

**PARTICIPATORY JUSTICE AND HUMAN RIGHTS
PROTECTION IN LITTLE DEMOCRACIES :
A PILOT STUDY**

PROJECT REPORT
Submitted to

**KERALA RESEARCH PROGRAMME ON LOCAL LEVEL DEVELOPMENT
(KRPLLD)**

**Center for Development Studies
Thiruvananthapuram**

KERALA

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June 2003

Acknowledgment

I am thankful to Dr.K.Narayanan Nair, Programme Coordinator, Kerala Research Programme on Local Level Development (KRPLLD), Centre for Development Studies, Thiruvananthapuram for giving me an opportunity to undertake the Pilot Study on Participatory Justice and Human Rights Protection in the context of panchayats in Kerala. Prof.P.R.Gopinathan Nair, Programme Advisor and other supporting staff of the Project Secretariat, were also extremely helpful in the execution of the project. Their services are gratefully acknowledged. Sri.Jayachandran, Secretary, Kerala State Human Rights Commission, Sri.Vikraman, Secretary General, Human Rights Protection and Welfare Council of Kerala(Kadakkavoor), Dr.B.Vijayakumar, Reader, Department of Economics, University College, Trivandrum, Smt.Sulochana, President, Grama Panchayat Pothencode, Trivandrum, Sri.A.Sajjayan and Mr.Muralidharan, Research Assistants have rendered immense service at various stages of the present study. Office bearers of the local units of SNDP Yogam, Muslim organisations, members of Self Help Groups in Vengode(Pothencode Grama Panchayat), activists of backward class organisations, Human Rights Protection and Welfare Council of Kerala (Kadakkavoor), Local Unit Vengode, Residents of Vengode SC/ST Colony, Officials and elected members of Pothencode Grama Panchayat etc deserve acknowledgment for their active cooperation in the field survey for the pilot study. I am thankful to all of them for their valuable support.

Contents

	Page No.
<i>List of Tables</i>	ii
<i>List of Annexure</i>	ii
<i>List of Abbreviations</i>	iii
<i>Chapter 1 :</i> :Introduction	1
<i>Chapter 2 :</i> Nyaya Panchayats in Retrospect and Prospect	9
<i>Chapter 3 :</i> Panchayati Raj Institutions, Human Rights and Decentralised Systems of Dispute Settlement	16
<i>Chapter 4 :</i> Human Rights Protection, Promotion and Education by Panchayats: Scope and Challenges	27
<i>Chapter 5 :</i> Conclusions and Suggestions	43
<i>Annexure I</i>	47
<i>Annexure II</i>	48
<i>Bibliography</i>	49

List of Tables

Table No	Title	Page No
4.1	Profile of the Study Area : Pothencode Grama Panchayat	29
4.2	Distribution of Respondents according to Sex, Age, Community, Educational Status and Employment	30
4.3	Distribution of Respondents according to Awareness: Human Rights, Death due to Poverty, Dowry-related Atrocities/ Death, Custodial Torture/ Death and HR Violations in Police Station	32
4.4	Awareness of Human Rights Violation in the Panchayat and Nature of Violation	34
4.5	Human Rights Awareness and Role of Different Agencies in its Promotion/Education	37
4.6	Opinion on the Scope and Challenges of Nyaya Panchayats	38
4.7	Agencies Preferred for Settlement of Disputes in Family, Community, Place of Worship, Marriage, Property, Environment etc	40

List of Annexures

Annex I	The Universal Declaration of Human Rights : A Synopsis	47
Annex II	Name and Address of NGOs included in the Rolls of the Kerala State Human Rights Commission	48

List of Abbreviations

COs	Community Organisations
HROs	Human Rights Organisations
HRs	Human Rights
ISS	Institute of Social Sciences
JSs	Jagratha Samithies
NCERT	National Council of Educational Research and Training
NGOs	Non-Governmental Organisations
NHRC	National Human Rights Commission
NHGs	Neighbourhood Groups
NPs	Nyaya Panchayats
OBCs	Other Backward Classes
PDHRE	People's Decade for Human Rights Education
PHC	Primary Health Center
PRIs	Panchayati Raj Institutions
SHGs	Self Help Groups
SC/STs	Scheduled Castes/ Scheduled Tribes
SNDP	Sree Narayana Dharma Paripalana
UGC	University Grants Commission

Chapter - 1

Introduction

Human rights is a twentieth century name for what has been traditionally known as natural rights or, in a more exhilarating phrase, the rights of man [Cranston, Maurice, 1973]. The notion of natural rights has continued to attract man's minds; and the constitution or the legal codes of practically every state in the world today give at least formal recognition to the rights of man and the citizen. Thus one of the greatest accomplishments of civilization in the twentieth century is the acceptance of human rights as

an integral part of governance for which the state, whatever its form, has accepted obligations and accountability [Madhava Menon, N.R, 2000]. There is a strong NGO movement supported by an increasingly activist judiciary and an independent media to monitor human rights violations and to seek accountability of the powers-that-be at different levels of government. Admittedly, there is a human rights culture emerging everywhere informing and illuminating public policy and governance with varying degrees of success against strong currents of authoritarianism and abuse of power [Madhava Menon, N.R, 2000 a].

Some studies have shown that poverty worldwide including in India, has increased as a result of globalisation. According to the results of the 53rd round the National Sample Survey released recently, the percentage of rural poor in India increased from 35% in 1991 to 38.5% in 1997. A survey carried out by the National Council of Applied Economic Research along with the International Development Research Centre of Canada drew similar

conclusions. Yet another study by the International Food Policy Research Institute notes that while overall economic growth has been impressive since the start of reforms in the early 1990s, this has not made a positive impact on rural poverty. If after ten years of experience in economic liberalisation, there is increase in poverty and decrease in government's intervention in programmes directed towards alleviating poverty, human rights activists will have to ask questions of state accountability according to constitutional prescriptions. Human rights being part of the basic structure, no market-friendly government can hope to abridge it through constitutional review or similar exercise Can the state disown or disregard its obligations under the cover of economic liberalisation ? [Madhava Menon,N.R,2000]. Similarly, shifts in economic policies under globalisation and the growth of Transnational Corporations pose new threats to human rights worldwide. When the state loses its capacity to decide its own economic policy, the first casualty is social welfare and thereby socio-economic rights.....The increasing power of Transnational Corporations and the inability of governments to control their activities lead to human rights violations [Koshy,Ninan,2002]. It is true that after the adoption of the Universal Declaration of Human Rights in 1948, an elaborate system of mechanism has been created to ensure the advancement of universal human rights, deal with violations of human rights, and to promote education/training in human rights. But the emerging environment of globalisation and shrinking state, demand new strategies for human rights protection and promotion.

The Context

In order to facilitate the promotion of human rights effectively, education, training and awareness programmes have been assigned a crucial role. The People's Decade for Human Rights Education, 1991-2001

[PDHRE] was therefore conceived in the late 1980's and a number of activities were carried out for the promotion of human rights education in many parts of the world. An International Congress on the Teaching of Human Rights was held in 1988 in Vienna. The UN World Conference on Human Rights [Vienna, 1993] Declaration, inspired the UN Decade for Human Rights Education 1995-2004. Out of the 100 clauses in the Programme of Action of Vienna Declaration, four [78-81] are related directly to education and training. The World Conference on Human Rights [Programme of Action 78] considers human rights education training and public information essential for the promotion and achievement of stable and harmonious relations among communities for mutual understanding, tolerance and peace. Paragraph 33 of the Vienna Declaration and Programme of Action "emphasises the importance of human rights education..... and calls on all states to do so". The section on human rights education in the Programme of Action recommends that states develop specific programmes and strategies of ensuring the widest human rights education, establishing international public policy on human rights education and reaffirming its importance.

Human Rights Education

According to Koenig, "the pursuit of human rights education serves as a powerful incentive for people to organise and coordinate themselves for effective action. The relationship between an active awareness of human rights and the realisation of these rights has been acknowledged worldwide" [Koenig, Shulamith, 1994]. The purpose of mass education in human rights, he says, is to cultivate learning about justice, develop a universal human rights culture and create a global community in which abuse and violations are prevented and human dignity is protected by the powers of knowledge. In order to cultivate a human rights worldview, educators and grassroots

activists understand that public education in human rights must demystify the laws that govern people's immediate lives, relate international standards- and more fundamentally the spirit and content of the Universal Declaration of Human Rights-to people's daily concerns. This learning must draw from spiritual and cultural experiences to be acceptable and meaningful. Human rights will thus be seen as relevant to people's relationship with each other as well as with the state and other entities (Koenig,Shulamith 1994). The fiftieth anniversary of the Universal Declaration of Human Rights (1948-1998) with the theme "All Human Rights for All" -which fell during the Decade for Human Rights Education 1995-2004, provided an occasion for review of strategies for education, training and public awareness. In the scheme of human rights education, increasing involvement of international agencies, national/state level Commissions, NGOs, Voluntary organisations etc. is envisaged / welcomed.

The Indian Scenario

In India the National Human Rights Commission (NHRC) set up in 1993 is expected to play a leading role in the task of human rights protection, education and training. Steps have been initiated to introduce human rights as a separate subject in schools and universities with the active involvement of the National Council of Education Research and Training (NCERT) and the University Grants Commission (UGC) in the process. But there is a view that the NHRC has not been truly involving human rights activists, NGOs etc. in the development of its approach to human rights education and training (Pal,R.M, 1999). Given the scope of education and training in the protection and promotion of human rights, and the threats posed to them by liberalisation/globalisation, there is need for developing micro-level strategies to supplement the efforts of the NHRC and State level Commissions at the macro level. As already stated, the ongoing

marketisation and globalisation involve a gradual withdrawal of the state from welfare functions, posing grave threats to their obligations for the protection of human rights in general and socio-economic rights in particular. The emerging environment therefore demands more emphasis on prevention rather than solutions in respect of human rights violations. Participatory approaches to prevention-focused/oriented education, training and awareness, through Panchayati Raj Institutions (PRIs) - the little democracies at the grassroots-therefore, need a fair trial. People's institutions could be strengthened to serve as a watchdog against micro level violations of human rights.

Though Panchayati Raj and Nagarapalika institutions have come to stay, following the 73rd and 74th Amendments to the Constitution of India, the question whether these participatory institutions could serve as a vibrant mechanism for the promotion / protection of human rights, especially the socio-economic rights, has not been seriously addressed so far. It may be remembered that the PRIs of India have a tradition of serving as local courts known as 'Nyaya Panchayats'(NPs). In view of the present status of PRIs, with timely elections, functional and financial autonomy / stability, it is hypothesised that these institutions would be able to serve as an effective forum for human rights protection education and training in the new millennium. The scope and challenges of the proposed initiative is worth examining.

Participatory Justice : The Indian Tradition

The main disability in access to justice is the administration of the judicial system so far as masses of Indian people are concerned and even classes of India are concerned. Therefore the point in relation to NPs is that the only way we can provide access to justice to rural India is by restoring the process known to India for thousands of years : that is the process of

participatory justice where self determination exist in doing of justice by the people concerned (Upendra, Baxi, 1986). In many parts of India, village panchayats constituted a vibrant forum of decentralised rural administration. Despite their limited geographical jurisdiction, the village panchayats were able to widen the range of their operational jurisdiction over the years, covering in a small measure judicial activities also. The institution of village panchayats continued to serve as the people's forum in diverse backgrounds and operated with informal mechanisms for improving social, economic, cultural, judicial and educational conditions of the village folk. For models of participatory justice we have the cases of Nagas, Bhils, Raj Gonds or the entire tribal groups in India. They have very sophisticated methods of determining the most complex disputes, as complex as those which come to the Supreme Court. This tribal traditional panchayats have very complex issues coming up for deliberation and decision. They are thoroughly deinstitutionalised. ----- They do not have the power of the kind that the state law has. Nevertheless they have a whole variety of sanctions and sanctioning mechanisms which have worked for centuries (Upendra, Baxi, 1986). Baxi is not in favour of reviving NPs as such for the provision of participatory justice, because the NPs have functioned essentially as the assaulting arm of state power on local institutions. They displace traditional forms of dispute settlement like the Bardari Panchayat, the caste panchayat or panchayat dispute-settlement procedures developed by social agencies, voluntary organisations and social activists in certain areas. Hence he has suggested that the entire notion of NPs has to cease to be a mechanism for decentralisation and delegation of judicial power and has to become an instrument for organising the tradition and talent of Indian people for dispensation of justice.

In South India the erstwhile Travancore and Cochin states and Malabar provinces of the former Madras State also had instituted Village Panchayats and Courts with limited pecuniary and other jurisdiction. Despite the useful functions performed by the village court, they were driven out under the influx of British common law and the system of judicial administration that followed. Panchayat courts as a chief, people-friendly and speedy forum for dispute redressal gradually disappeared; the fate of the village panchayat was also not much different. Through a series of state initiatives (frequently marked by setbacks), we have been able to rehabilitate the PRI system over the years especially in the 1990s, thanks to the 73rd and 74th Amendments to the Constitution of India. Though the developmental issues and socio-economic environment have changed in independent India, particularly with the advent of economic reforms, the village communities are not completely free from human rights violations and in most cases the affected parties are completely ignorant about their rights too. The need of the hour is to create awareness about various human rights and devise cost-effective methods to bring justice without delay.

In view of the fresh lease of life of the PRIs, following the passage of the 73rd and 74th Amendments to the Constitution, it is hypothesised that the village courts would be able to serve as an effective forum for judicial intervention. Closely connected with the revival of the traditional functions of village courts, the scope and challenges of human rights protection, promotion, training and education through the PRIs can also be looked into. Human rights intervention works towards the realisation of PRI objective of social justice. It may be remembered that a number of NGOs, churches, *Jagratha Samithies* (JSs) etc operate in the process of decentralised conflict resolution and protection of human rights. Hence the empowerment of PRIs through village courts or as designated agencies for human rights protection,

promotion, education and training would sharpen their teeth and help realisation of the objectives of social justice. As stated above, the scope and challenges of the proposed initiative is worth examining.

Objectives of the Study

The Objectives of the Pilot Study are the following

- a. To trace the evolution of Village Courts in Kerala and examine their linkages, if any, with human rights issues.
- b. To identify formal and informal non-governmental mechanisms/organisations, if any, in operation for decentralised system of dispute redressal/conflict resolution/human rights protection at Panchayat level.
- c. To find out cases of Human rights violations in rural settings and
- d. To explore the scope and challenges of Nyaya Panchayats and intervention of PRIs as agencies for the advancement of Human Rights at the grassroots level.

Methodology

The present study makes use of both secondary and primary data/information. The former has been collected from the Administration Reports and related publications of Travancore, Cochin and Malabar. To identify non-governmental agencies operating in the field of decentralised conflict resolution, human rights protection, dispute settlement etc we have undertaken a pilot study of Pothencode Grama Panchayat in Thiruvananthapuram district, with special reference to Vengode, Ward 2 of the above panchayat. For the selection of the panchayat (and for intensive study, the Vengode Ward), the coverage of human rights organisations, non-governmental organisations, heavy concentration of backward classes particularly SC/STs etc were taken into account. A questionnaire was developed making use of the insights from preliminary discussions/interaction with human rights organisation in the study area.

Opinion, suggestions and views of elected and non-elected persons in the panchayat, members of SHGs, representatives of communal organisations, groups of men and women were canvassed with the help of the questionnaire. Simple statistical tools like percentage and average have been used in the processing and interpretation of data.

Plan of the Report

The report of the pilot study is organised as follows. In chapter 1, introduction, the context and specific issues of the study, objectives and methodology are dealt with. Chapter 2 examines Nyaya Panchayats in retrospect and prospect. In chapter 3, issues relating to Panchayati Raj Institutions, Human Rights and Decentralised Systems of Dispute Settlement are analysed; a brief review of studies is also attempted. The scope and challenges of human rights protection, promotion and education by panchayats are analysed in Chapter 4 based on primary information collected from the study area. Conclusions and suggestions of the study are summarised in Chapter 5.

Chapter - 2

Nyaya Panchayats in Retrospect and Prospect

It is common knowledge that a litigation, civil or criminal, whichever party wins or loses, leaves a trail of bitterness and bad blood and tremendous financial loss for both, apart from protracted trials and resulting frustration. In Indian conditions, law and justice at the Panchayat level with a conciliatory methodology is an imperative necessity. This can be only achieved by having a suitable forum for conciliation and adjudication involving little cost and no delay with an informal procedure conforming only to the requirements of natural justice where the key word would be justice rather than law (Mathur,S.N 1997). Decentralised justice in the above background found expression in the concept of Nyaya Panchayats incorporated in the panchayat legislation of some states in the past. The Constitutional Amendments that gave birth to the new panchayats were, however, completely silent on the subject. Hence the question of decentralised justice now needs to be vigorously reviewed.

Nyaya Panchayats, Peoples' Justice and Professional Justice : A Discussion

The institutional concept of Panchayats and 'Nyaya Panchayats' (peoples' justice) goes back to the hoary past not only in our country but in other ancient civilisations also. The judicial function of Panchayats is not a newfanged populist or proletarian innovation; it was perhaps the primary functions of the 'Panchayats' of 'jati', 'gram' or 'janpada' from times immemorial. Reference to Nyaya Panchayats abound in ancient literature and historical documents. They were creations of villages themselves and were composed of persons who were generally respected and to whose decisions the villagers were accustomed to unqualified obedience. "Sitting on the Panchayats, the elders of the village used to solve disputes arising between the members of the village community -----". They heard parties

in the presence of the entire village and solved the disputes. Public opinion of the village used to act as a powerful influence on the parties to the disputes and because justice was meted out at the very place where the dispute took place, it used to be inexpensive and immediate”. (Report of the Committee set up by the Congress Working Committee, 1954). NPs were village self-governments in action at the level of administration of justice; it helped in involvement of people in dealing with law and justice and institutionalisation of expeditious local resolution of disputes (Mathur, 1997). Mahatma Gandhi was the pioneer to revive the system of village justice when he advocated boycott of professional justice. NPs would be able to get over many of the limitations of the administration of professional justice. They are manned by people fully aware of local customs and habits; NPs follow low cost informal procedure, free from technicalities, and are closer to the people geographically and psychologically, so that values and attitudes are shared and there exists greater scope for conciliation / compromise. The following specific advantages are claimed for ‘Nyaya Panchayats’ viz; 1] they promote accessibility for the poor people to the institution of justice and help those who are priced out of the judicial market, 2] there is informality of the procedure in the Nyaya Panchayats; most of the disputes are amicably settled, 3] Nyaya Panchayats provide a forum where cheap and speedy justice is made available, 4] they are the carriers of secular, equalitarian modernistic legal ideology, and thus, assist the desired social transformation (Baxi, Upendra 1980). and 5] to some extent they help in reducing the arrears of the court litigation.

Nyaya Panchayats : A Historical Review

Reference to traditional courts of ancient India are made by philosopher-theologist, Maharishi Narad and *Yagnavalkya*. The king seldom interfered in the affairs of the panchayats and used to act as their guardian.

Members of the traditional courts were well versed in *Vedicdharma* and were men of high integrity. These panchayats are also mentioned by Kautilya in *Arthashastra*.

Village panchayats in the country continued to function relatively undisturbed during the Muslim rule. However they suffered decline in jurisdiction and authority with the downfall of the Mughal rule. The British system of justice almost stifled peoples' participation in the administration of justice except in caste and revenue matters. Even under the British rule few provinces like Madras, tried to rehabilitate traditional courts. Nevertheless, village panchayats and NPs fell prey to official indifference and in most provinces became defunct, despite the suggestion of the Royal Commission on Decentralisation that 'Panchayats should have civil and criminal jurisdiction in petty cases arising within the village'. The Indian Police Commission (1902), Government of India (1915), Bombay Village Panchayat Act (1920), the Civil Justice Committee(1924 -25) and the Bombay Village Panchayat Act (1937) were in favour of NPs at the local level.

After independence also several attempts were made to revive NPs as part of strengthening panchayats on the basis of the Directive Principles of State Policy of the Constitution. Balwantrai Mehta Committee (1957), Ashok Mehta Committee (1978), the 14th Law Commission and the Rajagopaul Study Team (1962), also made valuable recommendations for the rehabilitation of NPs in the country. Although NPs were constituted in 15 states by special legislation, only few states actively promoted them. Reports of various evaluation committees appointed by state governments presented a discouraging picture.

A number of experts have examined the functioning of NPs in the context of Uttarpradesh,(R.Kushawaha, 1977, Richard, n.d), Rajasthan (Mathur, Iqbal Narain and Sinha, n.d) and Karnataka (Upendra Baxi, 1986). The general conclusions of the studies are the following

- NPs have done some good work, but their potential remain untapped
- Their constitution has been by nomination or a combination of election with nomination
- There was a preference for NPs presided over by retired judicial officers or by new recruits for the purpose.
- Lay members were subject to local influence and pressures; they required training.
- Limited jurisdiction reduced their effectiveness
- Many panchayats were not adequately educated to discharge their functions effectively
- Meetings of NPs were irregular and their finances were also poor
- Caste, factions, stratification and local politics created difficulties for NPs in impartial operations

According to Mathur, the most important factor that emerges out of these studies is that the political will and political awareness of the people are crucial for making the process of democratic decentralisation including the institution of NPs successful. The present scenario, as Alice Jacob observes, seems to be that Nyaya Panchayats have not established themselves as effective instruments for settlement of disputes.

Nyaya Panchayats in Kerala : An Overview

Travancore

Up to the year 986 (1810) there were no established courts in the country (Travancore). All civil matters then were heard and decided by *Surwadhikariakars* or by panchayats according to the order they received from the Maharaja or his minister whether he will be known by the name of *Valiyasurwadhy*, *Dalavah* or *Dewan*. They need to report the decision to the minister and according to the sanction accorded, execute the decree. Fees were also levied from the parties. (A Handbook of Travancore 1881).

With a view to reduce the number of petty suits in the civil courts, 19 Village Panchayat Courts were established in 19 Municipal Towns including Alleppey and Kottayam and their jurisdiction extended to money suits upto the value of Rs.50. Village courts consisted of not less than 5 Honorary Judges, one of whom was styled the President. They were appointed by the government once in two years. Every suit had to be heard and disposed of by a Bench of atleast three Judges. Parties aggrieved by the decisions of the Panchayat Courts were entitled to have such decisions revised by the District Judge within whose jurisdiction the court was situated. The powers of the Village Panchayat Courts in regard to execution of decrees were limited to attachment of movable properties and in cases where other modes of execution were sought for, such as arrest of judgement - debtor and attachment and sale of immovable property, resort had to be had to the Munisiff's Courts (A Judicial History of Travancore, 1932).

Cochin

In Cochin, Village Panchayats were in existence for a considerably long time. The Village Courts Act passed in 1943 repealed the major part of the Village Panchayats Act. The main work that the Village Panchayats were

expected to discharge was judicial and with the constitution of separate Village Courts, the Panchayats were relieved of a large part of their work. Their services were later utilised to further and improve the activities of government in rural areas. (Cochin Information, 1944). It was for the speedy and efficient administration of justice in the rural parts, that the Panchayats courts were abolished and reconstituted as Village courts. Thirty five village courts were constituted in 1118 immediately after the passing of the Village Courts Act and 12 in 1119. All the villages in the state were brought under the jurisdiction of the village courts. There was also provision in the budget for conference of the judges of the village courts. (Cochin Information, 1945).

Malabar : Village Courts

Village headman (adhikaris) were empowered under the Village Courts Act of 1889 to try petty suits where the value of the cause of action does not exceed Rs. 20; and the system of trial by Bench Courts under section 9 of the same Act was in force in certain areas. But the Village Courts were not popular and did not appreciably lighten the burden of the civil courts. More than a quarter of the total number of suits launched in the Presidency in 1903 were filed in the Village courts ; but in Malabar the proportion was only one-eleventh (Malabar Gazetteer).

Nyaya Panchayats (NPs) were functioning fairly satisfactorily in villages during the pre-British days. They were in fact the base on which the entire superstructure of indigenous system of administration of justice was founded. But on the coming of the British rule, an alien system of administration of justice was implemented in our country and Nyaya Panchayats, which were till then administering justice in rural areas, gradually lost their authority and influence and fell into disuse (Krishna Iyer, V.R, 1979). At the time of commencement of the Constitution of India,

some states (Madras, Mysore and Kerala) had the system of village courts whereas a few other states adopted it in pursuance of the Directive Principles of State Policy enshrined in Article 50 of the Constitution. Article 40 of the Constitution of India enjoins the state to organise village panchayats. The justification for 'Nyaya Panchayat's has been that they facilitate decentralisation and people's participation in one great branch of the government, namely, dispensation of justice (Jaswal, P.S, 1996).

In spite of these laudable objectives, till now the attempts of some states to establish the NPs did not prove successful and some states (Maharashtra, Rajasthan) have gone even to the extent of abolishing them. Their failure was due to many reasons; they had only limited civil and criminal jurisdiction confined to petty offences without much power to enforce compliance/awards, issue directions etc. In many cases powerful landlords dominated NPs depriving common people the benefit of impartial justice. The NPs have a relatively insecure and subordinate status both as judicial institutions and as institutions operating within the context of Panchayati Raj system, without being an integral part of it.

Given the long tradition of 'professional justice', people's justice is an area of considerable controversy on which historians and political scientists may not readily agree. But "what we need is robust common sense and equally robust faith in the common man; without that faith in the capacity of the common man to govern himself and to learn to be fair in his dealings and in dispute situations, the Panchayati Raj experiment is foredoomed to failure. On the other hand, it would be unrealistic to assume the common man or his chosen representative to be inherently infallible or invariably just and fair and not to provide for their training or for other safeguards. A pragmatic middle path between "people's justice" and "professional justice" and a reconciliation between "democracy" and "rule of law" as understood

and interpreted by lawyers and judges is not only possible but eminently practicable and desirable. Nyaya Panchayats could in course of time come to represent habits of self-government and respect for legality and justice which would be an enduring gain not only for grassroots democracy by also for grassroots rule of law (Singvi, L.M. 1977). The tradition/ experience of the institution of Nyaya Panchayats in the resolution of local revenue, civil and criminal disputes would serve as solid base for commencement of a programme for human rights protection, promotion, training and education. There is in fact much wider scope for rethinking on such an intervention, given the constitutionally granted mandate and status of the present PRIs.

Chapter - 3

Panchayati Raj Institutions, Human Rights and Decentralised Systems of Dispute Settlement

A. Panchayati Raj Institutions and Human Rights

The ongoing marketisation and globalisation involve a gradual withdrawal of the state from welfare functions, posing grave threats to its obligations for the protection of human rights in general and socio-economic rights in particular. As observed in the introductory chapter, the emerging environment therefore demands (1) more emphasis on prevention rather than solutions to human rights violations and (2) development of micro level strategies at local government levels to supplement the efforts of national and state level human rights commissions at the macro level. Participatory approaches to prevention-focused / oriented education, training and awareness, through Panchayati Raj Institutions (PRIs) - the little democracies at the grassroots- therefore, need a fair trial. Peoples' institutions could be strengthened to serve as a watchdog against micro level violations of human rights. Though PRIs have come to stay, following the 73rd and 74th Amendments to the Constitution of India, the question whether these participatory institutions could serve as a vibrant mechanism for the promotion/ protection of human rights, especially the socio-economic rights, has not been adequately addressed so far, particularly in states like Kerala, where decentralised governance has become a model for other states. It may be remembered that the PRIs of India have a tradition of serving as local courts known as "*Nyaya Panchayats*". In view of the present status of PRIs, with timely elections, functional and financial autonomy / stability etc. it is

hypothesised that these institutions would be able to serve as an effective forum for human rights protection, promotion, education and training in the new millennium. The scope and challenges of the proposed initiative is worth examining.

As a prelude to this, a brief review of the studies on PRIs and human rights is attempted below. In recent years there has been a suggestion to link human rights protection and enforcement with PRIs, the little democracies of India. According to Haragopal there are three arguments in favour of the position that the PRIs will be able to promote and guarantee human rights ; 1] these institutions lead to decentralisation of power and take decision-making closer to the people, 2] grassroots institutions buttress the democratic culture and 3] these institutions in the ultimate, contribute to the redistribution of power (Haragopal, G.1997). The PRIs, unlike several other institutions, are closer to the life and living place of the people in terms of size and space. It is precisely the reason why these institutions deserve a serious trial. We notice all over the country and particularly at the grassroots level that the coercive apparatus is becoming more important than the development apparatus. This shift in focus necessitates the linking and strengthening of PRIs with human rights agenda. Subordination of the police apparatus to the PRIs would serve the cause of effective decentralisation and also human rights (Haragopal, G. 1997). For instance a provision like informing the arrest of an individual to the local PRI can reduce the arbitrariness in the arrest and detention. The PRIs for that purpose should constitute subcommittees with powers to review arrests and act as counter power centres. It is also maintained that a vibrant 'Grama Sabha' can not only fortify democratic culture but promote human rights and provide a fuller content to their meaning and also practice.

Mahipal has put forward three arguments for PRI promotion of human rights viz; through decentralisation of power, inculcation of democratic culture at local level and changing the existing unequal social order into a more equitable one (Mahi Pal, 2000). Operational autonomy, participatory approaches, empowerment of weaker sections, bottom-up procedures, transparency in functions, accountability to the people etc characterising the PRIs facilitate the promotion of human rights by them in a mutually rewarding manner. Besides the formulation of plans for economic development, PRI interventions towards the promotion of 'social justice', empowerment of weaker sections like SC/STs, OBCs, women etc [involving issues of human rights particularly socio-economic rights] are essential imperatives of decentralised governance. Recognition of the 'Right to Development' as a human right (1986) emphasising equal access to basic resources, gender equality, removal of social injustice and participatory governance provide greater scope for PRI participation in human rights promotion. Through the process of judicial activism, during the last two decades, socio-economic rights viz; right to education, health, work, clean environment and development, reflecting the spirit of the Directive Principles of State Policy, are judicially declared as enforceable fundamental rights. As they are also the basic concerns of the local governments or subject to the influence of their operations, the PRIs would in fact be strengthened through promotional human rights intervention under their patronage. For the advancement of socio-economic rights [which are labelled as Second Generation Human Rights], the PRIs would be an appropriate forum.

Studies conducted in different countries show that there is a strong linkage between decentralisation and human rights. While decentralised governance can promote respect for human rights in certain conditions, in

others it may diminish civil status of a person or a group. International Council of Human Rights Policy (Geneva) has addressed these issues in the study 'Local Rule: Centralisation and Human Rights' (Edited excerpts, ISS, 2002). According to the study decentralisation might improve protection of human rights

- When it enhances political rights (the right to take part in the government of one's country)
- When it leads to more effective government (transparency and accountability)
- When it help achieve economic and social rights (efficient delivery of services - housing, education, health care etc)
- When it promotes accountability (through informed participation of people)
- When it increases local autonomy and empowers disadvantaged groups (through reservation of seats / office in local governments as in India for SC/STs, women).

There are certain conditions which might help decentralisation of power to undermine the protection of human rights

- When local populations are disempowered
- When national institutions are disempowered (for eg. professional associations, trade unions etc get fragmented, lowered in standards as in training and more exposed to corruption)
- When decentralisation exacerbates social divisions (special advantages available to minorities promote further fragmentation/ duplication, separatism, conflicts, pressure groups etc)
- When it deepens inequality (between regions and communities)

- When economic and social rights regress (through falling standards in services, declining devolution of finances from the central government, loss of economies of scale and lack of professionalism).

While decentralisation helps the people living at the bottom of the society to assert their democratic rights, local elites fight back to retain their privileges, giving rise to social tension and violence

- When decentralisation provokes violence (in elections as in India, when newly elected councillors are beaten up, and killed by upper castes)
- When it empowers local elites (leading to local authoritarianism).

According to the study, central government clearly has an essential responsibility in relation to abuses of local power. Some of the ways it can intervene without undermining the decentralisation process are regulation, audit, investigation of allegations of abuse (by officials, police etc) and development of institutions that monitor human rights (Ombudsman, Human Rights Commissions etc).

In a recent paper George Mathew has examined the question whether the decentralisation process and the decentralised institutions increase human rights violations or enhance the possibility for respecting and observing human rights. The paper investigates first the social factors as well as denial of the right to livelihood, then those who are at the receiving end and finally the response of the state. According to him there has been a sharp increase in violent manifestations of casteism in local communities ever since the local government systems got strengthened through the constitutional amendments. When the PRIs have been seen by the upper castes as the tool for the lower castes, to assert their right as individuals

living in a democratic polity, the latter have become targets of caste-based discrimination and violence (Mathew, George 2003). Atrocities and human rights violations against the lower castes can be controlled only through a culture of equality of human beings. This can be achieved by human rights education and eradication of illiteracy. The Panchayats have a crucial role in this. Secondly, there are few states like West Bengal, Karnataka and Kerala where the issue of poverty has increasingly become a human rights issue and decentralisation is seen as an effective tool to address this problem. However in many States, the poor remains where they are and in some cases their condition deteriorates, becoming more vulnerable to human rights violations due to corruption at the local level. Similarly after the elections, reports from States showed that the human rights of the dalits were violated in more than one sense even after strengthening of the local bodies. Violations of human rights are everyday occurrence in the tribal areas of India, inspite of powerful legislations for decentralised governance. Reports from the length and breadth of the country indicates that women members of the Panchayats (from reserved constituencies and otherwise) have enhanced their status and rights. The rights of the people to participate in the decision making process of their locality is legally mandated through the Grama Sabha. However, frequent postponement of elections has made the above position a mockery. The creation of parallel bodies ushering into the domain of local bodies is another instance of delimiting the powers of the latter.

Against the background of the emerging role of PRIs in the field of human rights, a number of initiatives have been set in motion in the above direction. Tamil Nadu government has decided to form watchdog committees at village level for elimination of trafficking in women and children. The action was taken on the basis of advice given by state level

Advisory Committee on Eradication of Child Prostitution. Each watchdog committee will consist of village panchayat (President), village administrative secretary (Convener), headmaster of the high school, a representative of the local police station, a representative of NGOs working in the area and a member of SHG active in the area (ISS, Panchayati Raj Update, 2002).

In a recent study, (reported by Raghaviah), Mohana kumar and Binitha (2002) have explored the scope and working of 'Jagratha Samithies' in Mulamkunnathukavu, Trissur district, Kerala. According to them, in Kerala, where complaints by women relating to sexual harassment, marital frauds and the like are on the rise, panchayat level Jagratha Samithies (JSs) could be the answer to simplify the process of investigation and provide quick legal redress to women. Jagratha Samithies were thought of at a juncture when the size of the State Women's Commission (and by implication the volume of cases it can manage) was reduced to that of a nominal agency. Jagratha Samithies (JSs) have assumed the role of an informal dispute investigating forum and has been acknowledged as an ideal means for reaching quick legal aid to women. Interestingly in Grama Panchayats where the JSs function, they have proved to be highly effective in investigating the grievance of women at the grassroots. A JS consists of 15 members (of which 2/3 are women) and 3 non - official members - doctor, police official or lawyer, preferably women again. The nine member district level committee has as members the District Collector (Chairman), District Panchayat President, Municipal Chairman, Superintendent of police and womens organisation representatives. The Grama Panchayats popularise the concept of JSs and provide for its expenses under their women component plans. The samithies facilitate timely reporting of investigations and redressal of atrocities against women through

agencies like the police, family courts, Women's Commission etc. Despite the claims of the Kerala model, status of women in the state leaves much to be desired; their work participation is very low (16% as against 23% for India), only 6 per cent of them are represented in the State Assembly. According to a survey of the State Planning Board, while the number of incidents of violence against women has been recorded as 36.90 for the country, the figures are 62.30 and 68.30 for Thiruvananthapuram city and rural respectively.

From the survey of studies on PRIs' role in human rights protection, we find that there is much scope for such interventions in future. However, the space for such intervention by the PRIs needs to be properly defined and effective linkages have to be established with NGOs and other agencies in the field. It is against the above setting that we have undertaken the present study.

B. Decentralised Systems of Dispute Settlement

It is a fact that a large number of civil and criminal cases, as also others involving human rights violations, are not taken to the formal system (judiciary) of the justice process. Several cases remain unattended / unreported / unsettled while others are settled through the informal systems of dispute settlement / conflict resolution. With the decline of 'Nyaya Panchayats', informal systems of dispute settlement have emerged in several parts of the country. In Kerala, apart from voluntary agencies, a number of communal organisations have diversified their operations into dispute settlement and conflict resolution. Various denominations of the Christian Church, Muslim Organisations, Hindu religious outfits, communal organisations of Ezhavas, Nairs, SC/STs, Other Backward Classes etc. are actively involved (suo moto or upon complaints) in the identification and settlement of inter community as well as intra - community disputes relating to marriage, property, place of worship, employment, education etc. In fact such systems of informal and decentralised dispute settlement relieve the burden of the formal system, which is saddled with mounting backlog of

undisposed cases involving high social cost over and above the personal cost of the complainants/ petitioners. In many cases, it is the high cost, poor access and delay associated with the formal system, that draws the poor and the ignorant closer to the informal system of dispute settlement/ rights protection. Whereas the formal system, like many government departments, does not provide much extension / promotional service in the delivery of justice to the affected people, the basic mode of operation of the informal system is the delivery of services through suo moto identification, negotiation and settlements, many a time through the participatory process. Though the informal system lacks power to enforce attendance of parties to an issue, call for documents or search for material evidence, the natural tendency of people to remain within the community-fold renders social control over them by the communal organisations. The participatory process is thus people-friendly, speedy, cost-effective and negotiation-driven. The informal system renders sustainable services to individuals and the society at large, by settling marital issues, discrimination against the poor, children, women, illiterate people etc, property disputes, religious issues and so on.

In spite of the awareness of the people about the limitations of the formal justice process and the efficacy of the participatory justice process, the role of the latter has not been adequately recognised, documented and empirically examined . The issue has assumed a new dimension in the context of the widespread acceptance of participatory interventions in socio - economic issues under the Panchayati Raj system, in which Kerala has been a pioneer in many respects. It is therefore presumed that participatory interventions in the justice process need close examination and proper linkage with the general framework of participatory socio-economic development, in the special context of Kerala. The conceptual framework of the present study thus owes very much to the ongoing attempts towards enlarging the participatory process, both in theory and practice, so that development is made sustainable and truly human.

Models of Decentralised / Informal Dispute Settlement

(a) *Oorukkoottom*

Oorukkoottom generally refers to the village assembly or grama sabha. They were councils of village government in traditional Kerala which decided public affairs of the village including temple issues. They existed until the first quarter of the 19th century. A widely known decentralised system of (informal) dispute settlement, popular among the scheduled tribes of Kerala has been '*Oorukkoottom*'. It serves as a forum headed by elder members of scheduled tribes of Kerala inhabiting hilly areas of Trivandrum, Idduki, Wayanad and Kozhikode districts. '*Oorukkoottom*', considered as a tribal assembly, settles disputes of all kinds involving the tribals inter se, and the decisions of the tribal leaders are accepted by all without going into the merits of such decisions. In addition to imposition of penalty, appropriate strictures are also passed in the form of warning and in certain cases, ostracisation of the disobedient / rebels from the tribal mode of living. Persons found to be guilty of grave offences are forbidden from participation in functions/ ceremonies including funeral, marriage, cohabitation, festivals, rituals, sharing food and related cultural practices. It may however be noted that, the mode of operation, procedures and the principles that are followed in such assemblies are purely caste-specific, deeply rooted in their own cultural milieu and are rarely in tune with or justified / tempered by the formal laws of the land. Despite this drawback, members of the tribes prefer to be governed by the law of the tribe rather than the common law of the land. In the above context, policy decisions on promoting the informal dispute settlement mechanisms, have to pay serious attention to existing traditional and caste-specific mechanisms for dispute settlement before attempting structural changes in the system.

(b) *Kadakkodi (Sea - Court)*

'*Kadakkodi*' is a colloquial term coined from two malayalam words '*Kadal*' (stands for sea) and '*Kodathy*' (stands for court). The *kadakkodi*, indigenous judiciary at the village level, was formed according to religious beliefs and systems. This is a forum to settle all disputes in the village, including fishery regulations. Interestingly, *Kadakkodi* is more than a judiciary as it performs legislative and executive functions too. It enacts

rules and regulations, enforces and executes them. (Rajan, 2002). The *Kadakkodi* in central and north Kerala, South India, had a stronghold in the fishery management regime. It consists of a committee unanimously elected by the village community. *Kadakkodi* is comprised of two forms of committees- Committee of Hindu Priests (from fishing community) and Committee of Village People. The former known as *Achanmaar*, is elected for life time according to hereditary Hindu rituals. There are 12 priests of different grades with different functions. The grade depends on the *Tharavad* or family status. The structure of the committee varies between villages. The community elects the Committee of Village People annually during the time of temple festival. This indigenous court exercised social control through enactment and enforcement of regulations on fishing technologies, seasons, timing, fishing rights etc. which are binding (socially, not legally) for the community. The Court had been vested with powers to settle social and family issues too. But this Court in the fisheries sector, which once had a fisheries management regime, has almost declined now.

The acceptance of the community, the consensus in settling disputes, the participatory and decentralised processes are the merits of the Court. The Court acts upon petitions, suo moto, or based on public interest litigation. The *Achanmaar* (Judges of the Court) usually gather at the temple premises. If they receive petitions, a flag will be hoisted on the seashore where the general body is usually convened in the evenings. Both the parties are summoned and examined. Some times, the Court will appoint a Commission comprising of independent persons from the village to enquire into the matter in detail. On the report of the commission, the Judges pronounce the judgement and it is announced in the general body. The aggrieved parties will be given the chance of *Punar* (appeal). Those who violate the rules relating to fisheries will be awarded punishment (in the form of excommunication) or will be denied the rituals on the occasions of birth, marriage, death etc.

From the above account of the informal, decentralised and participatory systems of dispute settlement, it may be concluded that they

are caste, community and location - specific and are therefore unsuitable for state - wide application. In a society moving towards secularism, accompanied by high rate of horizontal / vertical, social and occupational mobility, the traditional caste – linked institutions of informal dispute settlement lacks popular replicability. The most suitable institutional alternative, therefore, lies in the promotion of human rights organisations which are well entrenched in the Universal Declaration of Human Rights (1948), the embodiment of the natural rights of people world - wide. In such programmes of human rights protection, promotion and education, there exists a meaningful space for the institutions closer to the people, like the Panchayats, for mutually beneficial and participatory operations.

Chapter -4

Human Rights Protection, Promotion and Education by Panchayats : Scope and Challenges

In order to examine the awareness of people about human rights issues in general and violations of rights involving death due to poverty, dowry-related atrocities / death, custodial torture / death, and others in police stations, a sample survey was carried out in Pothencode Grama Panchayat, Trivandrum district. For the purpose of the enquiry, a draft questionnaire was developed which was discussed with selected members of a human rights organisation having one year of presence in ward II Vengode of Pothencode Panchayat. The survey was carried out during the third week of April 2003. Apart from the sample of permanent residents of Vengode, the response of officials and elected members of the panchayat were also canvassed. The sample of permanent residents was selected from a small gathering facilitated by the HRO and activists associated with the SC/ST colony in Vengode. Those who volunteered were asked to respond to the questionnaire. Members of SHGs were contacted at their place of residence. Ward II Vengode of the panchayat was purposively selected because of the high concentration of most backward and marginalised classes of SC/ST population in the area. The presence of women and child welfare activities including women empowerment programmes like Kudambasree, Neighbourhood Groups (NHGs), Self Help Groups (SHGs), human rights organisation etc. were also taken into account in the choice of Vengode, as the study area.

As a prelude to the recording of responses from the sample (100), a brief account of the nature of human rights, history of Nyaya Panchayats and the scope of decentralized dispute settlement / conflict resolution at panchayat level was given to them. With a view to obtain the opinion of different categories of people dealing with / subject to human rights issues, local governance, dispute settlement etc., elected and non-elected members of panchayat, poor women following group activity (members of self help groups), and members of communal organisations of the locality were covered in the study, in addition to a separate category of unorganised men and women. A profile of the study area is given in Table 4.1. It is observed that the female population is 51 per cent and the scheduled caste population is 10 per cent of the total population.

Socio -economic Status of Respondents

The general socio-economic background of the 100 respondents (Panchayat officials 8, Panchayat members - 8, members of Self Help Groups (women) - 26, members of communal organisations -11, Men -34 and women -13) is summarised in Table 4.2.

There are 47 women and 53 men in the sample of 100 respondents. The community -wise distribution indicates 49 scheduled caste members, 5 scheduled tribe members, 28 other backward class members and 18 forward class members covered by the present study. The analysis of educational status of the respondents shows that the average educational qualification is Tenth standard. The average age group of respondents is 31 - 50 years; most of them (54%) face unemployment and 23 per cent follow other small activities. Given the above composition of the respondents, it may be noted

Table 4.1

**Profile of the Study Area : Pothencode Grama Panchayat,
Thiruvananthapuram District**

District	:	Thiruvananthapuram
Block	:	Kazhakootom
Location	:	North of Thiruvananthapuram Taluk
Classification	:	Special Grade
Village	:	<ul style="list-style-type: none"> • Upper Thonnackal • Lower Thonnackal • Ayirooppara • Aandoorkonam
Area	:	20.85 sq km
No. of wards	:	13
Population	:	24,995 12,729 Female 12,266 Male 2,600 scheduled castes 1,305 Female 1,295 Male
Economic Activity	:	Agriculture - 60% of population Own cultivation 15% Trade and petty jobs 8% Govt. employees 5% Outside employment 5% Service sector 10%
Employment Status	:	Educated unemployment
Own funds	:	Rs.25 lakhs P.A
Educational Institutions	:	Govt. LPS (2) Govt UPS(2) Govt. HS (1)
Health care	:	PHC Ayurveda Dispensary Family Welfare Centre Mannara
Women and Child Welfare	:	25 Ankanavadies Karunya Special School
Women Empowerment	:	Kudumbasree, Neighbourhood Groups(NHGs) Problems of Marketing of women units.

Source : Pothencode Grama Panchayat, Decentralised Planning, Xth Plan (2002-07).

that the study gives enough weightage for the views of women and backward communities (usually considered as weaker sections of the rural society) on issues affecting their day to day life involving human rights violation, protection and the role of Panchayats in dispute settlement/ resolution.

Awareness about Rights and Violations

The response of the sample groups on general awareness about human rights, death due to poverty, dowry - related atrocities, custodial torture, police atrocities etc. is analysed with the help of Table 4.3.

Because of the operations of human rights and communal organisations in the study area, a higher percentage of respondents (83) irrespective of categories, have reported general human rights awareness. However their awareness is not that much high about HR protection in the study area. The gap in awareness between rights and protection leaves scope for HR interventions in the study area. This is further amplified by the lower number of beneficiaries reporting help rendered by HR organisations. The right to employment and livelihood, freedom from illegal police torture, interference with the right to married life (without dowry related atrocities, torture, interference in privacy etc.) are important HRs. In the above backdrop, the opinion of the respondents was invited on the above issues. Reports on custodial atrocities and death due to poverty are few ; however 50 per cent of the respondents have stated their awareness about dowry - related atrocities and related HR violations. About 50 per cent of the respondents, especially men and women groups in the sample are aware of HR violations by the police. Because of this, only few respondents (35%) are satisfied with police intervention in HR / dispute

settlement. The above result points to the need for reforming the dealings of the police towards the public and human rights education among policemen.

Nature of Human Rights Violation

Awareness of the respondents about human rights violations and the nature of violations reported by them are analysed with reference to Table 4.4.

Majority of the respondents (69%), except panchayat members, has expressed their awareness about human rights violations in the panchayat. The exclusive category of women and women operating under SHGs together (39) have expressed high level of awareness ; it is observed that 77 per cent of them are aware of different types of HR violations in the study area. A high percentage of men (85%) have also reported their awareness. It may however be noted that the political leadership (elected members of the panchayat) is reluctant to accept the existence of HR violations in the panchayat.

The nature of HR violations and the category of respondents reporting awareness about different types of violations are also examined in the study. We have identified and examined 23 situations of HR violations involving, men, women, children, poor, backward categories, criminals, election, educational / cultural institutions, place of work, public property, environment etc. An analysis of the violations reported (220) brings out highly informative results with implications for better human rights awareness programmes and protective measures. Some of the respondents have reported awareness about multiple types of HR violations in the locality. Men have stated 108 cases of HR violations, forming 50 per cent of the responses obtained in the survey. A careful scanning of the distribution of violations involving different types of people and situations provides

interesting observations indicating the gravity of violations and the socio economic background of the victims. It is widely held that weaker sections especially SC / STs, women and those who happen to deal with the police machinery are the usual victims of HR violations in a developing society. Our study also endorses the prevailing viewpoint on HR violations against weaker sections and women in workplaces, households, police station, public places etc. It is noted that 15 per cent of the reported violations involve SCs and STs and 14 per cent of the cases are connected with police atrocities. Cases of custodial death (7%) reinforce the general findings stated above. Dowry-related atrocities (7%) reported in the study also need to be viewed seriously as they also involve cases of exploitation of women, posing a grave threat to a very strong unit of the society - family.

Role of Alternative Agencies in HR Promotion and Education

At the global, national, regional and local levels the role of HR awareness programmes in HR promotion / education has been increasingly emphasised. Prevention is better than cure : the dictum holds true in the case of HR violations also. HR promotion and education programmes are undertaken by Human Rights Commissions, Educational institutions, NGOs and Civil society organisations. Against the above setting, the study collected information about HR awareness programmes, the agencies involved, the role of Grama Sabha if any, nature of dispute settlement, effectiveness of settlement, scope of HR education in panchayats etc. Majority (62%) of the respondents are aware of HR programmes in and around the study area. The study area, having the presence of an HR NGO, provides much scope for NGO- led intervention in HR awareness, promotion, education etc. Out of the reporting respondents (62%), about 79 per cent hold the view that HR organisations are instrumental in awareness, prevention and education. The panchayat is found to be contributing the

least in the above matter; infact its role is observed to be the least in our survey covering four agencies, namely panchayat, HROs, COs and NGOs. Interestingly NGOs and COs involve in such programmes better than the panchayat.

The Grama Sabha is considered a potential (people's) forum for raising and settling local issues, disputes etc. Hence we have addressed the issue whether the Grama Sabha is utilized in the above perspective. Though 47 per cent of the respondents have reported cases of HR issues raised in Grama sabha, the forum is generally considered very weak for settlement of HR issues. However the scope of an HR working group in Grama sabha is highlighted by 90 per cent of the respondents; members of communal organisations and SHGs are found to be the most powerful votaries of the suggested HR intervention through the Grama sabha.

In many parts of the country for sometime panchayats were involved in dispute settlement through the machinery of Nyaya Panchayats. As the panchayats of today have a solid foundation of timely elections, adequate funds, personnel and local participation of people in their programmes, they can think of reviving their old form of intervention in local dispute settlement. In the above setting, we addressed the question on the effectiveness of the panchayat in dispute settlement. Though the present level of intervention by the panchayat in dispute settlement is very low, majority (66%) of the respondents hold the view that panchayats can have a role in the matter (including HR issues). The potential role of the panchayat is supported fully by panchayat members followed by women SHG members and representatives of communal organisations (Table 4.5).

Our study has brought out a highly supportive role for the panchayat in HR education; 89 per cent of the respondents hold the above view. Elected members of the panchayat, women SHGs and members of

communal organisations fully endorse the possible role of panchayat as a forum for HR education. Other categories of respondents like employees of panchayat, women groups are also supportive of the HR educational programme envisaged in the panchayat.

Scope and Challenges of Nyaya Panchayats

Along with HR issues in the panchayat, the scope of HR promotion and education through the panchayats and reviving another institutional intervention (that existed decades ago), viz Nyaya panchayat, is also addressed in our study. It is observed from Table 4.6 that 54 per cent of the respondents have heard of NPs. Among the different categories of respondents, all the members of the panchayat, followed by employees of panchayat and members of communal organisation have reported their knowledge about the old NP system.

Nearly 79 per cent has expressed awareness about ‘Oorukuttom’ (a traditional informal institutional setup for the settlement of various issues of SC/ STs in their clusters. However its effectiveness is not shared by the majority. It is found that 65 per cent of our sample welcomes NPs in the panchayat systems. Respondents associated with the panchayat (62.5%) and women as a separate category (77%) are the groups that strongly welcome it. Opinion is not in favour of reviving the old form of NPs, but with suitable changes (89%). All the respondents, especially those linked to panchayat, welcome the NPs provided they are impartial and effective. Similarly the effect of NPs on BCs, widows, women etc. is reported by 72 per cent of the respondents as being positive. The forceful supporters of the view are members of the panchayat (100%), employees (88%), representatives of COs (91%) and women (77%).

Elections in India, down to the local level are fought on political basis and there has been progressive politicisation of public issues, particularly in

Kerala. Eventhough the virtues of participatory interventions in local governance are widely shared, we have observed that 68 per cent of the respondents anticipate a high degree of political interference in the proposed NPs (employees of panchayat (100%, COs 91% , SHGs 69%). However only 50 per cent of the members of the panchayat subscribe to the dominant view of politicisation of NPs. Majority of the respondents (89%), welcome the grama sabha as a forum for screening petitions to be placed in the proposed NPs. Elected members of the panchayat, communal organisations and women groups fully support (100%) the proposed role of the grama sabha in between the petitioners and the NPs.

Preferred Agencies for Dispute Settlement / Rights Promotion

At the local level of panchayat, a number of agencies exist for the settlement of disputes / resolution of conflict, involving the family, community, place of worship, marriage, property (private & public), environment etc. Institutional preferences of the respondents are addressed in Table 4.7

Police station, COs, HROs, Judiciary, voluntary organisations, panchayat, political parties and free legal aid agencies are the mechanisms posed for the expression of respondent's preferences. Being a pilot study, we have not delved deep into the order of preference in cases of multiple preferences (147 responses were obtained from 100 respondents, indicating more than one preference stated by few members). The most preferred (44%) dispute settlement / rights protection agency is HROs and the least preferred one (2.72%) is political parties. Free legal aid agency (11.56%), judiciary (10.88%) and police machinery (10.20%) are the other mechanisms favored, as may be noted from the responses of the sample groups. The distribution of responses indicate a preference for the panchayat (7.48%) compared to COs and other voluntary agencies (6.80 each). It may be noted

that, despite the critical attitude to the police apparatus, respondents have an express preference for it over political parties, voluntary organizations and the panchayat, in matters of dispute settlement and local conflict resolution.

The findings and observations of the Pilot study may be summarised as follows. Though a high percentage of the respondents (83) are aware about human rights in general, the level of awareness is low with regard to protection of human rights in the study area. Human rights violations involving dowry-related atrocities, and others linked to the police machinery have been reported by 50 per cent of the respondents. The fact that only 35 per cent of the respondents are satisfied with police intervention in human rights / dispute settlement, holds out a case for human rights education among policemen. Large number (220) of human rights violations reported by the respondents indicate the gravity of the situation existing in rural Kerala and the socio-economic background of the victims (mostly SC/STs, women and others dealing with the police machinery). About 15 per cent of the reported violations involve SC /STs and 14 per cent of the cases are connected with police atrocities. Out of the reporting respondents(62%), about 79 per cent hold the view that human rights organisations are instrumental in human rights awareness, prevention and education. It is also observed that NGOs and COs involve in such programmes better than the panchayat. Though Grama Sabha is considered a potentially useful forum for the human rights agenda, its intervention is rather modest; there is scope for the working group arrangement in Grama Sabha for human rights issues.

All categories of the respondents support the proposal for human rights education through the panchayat. Similarly 65 per cent of the sample welcomes 'Nyaya Panchayats' in the panchayat system. However, political interference is viewed as a major threat to the impartial operation of Nyaya panchayat; hence suitable safeguards will have to be instituted to make the

proposed Nyaya panchayats impartial, corruption-free and people - friendly. Analysis of people's preference for institutional alternatives in dispute settlement/human rights protection has brought out a strong case for human rights organisations in villages, especially in those inhabited by backward classes / weaker sections. In spite of the highly politicised environment existing in Kerala, covering elections as well, to local self governments, political parties are the least preferred agency in dispute settlement. Despite the critical attitude to the police apparatus, respondents have an express preference for it over political parties and panchayat, in local conflict resolution and dispute settlement.

The respondents have also made independent suggestions for protection of human rights and effective working of Nyaya Panchayats. Ward / panchayat level awareness programmes by HROs, COs, Panchayats and NGOs have been suggested by all the respondent groups. Similarly the need for a more detailed macro level survey / study on the state of human rights and introduction of a model NP on an experimental basis have also been suggested.

Chapter - 5

Conclusions and Suggestions

Human rights are universal legal guarantees protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity. Some of the most important characteristics of human rights are the following

- They are internationally guaranteed
- They are legally protected
- They focus on the dignity of human beings
- They protect individuals and groups
- They obligate states and state actors
- They cannot be waived / taken away
- They are equal and independent
- They are universal. They include a broad range of guarantees encompassing every aspect of human life and interaction. The popular rights are
- The right to life
- Freedom from torture and cruel, inhuman or degrading treatment or punishment
- Freedom from arbitrary arrest or detention
- The right to fair trial
- Freedom from discrimination
- The right to equal protection of the law
- Freedom from arbitrary interference with privacy, family, home or correspondence
- Freedom of association, expression, assembly and movement
- The right to vote and take part in government
- The right to just and favourable work conditions
- The right to adequate food, shelter, clothing and social security
- The right to health, education and property
- The right to development.

The implementation of human rights standard is closely watched at several levels like government agencies and services, human rights commissions, ombudsman, HROs, NGOs, community-based organisations, the courts, parliament, the media, professional associations, trade unions, religious organisations and academic institutions.

There has been in recent years considerable debate on both human rights and Panchayati Raj. A discussion on grassroots institutions like Panchayati Raj and their linkages with the question of human rights opens

up several new issues. The overall thrust of human rights is to create a social order where not only human dignity is guaranteed but the necessary socio-economic conditions are created for fuller development of every individual and thereby the entire population. This calls for not only freedom and emancipation of the oppressed but creation of institutions (like Panchayati Raj) which are democratic and conducive for such a purpose (Haragopal, 1994). We have undertaken the present study in the context of the line of thinking outlined above. The findings and the suggestions emerging from the study are summarised below. Being a pilot study with time and resource constraints, we have attempted only to identify human rights issues at the grassroots level (Panchayat) and the role of different agencies (including the Panchayat) in HR protection, promotion and education. As a corollary to the main agenda of investigation, the scope of reviving NPs as a participatory justice process is also examined.

As 72 per cent of the sample belong to socially, economically and educationally backward communities, the conclusions of the study can be taken as the opinion, views, and concerns of the backward and marginalised sections of the village population who are most vulnerable to HR violations and are deprived of involvement in different forms of participatory interventions in mainstream socio-economic life.

It is a well documented fact that women are more exposed to exploitation and HR violations; they constitute 47 per cent of our sample and their views on different issues also carry much significance in a study like the present one. The high rate of unemployment reported by the respondents is also a reflection of the poor attention paid by the society and the panchayat in particular, on the right to development. Since 46 per cent of the respondents belong to the age group of 31-50 years, their views are taken as a balanced one.

Irrespective of the sample categories, a higher percentage of the respondents (83%) has reported general awareness about human rights; however the level of awareness is comparatively low about HR protection,

leaving scope for HR interventions. The important HR issues in the study area are unemployment, police torture, interventions in matrimonial cases, dowry-related atrocities, torture etc. Reports on custodial atrocities and death due to poverty are few; however the existence of dowry-related atrocities have been reported by 50 percent of the respondents. HR violations by the police has left 35 per cent of the respondents dissatisfied with the police machinery in HR interventions and dispute settlement. It may be remembered that 40 per cent of the cases registered with the NHRC in 2001 has been against the police apparatus. The need for reforming the dealings of the police towards the public and HR education among them are the relevant inferences drawn from our study.

It is observed that people in the study area are well aware of HR violations in the locality, though the political leadership (in terms of the opinion of elected members of the Panchayat) is reluctant to accept the existence of HR violations. Our analysis of the violations reported (220) is an eye-opener on the nature and gravity of HR violations in rural Kerala. Our study endorses the dominant view that weaker sections including women are the worst victims of HR violations in work places, households, police station, public places etc. About 15 per cent of the reported violations involve SCs and STs and 14 per cent of the cases are connected with police atrocities. Dowry-related atrocities (7%) also need to be viewed seriously as they involve cases of exploitation of women and a threat to the institution of family. We have observed that the study area provides much scope for HR intervention by NGOs, COs, HROs etc. Majority of the respondents (62%) hold the view that HROs are instrumental in awareness, prevention and education in the study area; the Panchayat is found to be contributing the least in the above matter, compared to other agencies involved in the process, namely HROs, COs and NGOs.

Though Gramasabha is a popular forum under the PRI system, only very few HR issues are raised in it; however the scope of an HR working group in gramasabha is welcomed by 90 per cent of the respondents.

Members of COs and SHGs are the strong advocates of the above proposal. There has been general agreement on increasing involvement of panchayats in dispute settlement/ HR issues. Similarly the potential role of NPs, as a participatory institution in dispute settlement is also welcomed by the majority. The Panchayat as a potential forum for HR education is also widely shared but opinion is not in favour of reviving the old form of NPs as it leaves possibilities of political interference in its operation.

Opinion on institutional preferences in dispute settlement has brought out interesting conclusions with a lot of policy implications. Though multiple preferences are expressed, the most preferred dispute settlement/rights protection agency is HROs and the least preferred one is political parties. Free legal aid agencies and the judiciary are approved by the respondents next to HROs. Despite the critical attitude to the police machinery, respondents have much higher preference for it over political parties and the panchayat.

In the light of the present study the following suggestions are made.

1. There is a case for a state- wide research study to document participatory systems of dispute settlement.
2. Though human rights issues are not new to the macro situations, awareness and education need further strengthening at local levels especially in the clusters of weaker sections and women.
3. As there is a general tendency to turn to local police in cases of HR violations / disputes, human rights education and training have to be imparted to reform the police service.
4. Since elections to the offices of local self governments are contested on political ideologies, NPs may not be free from political interference especially in a highly politicised state like Kerala. Hence instead of reviving NPs, it would be better to strengthen HROs.

5. Panchayats being closer to the people in multifarious ways, they can meaningfully undertake HR promotion through educational programmes covering their officials/ members as well as the public.

There are strong indications in the government circles that participatory interventions in the justice process may be promoted in the programme of decentralised governance in Kerala. The Chief Minister of Kerala has told the delegates of the National Legal Workshop and Seminar at Kollam on 27th December 2001 that the State government was considering a proposal to establish NPs at the grama panchayat level to deal with minor offences. He hoped that NPs would lessen the burden of civil courts where more than 4 lakh cases had been pending for many years (Panchayati Raj Update, ISS 2001)

Annex I

The Universal Declaration of Human Rights : A Synopsis

This abbreviated version of the 30 Articles of the Universal Declaration of Human Rights provides an overview of the principal rights and freedoms that are every person's birthright.

The first two articles are fundamental principles underlying all human rights. Articles 3 to 21 comprise civil and political rights. Articles 22 to 27 refer to economic, social and cultural rights. The last three articles provide a framework of solidarity safeguarding the universal enjoyment of all human rights.

Article1	Right to freedom and equality in dignity and rights
Article2	Freedom from discrimination
Article3	Right of life, liberty and security of person
Article4	Freedom from slavery and servitude
Article5	Freedom from torture or degrading treatment
Article6	Right to recognition as a person before the law
Article7	Right to equal consideration before law
Article8	Right to remedy through a competent tribunal
Article9	Freedom from arbitrary arrest or exile
Article10	Right to a fair trial or public hearing
Article11	Right to be considered innocent until proven guilty
Article12	Freedom from interference with privacy, including home, family and correspondence
Article13	Right to freedom of movement and residence in one's own country and to leave and return at will
Article14	Right to asylum
Article15	Right to a nationality and freedom to change it
Article16	Right to marriage and protection of family
Article17	Right to own property
Article18	Freedom of belief and religion
Article19	Freedom of opinion and information
Article20	Right to peaceful assembly and association
Article21	Right to participate in government and in free elections and to equal access to public service
Article22	Right to social security
Article23	Right to work and fair pay for work
Article24	Right to rest and leisure
Article25	Right to adequate standard of living for health and well-being
Article26	Right to education
Article27	Right to participate in the cultural life of the community
Article28	Right to social order assuring human rights
Article29	Responsibility to community essential to free and full development of the

individual
Article 30 Freedom from State or other interference in any of the above rights

Annex II

Names and Address of NGOs included in the rolls of the Kerala State Human Rights Commission

1. Human Rights Protection and Welfare Council of Kerala, Kadakkavoor.P.O.,
Thiruvananthapuram
2. Consumer Guidance and Research Society of India, P.O.Aluva,
Ernakulam District.
3. Sevanam Centre for Social Services, Aluva.P.O., Ernakulam District.
4. Legal, Industrial and Socio Educational Society of India,
Kothamangalam.P.O., Ernakulam District.
5. Social Welfare and Educational Society, Mudikkal.P.O., Ernakulam District.
6. Human Rights Protection Council, Perumbavoor.P.O., Ernakulam District.
7. Consumer Guidance and Complaint Cell, Moovattupuzha.P.O.,
Ernakulam District.
8. OISCA - International, C-8.Jawahar Nagar, Nadakkavu, Calicut - 673 006

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Table – 4.2 Distribution of Respondents according to Sex, Age, Community, Educational Status and Employment

Respondents	No.	Sex		Community				Educational Status							Em	
		M	F	Forward	OBC	SC	ST	Illiterate	< 5 Std.	10 th Std	PDC	Degree	P.G	Professional	Govt.	Agri.
Panchayat Officials	8	5	3	3	5	0	0	0	0	1	2	1	3	1	8	0
Panchayat Members	8	4	4	5	2	1	0	0	0	5	1	2	0	0	0	1
Members of SGHs Women	26	0	26	5	5	15	1	1	8	10	4	2	0	1	0	2
Members of Communal Organisations	11	10	1	0	9	2	0	0	2	4	3	2	0	0	0	2
Men	34	34	0	1	5	24	4	0	12	17	5	0	0	0	1	3
Women	13	0	13	4	2	7	0	1	9	1	1	1	0	0	0	1
Total	100	53	47	18	28	49	5	2	31	38	16	8	3	2	9	9

Source : Field Survey

Table – 4.3 Distribution of Respondents according to Awareness :

Human Rights, death due to poverty, dowry related atrocities/ death, custodial torture/death and HR violation in Police Station.

Respondent	No. having general HR awareness	no. aware of HR protection in Panchayat	No. of beneficiaries of HR organizations	No.Aware of Death due to			No. aware of HR violations by the police	No. satisfied with police intervention HR/dispute settlement
				Poverty	Dowry related atrocities	Custodial atrocities		
Panchayat Officials	8	7	1	0	5	0	6	0
Panchayat Members	8	7	0	0	2	0	2	5
Members of SHGs(women)	20	19	12	8	12	14	10	16
Members of Communal Organisations	11	2	2	0	4	0	3	2
Men	25	13	18	7	18	14	21	4
Women	11	9	6	4	9	5	8	8
Total	83	57	39	19	50	33	50	35

Source : Field Survey

Table – 4.4 Awareness of Human Rights in the Panchayat and Nature of Violation

Respondents	No. Aware Of	Nature of Violation *																		
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	
Panchayat Officials	2	1	1	1	0	0	0	1	0	1	0	0	1	0	1	0	1	0		
Panchayat Members	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Member of SHGs (women)	18	9	5	1	1	0	3	6	0	4	2	0	3	1	0	0	4	6		
Members of Communal Organisation	8	5	0	2	0	0	0	4	0	1	0	0	0	1	3	0	2	4		
Men	29	4	8	5	3	2	3	15	2	12	2	2	3	0	3	2	7	18	1	
Women	12	6	4	0	0	0	0	6	0	3	0	0	1	0	0	0	1	3		
Total	69	25	18	9	4	2	6	32	2	21	4	2	8	2	7	2	15	31	1	

Source : Field Survey

* Human Rights Violation involving : 1. Women 2. Children 3. Poor 4. Illiterate 5. Political Parties 6. Religion 7. SC/STs 8. Atheists

9. Unemployed 10. Criminals 11. Ex-prisoners 12. Domestic Servants 13. Mixed Marriage 14. Widows 15. Separated 16. Dowry atrocities

17. Police atrocity 18. Custodial death 19. Election Candidates 20. Educational institution 21. Cultural institution 22. Place of work

23. Public property

Table 4.5 Human Rights Awareness and Role of Different Agencies in its Promotion / Education

Respondents	No Aware of programmes	Agencies involved *				HR issues raised in GS	Whether Settled	Scope of HR working group in Grama Sabha
		P	HROs	Cos	NGOs			
Panchayat Officials	2	1	0	0	1	3	1	7
Panchayat Members	6	0	5	0	1	2	2	7
Members of SHGs (Women)	17	1	16	0	0	14	6	25
Members of Communal Organisations	2	1	1	0	0	2	0	11
Men	23	0	16	3	4	16	10	28
Women	12	0	11	1	0	10	6	12
Total	62	3	49	4	6	47	25	90

Source : Field Survey

* P : Panchayat * HROs : Human Rights Organisations * COs : Communal Organisations * NGOs : Non -Governmental Organisations

Table – 4.6 Opinion on the Scope and Challenges of Nyaya Panchayats (NPs)

Respondents	No. heard of NPs	No. aware of Oorukkuttom	No. stating effectiveness of Oorukkuttom	No. welcoming NPs in PR system	No. favouring NP in				No. reporting positive effect of NPs on BCs, widows, women etc.	No. welcoming petition Grama Sabha to entertain NP
					Old form	With Changes	No. welcoming	No. fearing political		
Panchayat Officials	6	8	6	5	1	7	8	8	7	4
Panchayat Members	8	8	4	5	1	7	8	4	8	8
Members of SHGs (women)	9	15	14	13	4	22	6	18	13	21
Members of Communal Organisations	8	8	3	9	0	11	11	10	10	11
Men	18	31	15	23	1	33	33	23	24	32
Women	5	9	7	10	4	9	11	5	10	13
Total	54	79	49	65	11	89	77	68	72	89

Source : Field Survey

Table – 4.7 Agencies Preferred for Settlement of disputes in family, community, place of worship, marriage, property, environment etc.

Respondents	Agencies Preferred							
	Police Station	Community Organisation	Human Rights Organisation	Judiciary	Voluntary Organisation	Panchayat	Political parties	Free Legal Aid Agency
Panchayat Officials	1	0	1	1	0	1	3	1
Panchayat Members	2	0	0	0	0	7	0	1
Members of SHGs (women)	4	0	25	4	3	1	0	4
Members of Communal Organisations	0	7	4	0	0	0	0	2
Men	6	2	24	8	6	1	1	9
Women	2	1	10	3	1	1	0	0
Total	15	10	64	16	10	11	4	17