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VILLAGE COURTS : BOON OR BANE

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Abstract:-Village Courts are very popular in rural Tamil Nadu through the ages. They are the backbone of the functioning of the village society. Even though different courts are functioned in the Villages, they administered the local justice and maintained law and order. Generally the village panchayats acted as the village courts. The elders and wise men presided over the village courts and delivered their verdicts in many cases and imposed fines on the convicts on the nature of the crimes. The village courts administered justice based on eye witnesses and evidences. Punishment varied from simple to harsh, depending upon the nature of errors and crimes.. The verdict seemed varied from one village to another one. However, now the role of the caste panchayats ruined the nature of the village set up, and it seemed almost a bane to the society. The British Administration ruined the function of the village courts. In the post-Independent period, B.R. Ambedkar was against the village panchayat because it nurtured caste system. According to him, the dominant caste members were alone allowed to sit as panchayat members and their judgment was against the interest of the downtrodden people Any how, still the village panchayats are functioning successfully in the rural Tamil Nadu and a great blessing too.

Keywords: Court, Panchayat, Folk, Rural , Village, Council.

INTRODUCTION:

Rural judicial system in Tamil Nadu in which the village people have more faith has not been studied in detail so far by many researchers and scholars. Even those who did their studies in North India have contended that India's massive population through the promotion of Nyaya Panchayats. "Village courts" are in theoretically provocative as well as practically important. Yet, it remains virtually unexamined in India and unknown elsewhere"¹

A.L. Basham pointed out that "At all times village was the unit of government"². In the villages the two elements namely village headman and the village council, which survive to the present day, represented the last link in the claim of governmental control and good governance. Moreover it is known that some cities had local autonomy, councils existed in large villages in various parts of India, especially the Chola country, where they were vigorous.³ The existence of the people's courts all over Tamil Nadu is nothing but the continuation of the powerful village administration in the past, but in an informal manner. As the village council is rarely referred to in most sources, though it certainly existed all over India . Its status and power continue to be till date with efficacy in the rural India, but it is not recognized as part of the state machine.

Panchayats which have existed in India for thousands of years, are a characteristic and distinctive institution of Indian civilization. The meaning of Panchayat is "coming together of five persons". In ancient Tamil legal system , it is found that find the terms Aimperuhkulu, "group of five big persons" and Enperayam "group of eight big persons". Panchayats were constituted for one revenue village or more than one and consisted of not less than seven and not more than fifteen members⁴

In the Nayak period also (16th to 18th Century) the central government did not maintain an elaborate judicial establishment. Justice was mostly administered locally by the village officers.⁵ In the Pre-British India there were innumerable, overlapping local jurisdictions, and many groups enjoyed some degree of autonomy in administering law to themselves. Disputes in villages and even in cities would not be settled by royal courts, but by tribunals of the locality, of the caste within which the dispute arose, or of guilds and associations of traders or artisans, or, disputes might be taken for settlement to the Panchayat of the locally dominant caste or to landowners, government officials or religious dignitaries.⁶

It is noteworthy that Indian scholars and experts in Indian Polity had two kinds of opinions regarding village panchayats quite contradicting to each other. B.R. Ambedkar, the chief draftsman of the Constitution of India, vigorously defended the omission of villages and ruffled the feelings of many in the Constituent Assembly by stating bluntly: "I hold that

those village republics have been a ruination of India. What is a village but a sink of localism, a den of ignorance, narrow-mindedness, and communalism?" In response, Mr. H.V. Kamath dismissed B.R. Ambedkar's attitude as that of an "urban high-brow" and insisted that "sympathy, love and affection" toward our "village and rural folk" was essential to the uplift of India. . T. Prakasam pleaded for a modernised system of Panchayats which will give "real power to rule and to get money and expend it, in the hands of the villagers". Professor N.G.Renga asked "without this foundation-stone of village panchayats how would it be possible for our masses to play their rightful part in our democracy?".⁷

While discussing reports of committees on Legal Aid namely Justice Krishna Iyer and Bhagwati, Galanter writes Panchayats would remove many of the defects of the British system of administration of justice, since they would be manned by people with knowledge of local customs and habits, attitudes and values, familiar with the ways of living and thought of the parties before them".⁸ Panchayats are commended as inexpensive, accessible, expeditious and suitable to preside over conciliatory proceedings.

Experts' opinion is that the legal ineffectiveness gives new life to the persisting doubts about the suitability of current legal engagements and that there are enduring loyalties to the notion that the adversary conflict institutionalized in the law is destructive and counter to India's indigenous traditions.⁹

There are several forums, independent of the official law namely a "low adalat" run by a charismatic social worker in a tribal area of Gujarat, People's council for social Justice in Kerala conducted by a voluntary group and so on. People's council for social Justice urges people to avoid the courts and avail themselves of its services instead.

Not only in India but in USA also it is found that measuring the quality of dispute processes is a problem that has recently received considerable attention, as an off-shoot of the growth of the "Alternative Dispute Resolution Movement". The interest in these questions is world wide. However the Indian conditions are different.¹⁰

The current trend is due to the dissatisfaction over extortionate expense, inordinate delay and tormenting uncertainty of court process. While one find this new trend growing, the old caste panchayats and village panchayats are functioning in several places in Tamil Nadu.

Legal experts who did extensive study on Nyaya Panchayat in North India (Maharashtra, Rajasthan, UP. etc.) wrote that the Law Commission (1958) and the study team on Nyaya Panchayats (1962) saw a bright future for Nyaya Panchayat but the evaluations of Panchayat Raj in 1970s recommend the abolition of the Nyaya Panchayat altogether.¹¹ The Rajasthan Committee also concluded that the Nyaya Panchayats are "neither functioning properly nor have they been able to inspire confidence in the people".¹² Another scholar examined Nyaya Panchayat in 1970s in Uttarpradesh and offered an explanation for the failure of the yet persistent trust in these failing institutions.¹³

The present paper examines village courts today in the State of Tamil Nadu, the efficacy of folktales in the process of hearing and thereby tries to establish that the village courts are not a failure in Tamil Nadu. The Village Panchayats are so powerful in several villages that no police would enter and interfere in their affairs. The hearing of the cases is known as "Kata-p-panchayattu". The Village Panchayat or Grama Sabha is an empowered, deliberate body, powerful enough to ensure popular control over local affairs.¹⁴

TYPES OF PANCHAYAT

The Village Panchayats can be classified into three major divisions namely, 1. Jati-p-panchatat - "Community Court" 2. ur-p-paiccayat - "Village court" 3. nattu-p-panchayat - "Inter-village court"

The Community Court or Jati -p-Panchayat, constituted by the community people looks into the community affairs and problems such as a.) Quarrels between families of love pairs b) Divorce c). Suspicion over spouse d) Illegal activities e) Dispute over lands and properties and f.) Problems created by evil forces and criminals and so forth. The Jati-p-panchayat has its limitations as to it can function only for a particular caste or community. But it would handle most cases".¹⁵

Village court or ur -p-panchayat will be constituted by the villagers only when problems arise. It is a common court which has representatives from several community courts. Major crimes and inter-caste problems will be placed before the village court.

Inter- Village Court or nattu-p-panchayat . When problems common to two villages arise this court which has representative members from both villages will be constituted. The cases brought to all these courts will be dealt with in a public place called ur manram, ur metai or ur-c-cattiram or in open under a big tree.

The standards set for the members are high. They are to be religious, wealthy and of high status and character. Since the members of the courts are usually respected by the people, the verdicts passed on are accepted wholeheartedly. As the members are not paid any remuneration, the people prefer not to go to magisterial courts and High courts where the procedure is highly bureaucratic and the dealing very expensive. Most of the village people belong to lower class and they cannot afford to pay big fines.

Actually, the word "panchayat" no longer suggests any reference to the number five. In its broadest accepted usage, it designates here a gathering invested with judicial or communal functions - any-thing from a committee of arbitrators summoned by the concerned parties to settle a dispute to a plenary session of the assembly - of a hamlet or of a territorial unit.¹⁶ Justice William Holloway, in his notes on "Madras Judicial Administration", remarked that the natives of Madras dread the very idea of resorting to the Supreme Court and cited the incomprehensibility of the English proceedings, as well as their high

cost. He reproduced a list published by a Madras city newspaper in 1847 giving the names of thirty seven men and the sums their families had spent on litigation, and commented on the ruin of nearly every wealthy family which has ever resorted to court.¹⁷

The famous poet Desikavinyakam Pillai of Kanyakumari District wrote the evils of going to court with great humour and satire in his "Marumakka vali manmiyam" in the chapter on Koteri-k-kuti mutitta patalam "ruin of family /lineage by going to court".¹⁸ The same kind of idea prevails in Tamil villages and hence the rural litigants prefer informal village courts rather than going to courts of law.

The present judicial system in rural Tamil villages is not rigid and formal as one may expect it to be. The case which is to be described in this paper and a number of such cases were reported to a single man who is highly respected by the local people in Usilampatti, Madurai District.

The "Judge" Ayyakkannu is a native of Usilampatti, a Kallar by caste. He is the proprietor of a small grocery shop; however until recent times he did not have a shop of his own and he was only acting as an informal judge in many cases that were reported to him. He is well known among people and highly regarded for his talents in handling cases. He had only basic education in primary school but has a marvelous brain of a legal expert which employs indigenous methods to solve huge problems. He is a proof for Dumont's observation as to "the indigenous aesthetic is to a large degree verbal and judicial".¹⁹ Ayyakkaiju is known for his wit and attractive way of conducting the hearing of cases. As Dumont pointed out "not only is the jurist often an eloquent speaker - and eloquence and wit are highly valued".

A case came to the court of village judge. Difference of opinion between a husband and wife caused separation. The wife went to live with her parents. The couple had a small baby. The husband refused to give the baby to his wife. Both the mother and the child had mental and physical suffering due to the separation. This was reported first by the husband -plaintiff to the 'judge' who was paid Rs. 5/- as fee.

The judge and other two big men of the village went to the defendant's (wife's) village met her at her parent's house, pacified her and she agreed to live with her husband again (The bus fare and other expenses for the three people were met by the plaintiff). She lived with her husband and child for a week and when the husband relaxed his vigil she flew away with her child to her parent's house. -

The plaintiff came to the court once again. He was so angry not only that his wife went away from him but she took the baby also with her. At this point the judge told the plaintiff a folktale (This time also the plaintiff paid Rs.5/- to the judge).

Folktale as an Effective Technique to solve the issue Ethnographic examples can illustrate the cultural functioning of different genres. Fieldworkers in Africa have pointed out the prevalent use of proverbs in judicial proceedings. John Messenger who observed the Anang in Nigeria, wrote about using proverbs by the plaintiff and the defendant and the effectiveness of proverbs in passing verdicts. This key role of proverbs in swaying the opinion of the justice is unrecognized by the Anang themselves, since they are so accustomed to employing proverbial phrases in daily conversation as a means to instruct the young and in the course of ritual ceremonies.²⁰

As the Anang in Nigeria, the rural judges in Tamil Nadu are found to be using folktales effectively during hearing of cases. There lived an old tiger in a mountain cave. He was very old and sick. But he had a terrible hunger. He could not go out to look for prey. At that time a jackal came that way; The tiger stretched out head and asked him, "How are you, my friend?". He replied "I'm fine. Why are you lying down like this?" The tiger told in his reply "I have become very old. My health has deteriorated. I am so hungry. You can only bring me a prey. If you do so I shall never forget it in my life".

The jackal promised him to bring him prey and left. When he was just entering into the nearby village he saw a donkey standing near a ruined wall. He went close to the donkey and said, "Oh dear sister, you look so beautiful. Our tiger-brother who is lying down in the cave is longing to see you. He asked me to take you to him".

The donkey felt so happy that it did not understand anything. It thought that the tiger would give it lot of gifts. When it went near the cave the tiger leaped out in a great speed and caught hold of its ear. The donkey ran away without a ear escaping from the tiger, bleeding like anything.

The tiger was so sad and told the jackal "I did not expect this. What can we do now?" -

He replied angrily "I took much pain over getting you a prey, but you were not intelligent enough to catch hold of it. I can't do anything for you".

The tiger pleaded, "Please forgive me friend. Catch the donkey for me once again. I shall act with intelligence". The jackal was kind enough to go to the same place and look for the donkey. When he went near the ruined wall he saw the donkey standing there. He asked the donkey, "Oh my sister, why did you run away so fast? What happened to you?". The donkey replied, "Oh my good Heavens, that bad tiger caught hold of my ear and pulled me towards him. I lost one of my ears but somehow managed to escape. I am not foolish to believe you once more". The jackal said, "Oh sister, you took a hasty decision. Will I do harm to you? Tiger-brother touched your ear with affection. But you misunderstood his act and got afraid. Please come with me. He will be so happy to receive you". You see, the donkey does not have much brain! This time when the donkey went close to the tiger with fear the tiger stroked its back, pretended to be so kind with his sweet words and caught it under his feet and had a grand feast. The judge asked the plaintiff if he understood the meaning of the tale. When he smiled and nodded, the judge asked him to tell him what the tale meant.

The plaintiff said that the tiger was himself, the jackal the "judge", and the donkey the plaintiff's wife. He also agreed to meet the expenses for travel etc., of the judge, and other two big men of the community. He promised that he would be kind to his wife (as the tiger was kind to the donkey, when it was brought to the former a second time).

The judge and the other two big men again went to the defendant's place and brought her back with her child to her husband's house after taking much pain over convincing her of the new situation and after guaranteeing her a smooth happy life.²¹

Thus the village courts are not a failure in Tamil Nadu, especially in all the Tamil districts.. Among Folklore genres folktale is found to be used effectively by the judges during the process of hearing, to make plaintiff and defendant understand difficult situations, and the use of folktale causes success of the cases. Despite vast changes in government, economy and political organization between the British and the current Democratic India, something quite powerful keeps reviving the ideal of the panchayat within India. Thus the Village Courts plays a predominant role in rural side which solves various disputes with little expense and making amity among the vested groups. It is a boon to the people if it function well. It is a bane if it gives place to the vested interested groups.

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