the Secretary of the Anchal Panchayat or in his absence to a member of the Nyaya Panchayat.

Supervision and Control:

There should not, perhaps, be any

1. Ibid, P-105.
2. The West Bengal Panchayat Act, 1957.
difference of opinion on a point that the Nyaya
Panchayat at its infant stage should be nurtured and
taken adequate care of in order to attain its maturity.
The twin methods of supervision and central by higher
authorities are the very indispensable requisites to reach
the desired goal. In West Bengal the inspection of the
proceedings of any case and the records of cases maintained
by a Nyaya Panchayat has been entrusted with the District
Judge, the District Magistrate and the Sub-divisional
Magistrate within the local limits of whose jurisdic­
tion the Nyaya Panchayat is situate. The Act has also
provided for the inspection of the proceedings of a ny
suit and the records of suits by the District Judge and
the Munsif within the local limits of whose jurisdiction
the Nyaya Panchayat is situate. The aforesaid provisions
are undoubtedly salutary but in actual practice very
little is being done by way of regular inspection in
most of the states. In some states, the work of inspection
is entrusted to Panchayat Officers who have no legal train­
ing and who are really expected to devote the greater part
of their time and attention to the working of Gram
Panchayats.

But inspection of Nyaya Panchayats should

1. Sec. 100 Sub-Secs. (1) & (2).
net consist of a mere routine inspection to ensure that rules regarding the maintenance of registers and like are complied with. The inspecting officer should be able on occasions to act as a guide, philosopher and friend to Nyaya Panchayats and thus the appointment of a legally qualified man as a kind of judge-advocate for the assistance of the tribunals has recently been suggested.

The exercise of central control over the Nyaya Panchayats will also be done through the removal of the members and ultimately by its supersession if it is necessary to do so. On the removal of the members of a Nyaya Panchayat it may be suggested that such course of action will be taken if a member is found on enquiry to be guilty of misconduct, or to be remiss in the discharge of his duties or to be actively associated with any political party or with any religious, racial, language, caste or communal group as to render his continuance in office undesirable. A Nyaya Panchayat may be superseded as a body if it is not found to be acting judicially in the performance of its duties. The Panchayat Act in West Bengal in laying down the provisions

2. Ibid, P-113.
for constitution of Nyaya Panchayat has neither made room for the supersession of Nyaya Panchayat by any means whatsoever nor does it adequately mention the grounds for removal of a member of a Nyaya Panchayat. Only it has been provided under section 111 sub-section (1) that 'the state government may, by an order in writing, at any time, for good and sufficient reason to be stated in such order, remove a member of a Nyaya Panchayat.'  

But what constitutes 'good and sufficient reason' has not been clarified by the Act. The inclusion of such a vague and indefinite clause in the Act might create apprehension in the minds of the Panchayat members. The recommendation of the Study Team on Nyaya Panchayats suggests the removal of a member of a Nyaya Panchayat who is actively associated with any political party or with any religious, racial, language, caste or communal group.

But it is observed in most cases that a man of non-political colour has little chance of being elected to the judicial office by the Anchal Panchayat. The members of the Anchal Panchayat generally elect the members of the Nyaya Panchayat from amongst their party men and not otherwise.

The present criticisms against the village judiciary certainly prove the futility of the Nyaya Panchayat. The common complaints today against Nyaya Panchas are partiality, corruption, partisanship, frequent absence from sittings due to a reluctance on the part of the panch concerned to be associated with the decision of a particular case. Of late, a fear has also come to be expressed that party interests may also produce their reactions in the functioning of Nyaya Panchayats. In view of the defects just mentioned it was argued in the days of the Union Board system that all judicial powers would be withdrawn from the Boards.

It was stated in the days of the Union Board that 'Cheap and speedy justice has a fascination of its own. But generally when it is cheap and very speedy, it hardly remains justice. Amateur justice has hardly ever succeeded in any country. England has been its stronghold. The justices of the peace recruited from the leisured classes have disposed of petty cases for long. But even in this country a movement has been set on foot against this arrangement of things, and it should be noted that this movement is gaining in strength and momentum every day.'

1. Ibid, P-112.
3. Ibid, P-189.
The contention for the abolition of non-professional amateur judiciary on the basis of the movement launched in England against her justices of peace was published in 1936, and about three decades have elapsed since then, but still the system of lay justices not only continues but is more firmly established than it was ever before the war.

The following arguments may be put forward in a nutshell in favour of the system of Nyaya Panchayat:

Firstly, it is erroneous to argue that a layman cannot be a Judge. A layman can be entrusted with even the most complicated system of jurisdiction of deciding a case if he is given proper guidance and training.

Secondly, lay justice is cheap and quite satisfactory. It is needless to sacrifice lay justice to theory.

Thirdly, it cannot be universally claimed that a man trained in law should be always a good Judge.

Fourthly, corruption and malpractices are not the monopoly of the village judiciary.

They are in every sphere of human life and, perhaps, mere rampant in the upper sphere. The removal of corruption demands the change of human outlook and the abandonment of selfishness. Man must be made socially conscious in order to wipe out corruption and malpractices.

Lastly, the argument that party interest damages the sanctity of justice may be negatived by the right of supervision, central and guidance by higher authorities and it is true that herein lies the success of the system of cheap and speedy justice functioning from immemorial times.

Not only the Justices of Peace in England but the People's Courts system of Soviet Russia and the village conciliation committees of Yugoslavia offer good illustrations of successful lay judiciary. In Yugoslavia the emergence of conciliation committees has decreased the number of cases tried by ordinary courts. Thus, to deny the existence of Nyaya Panchayats in West Bengal as well as in India would mean a retrograde step. It is easier to abolish a system than to mend it. But the latter process though somewhat difficult is always praiseworthy. In Soviet Russia "the party and the government have unswervingly fought to bring the court as close as possible to the people, to strengthen its bond with the masses, to accelerate its disposition of cases and to improve the quality of its work."

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It must be observed in this context that Nyaya Panchayats have not yet been established all over West Bengal. The establishment of Nyaya Panchayats completely depends upon the will and wishes of the State Government. The State Government has authorised at the present moment some Anchal Panchayats to constitute Nyaya Panchayats to examine their actual working. If it is found that they are working satisfactorily, every Anchal Panchayat will be directed to constitute a Nyaya Panchayat quite apropos to the spirit of the Act. During the days of the Union Board petty civil and criminal cases in villages were in large cases decided by the President of the Board though he was not empowered to do so by the Act. This act of the President reduced the number of cases in the courts of the Sub-divisional Magistrates and the Sub-divisional Munsifs in many areas. So there is no reason to believe that the Nyaya Panchayat will fail to perform its allotted tasks. The success of the village judiciary depends, in the ultimate analysis, upon the honest and integrity of the Judges who would constitute it.

The U. S. A. of course, is not in favour of retaining the village judiciary. Throughout the rural regions of most of the United States petty civil and criminal cases are disposed of by the Justices of the Peace. These Justices of peace are "chosen by popular election in all cases decided by the President of the Board though he was not empowered to do so by the Act. This act of the President reduced the number of cases in the courts of the Sub-divisional Magistrates and the Sub-divisional Munsifs in many areas. So there is no reason to believe that the Nyaya Panchayat will fail to perform its allotted tasks. The success of the village judiciary depends, in the ultimate analysis, upon the honest and integrity of the Judges who would constitute it.

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1. Sec. 70 Sub-sec. (1) of the W.B.Panchayat Act, 1957. The aforesaid sub-sec. under section 70 lays down 1-
but a very few states”. In the U.S.A. "the supposed popular demand forug a Justice of the peace court in every township for the convenience of the community does not exist." The reasons for this are not far to seek. The people of the United States "live in a complex commercial and industrial age which has developed a highly technical and specialised body of legal principles and enactments peculiar to a period of maturity of law. Though the statute nowhere imposes any legal qualification for the Justices of Peace, it is necessary that the latter should be competent enough to apply judicially the great body of laws developed in America in recent times to attain fairness and legality in the dispensation of justice. But it is unfortunate that many present justices are ignorant and unfit to occupy even minor judicial posts. These justices of peace also failed to keep their records systematically. The evidence from different states shows that the record-keeping
by this typical justice is a joke. On account of the foregoing facts the Missouri constitution of 1944 abolished the office of the Justices of Peace and legislation of 1945 transferred their work to trained Magistrates. Mr. Lancaster holds the view that: "In the light of our experience, it would seem best to transfer civil work as far as possible to fewer trained Magistrates and make some provision by which they might act quickly on criminal matters as well. It should certainly be reasonable to suggest, in these days of improved highways, that there is no need for six, four or even two justices in every township." But W.B. Murra, an expert in the American constitution, holds an altogether different view.

He laid down:

"The work of these local courts is of great importance than most students of Government realize. They deal with an enormous number of cases and come into contact with more people than do all the other courts put together. Hence it is from them that the average man obtains his opinion of American Justice. When these courts are arbitrary, inefficient, or corrupt (as too often has been the case), they throw public suspicion on the whole judiciary, no matter how competent, fair and honest the higher courts may be."

"Unfortunately the personal and work of the local courts especially in the cities, have been too often made the prey of party politics. Big and little bosses have frequently controlled the selection of Judges and magistrates. Justice

1. Ibid. 2. Ibid, P-180. 3. The Govt.of the United States, 1936, P-73Q.
to often, has been tempered by political favoritism. Any reform of the judiciary, to be effective, must, therefore, begin at the bottom. The local courts are lowest in jurisdiction but not in importance. Many have found the successful working of the village judiciary during the days of the Union Board and in many cases the disputes in the villages ended in compromises or "salisi" through the mediation of the President of the Board. This method of settlement of disputes helped the people in a number of ways: Firstly, the poorer section of the community has little resources at their hand to continue a case in the court of a subdivisional Munsif or a sub-divisional Magistrate in a nearby town. Many people in the rural areas do not have two square meals a day. Thus to continue a case in a town is an impossible adventure on their part. The village judiciary saved the people to incur such types of undue expenses. Secondly, to go to a town to institute a case or a suit means undue harassment and a loss of time and energy. Particularly in the rainy season or in the harvesting season when the cultivators are primarily concentrated in the fields, they face much difficulty to go to a nearby town to appear before a court. The lay judiciary helped the people get rid of this difficulty to a large extent. Lastly, the village judiciary supplied the people with the ready and common sense justice which are suitable to the people of the rural regions who are mostly innocent and illiterate and do not understand

the complexities of legal problems. So the abolition of this system of judiciary would be an unwise and erroneous step.

The Nyaya Panchayat has not yet been fully established throughout West Bengal. But the system has functioned well in the areas where it has been established. The following chart will show the actual working of some Nyaya Panchayats in the district of Birbhum.

<table>
<thead>
<tr>
<th>No. of the Anchal &amp; Police Station</th>
<th>Year</th>
<th>No. of civil suits instituted</th>
<th>No. of criminal cases instituted</th>
<th>No. of civil cases disposed of</th>
<th>No. of criminal cases disposed of</th>
<th>Total amount of fine realised from the cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Kama, Suri</td>
<td>1968-69</td>
<td>5</td>
<td>22</td>
<td>12</td>
<td></td>
<td>₹120.00</td>
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<tr>
<td>b) Sandera, Kalhati</td>
<td></td>
<td>12</td>
<td>20</td>
<td>20</td>
<td></td>
<td>₹250.00</td>
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<td>c) Barsal, Rampurhat</td>
<td></td>
<td>10</td>
<td>15</td>
<td>15</td>
<td></td>
<td>₹180.00</td>
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<tr>
<td>d) Benshahat, Rampurhat</td>
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<td>4</td>
<td>11</td>
<td>11</td>
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<td>₹320.00</td>
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<tr>
<td>e) Tanti, Dubrajpur</td>
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<td>2</td>
<td>10</td>
<td>10</td>
<td></td>
<td>₹197.50</td>
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