

Lego-political Judicial Institution “Panchayat”, A Journey from Colonial to Postcolonial Times

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Abstract

Panchayat is a traditional judicial institute mostly remained in practice for centuries in various regions of Punjab. The transformation of traditional platforms into a Lego-political judicial institution has to be seen as the politics of judicial dispensation. The research is an attempt to investigate how political order is maintained through legal cover in social cosmos. The village Panchayat has been an important institution which disposes of numerous disputes/issues for maintenance of power structure. What are the reasons that still support both systems to work contemporarily? There may be clashes of justice in some cases but the law only supports the legal justice system with all its errors and flaws. Why is this injustice with the justice system? As in many countries like India and Bengal both systems have legal recognition. If the traditional justice system is no more working institution then why is this system still working?

Key Words: Judicial Institution, Colonial, Postcolonial, Judicial Structure, Panchayat, Judicial Practice

Introduction

Panchayat is a traditional judicial institute mostly remained in practice for centuries. The Punjab Village Panchayat Act 1921 was precisely enacted by British colonial masters. The transformation of traditional platforms into Lego-political judicial institutions. The platform provided a position of authority to local influential as political intermediaries to dispense cases by hearing disputes within micro-cosmos. The dispensation of justice remains a smokescreen as the main goal of judicial structure widely known as village Panchayats. The politico-judicial mediators enjoin the disputed parties’ to furnish guarantee bonds (cash or moveable possessions of value) in their custody to enforce the Panchayat decision (The Punjab Village Panchayat Act, 1921).

The local influential hold meetings and do consultations to find out the “appropriate” solution of issues or conflicts is judicial jurisdiction of Panchayat. Panchayat usually comprises elderly male of the village, who act as mediators to run the whole circuit of the Panchayat. The disputes and troubles can take place even at the group level (Clan, Biradary, Tribes) and Panchayat can activate its operations to resolve conflict for maintenance of social order and harmony of the village society (Acharya, P. 2003). The research is an attempt to investigate how political order is maintained through the legal cover in the social cosmos. The village Panchayat has been an important institution that disposes of numerous disputes/issues (Devasia, L. D. 2009).

The Panchayat system has been the common indigenous judicial practice in almost all sub-cultures such as Punjabi, Balochi, Sindhi and Pukhtun societies. The Panchayat system has been influential in the life of the masses of any society; they are indoctrinated as part of a group and bring security and identity. In Punjabi and Hindi, Panchayat is commonly known as Panchayat/Jirga whereas in Persian it is called Majlis (John, J. C. 2003).

There are many conflicts at the village level which need to be solved for the social order and bonding. Quite often, people entangle into dispute due to various underlying reasons such as petty verbal exchange on any matter or it may be a serious issue involving land, woman or any form of capital. These disputes and clashes are

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detrimental to the village socio-political order that may challenge authority of local powerful personalities of the village. It is pertinent to notice that it may be different from village to village in context of local power structure and their method to exercise authority (Taizi, D. 2007).

The legal justice system is also prevailing in Pakistani society. People also knock the doors of courts for justice in case of their conflicts and matters. Both traditional and legal systems are working in Pakistan but not everybody knows fully about both systems. The question arises if the court system exists then why people go to Panchayat. And if they are getting justice by the Panchayat then why are they going to the court system and vice versa. Maybe both systems have advantages and disadvantages. Some people claim that both systems are serving as weapons for the power elites and exploiting only the poor as Azam Chaudhry said in his book "justice in practice". The major population of Pakistan is middle and low class so that everyone is getting justice by any system that is convenient for him. How one can say that this system is only elite men show. If both systems are parts of one system then why is there the other? Why shouldn't they still merge with each other? There are so many questions in the debate which explore the new dimension of research with a comparison between the cases handled by both justice systems.

Panchayat (The Traditional Justice System)

There was a time when hunting and gathering societies lived in their own ways of life. The agrarian mind was quite different than of today. Everyone was considered to be a part of the community for working together. People had nothing much to choose and they were only there to fulfil their basic needs like a house, food and shelter. But the justice system also existed there. That traditional justice system was also an authoritarian based system. They had a different type of sanctions to regulate their behaviour and to control their families as well as their social groups. These sanctions and norms were based on their culture and traditions where they gave even punishment to the wrongdoers.

Restorative Justice Approach

Restorative Justice Approach was an approach where a convicted person was in front of the community and it was the community to take decisions against his/her wrong act. The person who broke the social norms or traditional laws went in front of his/her elders. They saw the sin according to the doer's act whether he was committing a big crime or minor one. And then they suggest a punishment for that wrong doer (Hayden, R. 1984).

The Criminal Justice System

Criminal justice system is a system that is hired by the white people where the justice department is playing the role of the courts system, lawyers and correctional officials. Under this Justice System, community is considered to obey certain laws and regulations. Violation of these laws is prohibited for everybody. The one who violates the law would be punished.

(Sidney, 1964), Now the court is supposed to give judgment on behalf of the arguments of both plaintiff and defendant. In the final phase, whether the person seems guilty then he is charged with a fine, punishment, probation maybe he is sent to prison. After serving punishment, he once again comes out and joins the community. There are also rehabilitation opportunities for the convicted in the prison in order to make the convicted product civilian in society.

The System in the Settlements

(Ronald, 2001), stated in his study that there are so many problems that people are facing in today's world. People are trying to put their traditional ways to tackle their problems. Non-aboriginal people are also admitting the worth of the traditional aboriginal justice system. So the traditional aboriginal approaches and techniques are used to acquire the knowledge about the weaknesses and strengths of the two systems.

Justice is Meant to Perpetuate Political Order of Power Structure

If we see that, what is justice? What should be a justice system? How judicial dispensation may be understood in a wider power structure? Likewise, there are so many questions that draw research insight for comprehensive analysis of judicial structure and its function to maintain political order.

Why are Both Justice Systems Promoting Functional Synergy

The comparison between Panchayat (traditional justice system) and legal justice system may be seen as a triangulation method. History of Pakistan shows that there was a close functional relationship between these two justice systems. The Panchayat system is considered a primordial judicial system in the history and practiced with different names in different societies. All those traditions which are used as sanctions in the Panchayat justice are manifestations of realities of specific society.

Types of Conflicts at Village Level

There may be some conflicts that emerged against them. Sometimes if anybody has social mobility in his family the others often try to pull his leg in different matters like the land issues as well as in the election situations. These are clashes on which traditional authority plays its role in the village affairs. So the Panchayat system goes actively to tackle these affairs.

Literature Review

(Harsh Mander, 2012), stated on the rights of urban homeless women, men and children that the Government of India has launched an initiative on the basis of the Panchayat system. In flood, Indian Supreme Court has recommended a law for community kitchen for homeless people. These kitchens will provide nutritious food and health facilities. So these people can live a balanced life like normal people. This act was done on the behalf of their Pune Hamal Panchayat. As their Panchayat raised a voice for those who were neglected by both systems that are state and traditional systems. After a year it was observed in the study that community kitchens were playing a positive step in the area. As it was a decision put out by the Panchayat system so all the credit went to their positive aspect for Panchayat.

As Chaudhry Azam analyzed that most of the clashes at village levels are based on land or within the house for a nuclear family and ethnocentric conflict with other clans or groups. There are some family disputes in this regard which are powerful and exploiting the honor of the poor. His study also shows that in the Panchayat system, the traditional practices seem more than the other systems. Panchayat plays its role according to customary values. This traditional system is serving the community without taking any cost from the parties.

In Indian constitution, Panchayat raj institution has legal authority as well as its verdicts are used as precedents in the courts. They are promoting their Panchayat institution day by day not only because this was a part of their traditions but also for cheap justice and on the spot justice which is approachable by everyone in the society. So this type of daring step was taken by the Government of India is giving their system a safety and also a favor by the traditional authorities.

(Chaudhury, 1999), stated in his work "The traditional system of justice" that there are various components of the traditional methods of conflict resolution. Administration of justice can be analyzed in the form of Khandan (family), Thara (platform raised), (end room of the house) of Baithak , Haveli (mansion), wood (space of socialization in the fields) , Panchayat (council) and the religious elites (including Pir and Sufi saints) . In the debate about the effectiveness of individual elements, Chaudhary argues that the underlying individual preferences emphasize one way to another for their own interests. The impact of modernization and traditional structures of authority is in a connection over the same societies.

Muazzmi and Sultana in 2020 argued that the traditional justice system is effective in Khul'a and divorce matters. People rely more on the Panchayat and local arbitration councils to solve their marital issues. It is also effective in civil matters however, in criminal matters the legal justice system has its worth with great effectiveness.

Harsh Mander analyzed that the issue of homeless women, men and children was not a light issue. Homeless community was a stigma on the Indian government where it was the Panchayat that explored the issue with its way to be solved. So Panchayat in India is also working as a legal consultant. The legal system and Government body welcome the suggestions and decisions of the Panchayat system (Mander, 2012).

After realizing that without involving the local people the development of the country is not possible, government added 73rd constitution amendment in which Panchayat was considered as a self government institutes having sufficient power for their functioning, which changes India into the "multi level federalism"

Regular elections took place for the selection of the Panchayat administrative members (Mathew, 2003).

(Soni, 2011) The research paper shows that the gram Sabha in rural areas is very beneficial for the development of the local community. Gram Sabha is a meeting which is held after every six months in which Panchayat administrative members come across local people who participate in the planning of developmental projects because they know well about their problems and available resources to solve their problems thus increasing the efficiency of Panchayats.

(Pratiksha Baxi, 2006) The writer presented a report which is based on comparative study of India and Pakistan. As the nation of both sites is under the control of two types of governers i.e. state government and other is Panchayat governers and both creates an anxious relationship between tradition and modernity which ultimately creates contradictory and unstable outcomes.

Jain in 1996 has stated in his article on “women changing Governance” that with the new Panchayat system in India, women were able to walk in every sphere of life. A woman as a leader was a new phenomenon with the new Panchayat raj institution where the women get more rights. Before that, they were not enjoying much high status in the different fields of life. This system was executed in the country in 1993 and the effects of this institution were observed within a year. And it was decided there to promote this institution as the results and public opinion about that institution was more positive than expected (Jain, 1996).

(Mathew, 2003)Panchayat is a group of five people which work for the management of affairs belong to the local community. In India the Panchayat system is very common which is based on the social status of the administrators of the Panchayat. (Moore, 1990)The study shows the mechanics of Panchayat and the “dream bread” exemplum which influence the working of Panchayat in Rajasthan, India. In this case the exemplum speaks both to an issue in controversy at the hearing, removing an out casting, and to the all-important procedure of the Panchayat. Moreover the writer also describes the importance of participation of the local community in decision making of Panchayat. The story narrated by the local people during Panchayat depicts their feelings about the panches (members of Panchayat) so through vigilance and rationality the local community plays an efficient role in decision making.

(Indra Rajaraman, 1996)This study focuses on the financial share of local bodies i.e. Panchayats. After the 73rd amendment decentralization of power took place and new three tiers of governers appeared on the scene, so that local community get flourished and developed through its self governers, but still after getting constitutional importance Panchayats are not able to perform their roles effectively due to low financial support.

Afterwards in 1993 73rd constitutional amendment was made to decentralize the power and to involve the people at very low level in spite of their financial conditions and castes so that the Panchayat acted more efficiently in the development of poor people of villages.

(Skyles, 1969) said that the courts are bound to give their verdict according to the laws and constitutional definitions while people feel uncomfortable some time with their legal system. Traditional justice is their own system as they feel it according to their cultural demands.

Hypothetical Research Questions

- What is the general perception of the rural populace about the function of Panchayat Institution in addressing disputes?
- Why do people entangled in disputes seek recourse to the Panchayat juridical function?
- How power structure compels People (of Dhaol Ranjha and surroundings) to have resolution through local Panchayat?
- Why has the Panchayat institution been in practice in the common social practice of rural society?

Objectives

- To comprehensively identify the function of Panchayats in the present locale as primary judicial institution of judicial governance
- To unfold norms and customs of local judicial institution “Panchayat” and process of membership in the village Panchayat as instrument of power

- To explore the Panchayats and representatives to how they organize themselves over a shared identity, regional strengths, areas of concern and advocacy.
- To document the proceedings of Panchayat in the selected locale.
- To initiate knowledge building around the praxis of local traditional governance.
- To inform representatives of civil society/Panchayat facilitators, and critical mass of Panchayat leaders on state citizenship relationship.
- To examine whether Panchayat could be institutionalized through legal cover for legitimate exercise of authority.

Statement of Problem

Panchayat as a local judicial institution is considered as a problem-solving assembly/institute that is viewed in the local traditional setting of the masses. It is formalized and legally endorsed by the colonial power to ensure political order in rural areas of Punjab. Later on, the post-partition period witnessed rapid structural changes taking place in different fields keeping this tradition of local judicial dispensation in continuity. This local judicial institute put the community at the mercy of a steel frame of political patronage. While it is a lego-judicial institution that exists as a grass root level political field. The working of panchayat has been a local field of passive revolutions at the village level. The passive revolution is a process in which certain issues tend to achieve political organization for collective action but soon scatter into multiple voices again. Thus the present research investigates how local judicial institutions panchayat instrumentalist in maintaining patronage-based political order through judicial dispensation. People subscribe to this local traditional institution as part of cultural practice leads to parallel judicial practice in contrast to the formal legal judicial system. The large number of cases referred to the traditional judicial panchayat are of civil matters as well as cases of honour which may be seen as offshoots of economic structure. People may feel honour to go to Panchayat as their tradition to further increase socio-political clout in village society. All these connections offer a way to understand why people entangled in disputes seek recourse to Panchayat juridical function?

Significance of the study

It will help the society as well as the later researchers about the traditional justice system which still existed in different shapes within different societies. In pakhtoons and Afghanistan it is called Jirgah while in India it has different local and legal names like gram Panchayat, sabha and lok sabha. In Punjab, it is called and well known as Panchayat/Paryah. Moreover the study signifies the proceedings and nature of the cases to be solved under the Panchayat system. Where the verdict of the Panchayat representatives is executed and how it is implemented in the selected locale.

Theoretical Framework

(Rawls in 1971, argues that justice is the necessary part for the society in progress. It is said that justice is the basic organ of the society. People living in society are expected to have equal and balanced opportunities. His ideas are giving a concluding swing with a fundamental structure is the renowned variation principle. The theory is supportive for the researcher to develop the research tools and methodologies. In a way the theory supports the principle of justice and the traditional justice system in which the individuals are supposed to be the rights oriented members of the society. As Rawls developed the attributes of justice for everyone, this theoretical framework is used in regard to the present research. People seek justice in any way and for that they do their every possible effort. When there are more than one justice systems to differentiate the right and wrong then the phenomena of equal distribution emerges.

Research Methodology and Evidence

The present study was conducted in district Mandi Baha-ud-Din. The district is very rich in practicing the traditional justice system even today. The panchayat of this district has its worth towards implementation of their final orders. Descriptive methodology was used for the present study. The question was to investigate the phenomenon of both justice systems in practice in the said locale. It was qualitative research in nature where the primary method of research was used with the help of in-depth interviews and case study methods. Interview

guide and case study checklist were the main research tools used in this research as used by Yin, Robert, K. (1984). The researcher attended some sessions of Panchayat discussion in Dhaol Ranjha where he went five times as a party of the matter. Moreover, as there was a matter of study in the Panchayat discussion. The panchayat discussions were observed according to the nature of study.

Mostly, direct observation of the local people was made when they were busy in daily routine work or interacting at household level or sitting in Kath (gathering of people) of the community during Panchayat. Sometimes in cases of democratic conflicts, I participated as a moderator and played my role effectively. Moreover, the researcher attended some sessions of Panchayat discussion in Dhaol Ranjha where he went five times as a party of the matter. Moreover, as there was a matter of study in the Panchayat discussion. The panchayat discussions were observed according to the nature of study.

Results and Discussions

By using the cases and interview guide in a village Dhaol Ranjha, District Mandi Bahauddin the researcher made an attempt to unearth the phenomenon of Panchayat. Panchayat is a traditional justice system that works and provides justice according to the traditional norms and values of the society. There are different traditional systems in different areas. All these are working only to provide justice to the villagers. At village level the chieftain of the village and those people who are thought to be respectable, honorable and considered visor or selected by the villagers as the member of Panchayat. In different villages in our society there are no criteria for the selection of members because those who have power and authority and have a reputable image in the area started solving the affairs of locals. Panchayat has a strong history since the time of hunting and gathering societies when people felt that to perform the social norms and values, there should be a justice system.

There is a clear cut description between the two justice systems. Legal justice system is working under the constitutional provisions and according to country law without regarding the cultural values and traditions.

Function of Panchayats in the present locale as primary judicial institutio

The traditional justice system does not obey any country law but respects the traditions and expected settlement among the masses. There is a gap between the both systems that has never been tried to fulfill by any government or any other institution. Both systems are working on their own ways and lines where the Panchayat institution has not his legal recognition in Pakistan.

In India, Bengal, and Nepal the Panchayat system has its legal authority where specific rules and regulations under different Panchayat raj act has been established. The Panchayat, under those roles, is working in the civil matters as well as developmental and social issues of their areas. The same system of Panchayat all these countries or sub continent in their pasts but there was no step taken by Pakistani government to enrich this traditional institution.

In Afghanistan, the studies of Paktia shows that there Panchayat system also established a village police named as Arbki for the execution on the decision of their Panchayat.

The Panchayat institution at village level in Pakistan is working within its boundaries and limitations. The legal system is also working within their jurisdiction in the same areas but both systems are anonymous to each other. The question arises at the end of study why both systems are still anonymous to each other. There are many examples of neighboring countries where West Bengal after its independence in 1971 has developed its Panchayat institution and made the first elections on the Panchayat system in 1978. Is Pakistan just waiting for the destruction of its traditional institutions or there is nobody encouraging that institution?

Philosophy of Panchayat at Village Dhaol Ranjha

In Panchayats the parties put forward their claims and viewpoints turn by turn without interruption. The intermediaries give enduring hearing to their issues. Dispensation of justice is an instrument of maintenance of political order as the main goal of village Panchayats. The Mediators order the parties' guarantee bonds in the shape of cash or moveable possessions of value and keep in their custody to defend the violation of Panchayats decision. Panchayat disposes the cases in the shortest possible time and dispensation of justice is not postponed unnecessarily. In Panchayat proceedings Metaphors and phrases are used which sum-up, the longer details in

few words. The Crux of the matter is that village Panchayat assumes importance with bearing on its longevity in large power structures for resolution of petty issues.

According to Ronald in his studies on "the two justice system" local justice system is in offering criminal procedure justice and this may deal only with the civil crimes, wrong act on the law of tort and easements. Community comes to them only for their civil matters and for their rights protection. In this regard, he argued, the criminal justice system is a necessary part of their system. So they need both systems for their society. The criminal justice system gives verdict with punishment and different ways to give sentence to the convicted. On the other hand, their local system of justice gives them the rights and protection in their movable or immovable property.

Panchayat can be used for the development purpose as Mashira A.K, described in his study that "Panchayat raj institutions in India are also working for the development of the country. Development of India is based on the development of her rural areas. To speed up the process of development, decentralization of power and involvement of the local community at basic level is the prime agenda of Indian government".

The Panchayat system in Pakistan is a complete institution that seems as powerful and authoritative at village level. It is possible to utilize this traditional institution in development sectors, in providing justice, in agriculture, forestry and many other welfare projects. Panchayat institutions are not able to perform any efficient role in these sectors without the help of the government.

Panchayat as Instrument of Power

There are also some flaws in the Panchayat system for example, some respondents argued about the Panchayat system as it was a system based on nepotism that protects the relatives and kin of the Panchayat members. The system has many flaws and compensations that are needed to correct with the help of governmental bodies. Moreover, Panchayat seems biased in some cases which is a flaw in this traditional system. In some cases Panchayat does not follow its precedents and it's giving different decisions in the same kind of cases.

Proceedings of Panchayat in the Selected Locale

The Panchayat system has no written rules and regulations to be followed. There is not any specific framework under which all the Panchayats are working. In different societies and areas, this traditional institution has its own way of giving decisions according to their powers and authorities. One of the flaws Panchayat institutes have in the matter of execution on the decision is that law enforcement agencies do not support any verdict of Panchayat. All these errors and flaws can be diminished or omitted if the government of Pakistan takes some serious action toward this traditional justice system.

Maintaining Order with Political Acumen and Shrewdness

Results show in Panchayat proceedings, metaphors and vernacular proverbial phrases are often used to sum-up, the longer details in few words. The village elders having the advantage of age and experience try to maintain order with political acumen and shrewdness. The tried and tested method is to verbally warn involved factions or individuals to find out ways to reconcile the dispute. The traditional pattern is to listen to parties of the dispute and sift the claims to draw a viable conclusion from it. In Panchayats the parties put forward their claims and viewpoints turn by turn without interruption. Panchayats can dispose of matters in a short span of time.

The colonial judicial institution of Panchayat had legal backing with wider effects on the masses conscious. However, the post-colonial period kept it out of sync and ran the local judicial practice without any legal cover until 2019 when The Punjab Village and Neighborhood Councils Act 2019 was enacted.

People still rely on the panchayat system in their civil matters. There are different types of conflicts at village level being handled by the panchayat system. For example, inter group disputes, intra group disputes, women as a cause of conflicts, elopement as a cause of conflicts, honor killing, marriage conflicts, dowry conflicts, Watta Satta, separation and divorce, conflicts within laws and conflicts due to money and defaulter ships.

Areas of Concern and Advocacy; Zan (woman), Zar (gold) and Zamin (land)

The authority decisions are binding upon people in disputes and matters because a village provides local cosmos

with specific boundaries as conflicts must settle down within their own village. The idea of others (*Shareeka in Punjabi*) remains in their memory which haunts villagers to maintain prestige from going public in the outer world. The cases dispensed in a Panchayat are based on three major aspects, zan (woman), zar (gold) and zamin (land). Furthermore, the elements of Izzat (honor), Sharam-o-Haya (Modesty and Ghairat), and defense of women/honor are the mainstream category of the villagers' disputed issues. Where the villagers saw themselves different according to their customs and traditions, they came across the boundaries and indulged into a conflict. Sometimes such issues may create fissures in marital alliances, ties between different biradries (clan) groups and patron-client relationships as well as their family bonding (Singh, H. 1994).

Societal Structure, Work and Duties of Villagers

The villagers have a variety of work in a collaborative way of doing and performing their duties as a part of the specific villages. There are different castes and classes in the villages mostly Ranjha Jatt Biradari is prevailing the whole village, while Gondal, Tarar and Syed's are also their part to play. Kammi's are the representatives of the labor class who perform their duties in the village for their land holders and upper class. There are different social bonding and kinship ties in the village where the Shareek system, Biradari system, Khandan, Ghar, Whom, family and different living patrons have been discussed.

The Praxis of Local Traditional Governance

There is a clear cut description between the two justice systems. Legal justice system is working under the constitutional provisions and according to country law without regarding the cultural values and traditions.

The traditional justice system does not obey any country law but respects the traditions and expected settlement among the masses. There is a gap between the both systems that has never been tried to fulfill by any government or any other institution. Both systems are working on their own ways and lines where the Panchayat institution has not his legal recognition in Pakistan.

Critical Mass of Panchayat Leaders on State Citizenship Relationshi

In India, Bengal, and Nepal the Panchayat system has its legal authority where specific rules and regulations under different Panchayat raj acts have been established. The Panchayat, under those roles, is working in the civil matters as well as developmental and social issues of their areas. The same system of Panchayat all these countries or sub continent in their pasts but there was no step taken by Pakistani government to enrich this traditional institution. Also in Afghanistan, the studies of Paktia shows that their Panchayat system also established a village police named as Arbki for the execution of the decision of their Panchayat.

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institutes have in the matter of execution on the decision is that law enforcement agencies do not support any verdict of Panchayat. All these errors and flaws can be diminished or omitted if the government of Pakistan takes some serious action toward this traditional justice system.

Conclusion

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The whole research shows an impact of the Panchayat system on the life of individuals living in the village and surroundings. There is also a comparison between two systems with those respondents having both types of cases who have faced or facing both types of cases. Overall it was an endeavor to unravel the traditional justice system with its advantages and disadvantages by giving an explicit picture of a Punjabi village Dhaol Ranjha.

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