

The Gram Nyayalaya Act, 2008: Key to Reviving Grassroot Justice for Common People

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“Justice in the life and conduct of the State is possible only as first it resides in the hearts and souls of the citizens”.

- Plato

I. Introduction:

Justice and rule of the law for the millions residing in the rural areas of our country remains a painful illusion. The existing judicial system is neither accessible nor capable of delivering quick justice, apart from the forbidding cost involved, for the poor in the rural areas⁴. Equality and justice are indisputably two key facets of the idea of a modern, democratic and constitution-adhering India. The principles of equality and justice are realized by the State apparatus through the business of administration of justice. India's justice system is characterized by systematic problems, including corruption, delays, pendency, increasing costs, limited legal aid etc⁵.

Six decades of Indian democratic history tells us the story of political parties who have managed to win election based on the promise of “Electricity-Roads- Water”. Successive governments promised this over and over again. The issue of ‘Justice’ to common man was never raised as an election issue. A solid framework of justice for rural India is one of the most fundamental instrument essential to achieve socio-economic freedom. It took over sixty years for the parliament to start contemplating about speedy and timely justice to the rural poor and the government did this by enacting the Gram Nyayalaya Act, 2008.

II. Nyaya Panchyats: A Historical Perspective:

The system of Nyaya Panchayats is indispensable because it ensures a participatory and people-oriented system of justice, provides greater scope for mediation, conciliation and compromise, mitigates hardship of the rural people by

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 - 4 Mathur, S.N., *Nyaya Panchayats as Instruments of Justice*, (1997), P. 17.
 - 5 G. Meneka, S. Aditya, *Accessing Injustice: The Gram Nyayalaya Act, 2008*, Economic and Politically Weekly, Vol. XLV, No. 43, Oct. 23, 2010, P.16.

providing justice at the village level, relieves the judiciary of its excess burden by marginalizing arrears, expedites disposal of cases, facilitates adjudication of disputes without the assistance of lawyers, encourages rendering of justice with the knowledge of local culture, traditions of society and behavioural patterns, closer to the people geographically and psychologically, saves time, trouble and expense of parties and witnesses, sidelines the cropping up of illegal caste Panchayats and facilitates decentralisation in the administration of justice⁶.

The administration of justice by village panchayat and by particularly of the people in the administration of justice in India are as old as the villages themselves. Though there is some difference of opinion on the point whether or not panchayats in ancient India were truly representative bodies and had legal sanctions, there is considerable unanimity on the point that the panchayat as an agency for settling local disputes belongs to antiquity⁷.

II. I. Traditional Courts: Ancient India:

In ancient India the administration of justice is done only through an instrumentality of the court. The definition of an ideal court is given by *Manu* as under:-

“That place, where three *Brahmanas* learned in *Vedas* sit, as also the learned *Brahmana* appointed by the king, they regard as the court of *Brahmana*”⁸.

According to the *Brahaspati* the Courts are of four kinds⁹:-

- a) Pratisthita, court established in a fixed place such as a town;
- b) Apratisthita, circuit court;
- c) Mudrita, court presiding over by a judge who is authorized to use the royal seal;
- d) Sasita, court presided over by the King himself.

The description of tribunals by Narada shows that the highest court in the hierarchy is the court of king himself and the lowest on the ladder was the village council. The modern Gram Panchayats constitute the judicial machinery at the lowest ladder which are organized on the basis of the sovereignty of the people. From the Sanci Stone inscription of Chandragupta II, it appears that in ancient India panchayats were called *Pancamandali*¹⁰.

One of the most glaring defects of the present day procedure lies in the delay in deciding the cases. But in Hindu jurisprudence much care was taken to

6 For details, See, <http://www.garhwalpost.com/article/Gupshup/9398>. Visited on 27-08-2011 at 3:00 p.m.

7 *Supra note 1* at p.25.

8 Yasmindese nisidanti vipra vedavidastrayah I Rajanascadhikrto vidvan brahanastam sabamvidun II, *Manu*. VIII, p.11.

9 Sharma, S.D., *Administration of Justice in Ancient India*, (1988), p. 166.

10 *Id.*, p.167.

avoid delay. The delayed justice according to the ancient Hindu legal system was considered most dangerous to the State. Delay in deciding cases is tantamount to denial of justice i.e. death of justice¹¹.

II. II. Qualification and Jurisdiction of Traditional Courts:

About the qualification for the membership of these courts the ancient law givers lay down that they be well versed in Vedic dharma, self controlled, well born, noble, selfless, experienced and capable. The members of panchayats were considered best judges as they lived in that very place where a given dispute arose. These panchayats had jurisdiction over almost every type of dispute arising in the village community. They decided civil and criminal matters¹².

II. III. Indian Police Commission:

The Indian Police Commission of 1902-1903 in its report observed that "it is expedient to relegate the trial of petty offences to the village headman and the panchayats and where the system does not exist it shall be cautiously and experimentally introduced"¹³.

Mahatma Gandhi, Father of the Nation, conceived village panchayats as a potential instrument for the socio-economic and political transformation of the rural society and cultivation of democratic way of life at the grass root level¹⁴. The various committees e.g. Balwantrai Committee, Ashok Mehta Committee etc. were appointed by the State Government to evaluate the working of the nyaya panchayats presented a discouraging picture and Maharashtra Evaluation Committee (1971) felt that the entrustment of the judicial function to the nyaya panchayat on the basis of democratic election or otherwise are both out of place and unworkable and felt that nyaya panchayat were languishing for want of funds, secretarial assistance, lack of powers and people's faith and should be abolished. The recommendation of the National Police Commission was that "the courts proposed at grass root level may be called *Gram Nyayalaya* avoiding any reference to panchayat as such that they may not be viewed as an adjunct or extension of the panchayats which are totally executive bodies with which political functionaries are associate"¹⁵.

III. 114th Law Commission of India Report on Gram Nyayalaya:

According to the recommendation of 114th Law Commission the atmosphere in the rural area was foredoomed to failure due to the lack of

11 *Supra note 6* at pp.190-191.

12 *Supra note 1* at 26.

13 The Indian Police Commission 1902-1903, Para 51, p.145. *See* also <http://bprd.nic.in>. Visited on 28-08-2011 at 11:00 a.m.

14 Sharma, B.R., *Socio-Economic Justice Under Indian Constitution*, (1984), p.248.

15 *Supra note 1* at pp.35-36.

confidence in people participation in the administration of justice. 'Justice according to the law' has been interpreted to mean 'Justice rendered by those who know law'. In other words advanced knowledge of law is a pre-requisite for dispensation of justice¹⁶.

In order to avoid any possible confusion arising from the distressing experience of the present state of Nyaya Panchayat the Law Commission recommends for the new form which is couple of steps ahead of it. After examining various alternative suggestions, the Commission recommends the name *Gram Nyayalaya* and observed that ultimate constitutional goal i.e. justice at grass root level, which should be inexpensive, easily available, non-formal and substantial can be achieved only by setting up this machinery¹⁷.

IV. Constitutional Perspective:

It has been rightly said that, "*Justice delayed is justice denied*"¹⁸. Nothing is so frustrating to the common man as finding that after he has suffered a grievance or a wrong, it takes years to get justice from the court. Delays add to the cost of the litigation in addition to mental worries. Justice should not only be swift but it should be cheap also. If the common man finds that he is unable to obtain redress quickly, easily and cheaply he will naturally lose faith in the judiciary¹⁹.

"Justice- Social, Economic, Political"²⁰, enshrined in our Constitution was not easy for the common man to get. Lt. Smt. Indira Gandhi promised the much awaited justice during the time of emergency. Her Government only managed to insert a new article in the constitution Article 39A i.e. equal justice and free legal aid, which has been added to invest the legal process with functional relevance and promotion of social justice and for providing social justice to the weaker section of the society. Article 39A, Constitution of India provides that state shall promote justice on a basis of equal opportunity and provide free legal aid and to ensure that opportunity for securing justice are not denied to any citizen by reason of economic or other disability²¹.

But the Lt. Smt. Indira Gandhi government was careful enough to insert that clause in part-IV of the constitution, i.e. in Directive Principles of State

16 *Law Commission of India*, 114th Report, Chapter V, Para 5.9, p.20.

17 *Id.*, Para 5.12, p.21.

18 Quotation by William Ewart Gladstone (1809-1898) in 19th Century.

19 Sharma, R.A., *Justice and Social Order in India*, (1984), p.383.

20 *Preamble*, Constitution of India.

21 *Art. 39A* of COI states that: - The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to secure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Policy, so that if government cannot provide free legal aid, it cannot be challenged in the court of law. Unlike the fundamental rights, free legal aid is not an enforceable right, but it's left to the policy makers to ensure as and 'when they feel necessary'.

IV. I. The Constitution (73rd Amendment) Act:

The Constitution (73rd Amendment) Act, 1992 has been enacted to give constitutional status to the Panchayati Raj. It seeks to provide "democracy of grass roots" as it intends "to give power to the people"²². However, the 73rd Constitutional amendment being silent about the justice dispensation function of the panchayats resulted in many states discontinuing Nyaya Panchayat institutions under the new State Panchayati Raj enactments.

V. The Gram Nyayalayas Act, 2008:

The concept of the Gram Nyayalaya was proposed by 114th Law commission (LC) report way back in 1986 while keeping in mind the long history of customary dispute resolutions in villages which was local, speedy and inexpensive. The Nyayalaya is proposed as the statutory avatar of these existing practices. The Law commission report also explains the two objects behind it. First is to introduce a participatory forum of justice and the other is to address the backlog and ever increasing arrears of the District and High Court.

Data reveals that there were 54,644 cases pending in the Supreme Court as on 30th November 2010; 40,60,709 are the number of cases pending in the High Court's as on 30th November, 2010 and 27,275,953 are the cases pending in district, subordinate courts as on 31st December 2009. The total number of pending cases before the various courts of our country stands at an alarming 31,391,526²³.

The Law commission also observed that a Nyayalaya would be ideally suited for the villages as the nature of disputes coming before such a court would be simple, uncomplicated and easy of solution. Such being the nature of dispute, the law Commission recommended that the Nyayalaya should not be enmeshed in procedural claptrap. Accordingly, the new court is being asked to use its discretion, to conciliate, to depart from the Codes of Procedure and Evidence and to follow principles of natural justice.

V. I. Salient Features of the Act:

The main object of the Act is to provide for the establishment of Gram Nyayalaya at the grass roots level for the purposes of providing access to justice to the citizens at their doorstep and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities and for matters connected therewith or incidental thereto. The salient

²² Article 40, Constitution of India.

²³ *Supra* note 3.

features of the Act are as under:-

- i) The State Government after consultation with the High Court may establish one or more Gram Nyayalaya for every panchayat at intermediate level and also specify the local limits of the area to which the jurisdiction of a Gram Nyayalaya shall extend²⁴.
- ii) Each Gram Nyayalaya shall be headed by a Nyayadhikari, who shall have the qualifications of the first class magistrate and be from a cadre created by the Governor and the High Court. Nyayadhikari are strictly judicial officers. They will be drawing the same salary, deriving the same powers as the first class magistrates working under the courts²⁵.
- iii) The Nyayalaya will be a mobile one and will conduct its proceedings in close proximity to the place where the parties ordinarily resides or where the cause of action had arisen²⁶.
- iv) The concept of plea bargaining is also included in the Act. A person accused of an offence may file an application for plea bargaining in Gram Nyayalaya²⁷.
- v) In civil cases, in execution proceedings, the Gram Nyayalayas shall not be bound by the Code of Civil Procedure, 1908. and will be guided by principles of natural justice²⁸.
- vi) It is explicitly stated in Section 26 of the Act, that the Nyayadhikari in addition to his regular adjudicative functions, will wherever possible, assist, persuade and conciliate the parties in arriving at a settlement²⁹.
- vii) The proceedings of the court will be carried out in the local language³⁰.
- viii) Every police officer functioning within the local limits of jurisdiction of a Gram Nyayalaya shall be bound to assist the court in the exercise of its lawful authority and whenever the police officer, revenue officer or government officer directed by the court for the assistance then he shall be bound to provide such assistance³¹.

So these are some important provisions under the Act which needs strict implementation for their proper working.

24 Section 3, The Gram Nyayalayas Act, 2008.

25 *Id.*, Section 5, 6, & 7.

26 *Id.*, Section 9.

27 *Id.*, Section 20.

28 *Id.*, Section 25(2).

29 *Id.*, Section 26.

30 Section 29 of the Gram Nyayalayas Act, 2008 states that:- "The proceedings before the Gram Nyayalaya and its judgment shall, as far as practicable, be in one of the official languages of the State other than the English language".

31 *Id.*, Section 35.

VI. Inadequacies in the Gram Nyayalaya Act, 2008:

The Act contains the provisions which are likely to restrict access to justice in the following ways:-

VI. I. Schedule I of the Act lists those offences which can be adjudicated by the Gram Nyayalayas. Part II of the schedule lists some statutes and offences committed under those Acts that are within the ambit of the criminal jurisdiction of the Gram Nyayalaya. Most of these legislations are social welfare legislations and directly affect the impoverished. Moreover, Act does not incorporate proper procedures for such kind of disputes that will be taken up for consideration by these courts.

VI. II. There is a provision for the accused person to file an application for plea bargaining in Gram Nyayalayas under Section 20 of this Act. The 142nd Report of Law Commission recommended a “competent authority” would be appointed as plea judges. Unfortunately Act does not provide for such competent authority. This may result in injustice and hazardous for the fair trial.

VI. III. In civil matters, the Gram Nayayalaya has the power of a civil court and judgement passed by it shall be executed as if it were a decree of a civil court. However, these courts are not bound by the procedure in respect of execution of decree as provided in the Code of Civil Procedure and shall be guided by principle of natural justice. Similarly, these courts overlook the principle of admissibility of evidence as envisaged in Indian Evidence Act, 1872. Thus, these courts sans civil procedure.

VI. IV. The Act provides U/S 24(7) that the proceeding shall, as far as practicable be consistent with the interest of justice and the hearing shall be continued on a day- to-day basis until its conclusion, unless the Gram Nayayalaya finds the adjournment of the hearing beyond the following day necessary for reasons to be recorded in writing. This provision employs non binding language and is conditional while dealing with an issue of prime importance. Any proceedings in the court of the law must be consistent with the interest of justice in all circumstances; however, this provision allows for non compliance when it is not ‘practicable’.

VII. Conclusion:

Government has been advocating the Gram Nyayalaya Act, 2008. This Act is to bring the same formal judicial set-up to the village level. This would not address the needs of the rural poor. It would restrict access as compared to the nyaya Panchayats. It has an expensive proposition. At least 2000 such new courts and recruitments of 4000 fresh judges, judicial magistrate’s first class and civil judges are required. Furthermore, the Gram Nyayalaya with a Nyayadhikari

and Lawyers representing the parties will possibly meet the same fate- delay, cost, technicality creeping in and ultimate alienation of party from the process of justice.

Inspite of all these shortcomings, if the Gram Nyayalaya idea is successfully implemented, it will be a revolutionary step for bringing justice to the doorstep of rural poor. It can fulfill the vision enshrined in our constitution- "to secure to all citizens the justice- social, economic, political".