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The Role of Nyaya Panchayat in Delivery of Rural Justice in India: A Critical Analysis

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Himanshu Anand**

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Abstract

Although the Constitution of India assures of an all-round justice delivery to all the corners of India, the real-time portrait of the rural justice administration speaks otherwise. During the first few years of independence, India was familiar with the operation of Nyaya Panchayat which was, in turn, founded on the Panchayat ideology of participatory grassroot justice. Despite being an instance of indigenous justice instrumentality, the efficiency of it faded with time as we reached 1970-80s. After making several attempts towards the revival of this ideology, the Parliament finally enacted the Gram Nyayalayas Act, 2008 in order to re-establish the indigenous form of dispute resolution system by way of learning lessons from past failures. However, a revisit to the current Gram Nyayalaya System leaves us in surprise that the span of 11 years from the date of the enactment till the date does not reflect any considerable changes in the portrait of justice delivery across rural India, except a sharp departure from the erstwhile Panchayat ideology. Hence, the present article explores the status of the rural justice system from the perspective of the role of Nyaya Panchayats and seeks a comparison of scenarios before and after the independence. Further, the article conducts a critical analysis of the contemporary Gram Nyayalayas after the 2008 enactment, with a special emphasis towards its sustainability as against the Panchayat ideology. In light of the analysis conducted, the authors have henceforth put forward suitable suggestions in this context.

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Introduction

The periphery of justice, though, is enshrined in the Preamble of the Indian Constitution,[1] the ideals enshrined in it are a product of the 1917 Russian Revolution. Being a proportionate mixture of various constitutions and borrowed clauses, the Constitution of India has not only envisioned the incorporation of justice through its Preamble but also adopted the same vision in its letter and spirit through the Directive Principles of State Policy.[2] Emphasizing on the 'Justice' as the Preamble of the Indian Constitution[3] speaks of, it altogether reflects the attainment of three kinds of justice: Social, Economic and Political, to all of its citizens. Time and again, the three prime organs of the Constitution have been striving to ensure such security of justice among all the Indian citizens, irrespective of diversity and heterogeneity. To achieve this purpose, there was a glaring need for recognizing and regulating the lower tier administration system while considering the full-fledged diversity and necessity for uniform access to administration of justice in the nooks and corners of the country. The Panchayati Raj, despite its existence through the Gram Panchayats and Nyaya Panchayats in the context of executive and judicial hierarchy respectively, was infamous as a blunt weapon with no constitutional status. Although, the 73rd Constitutional Amendment Act of 1992[4] successfully blessed the aged Panchayati Raj Institutions in India with due Constitutional recognition, the said instruments acted as an administrative component more efficiently than as the indigenous dispute settlement bodies due to the absence of any effective judicial power vested with the Nyaya Panchayats. With a view to restore this balance disorder and sheer deficiency in securing access to justice at the grassroot level, the Gram Nyayalayas Act[5] was enacted in 2008 to once again bring another breakthrough in rural level by revitalizing the role of Nyaya Panchayats in the delivery of justice and its ideals in rural India. The present article, therefore, analyses the differences between the roles of Nyaya Panchayats and Gram Nyayalayas, in light of the real-time portrait of the indigenous justice delivery system in India.

1 INDIA CONST. Preamble.
2 INDIA CONST. art. 39A.
3 *Id.* at Preamble.
4 INDIA CONST. Part IX, *amended by* The Constitution (73rd Amendment) Act, 1992.
5 The Gram Nyayalayas Act, 2008, No. 4, Acts of Parliament, 2009 (India).

Erstwhile Nyaya Panchayats - The Scenario in Pre & Post - Independent India

Pre-Independent India

The advent of Nyaya Panchayat relates back to the Village Courts Act, 1888[6] under which the first Nyaya Panchayat was established in Madras. Subsequently, at that time, many other states followed the footsteps of Madras, subject to certain modifications and alterations in their respective legislations. Further, in 1907, the existence of the Nyaya Panchayat was highlighted by the Royal Decentralisation Commission with regard to its constitution and powers in administration as well as adjudication of petty cases, both civil and criminal.[7] More or less, the jurisdiction of the Nyaya Panchayats in civil cases was confined to the suits relating to recovery of movable property, liquidated damages that had arisen from a contract, compensatory damages caused by cattle trespass etc. In contrast, the Nyaya Panchayats in the criminal cases were not conferred the power to impose imprisonment but only fine in extreme circumstances. The procedure adopted in Nyaya Panchayats was flexible and not strictly based on the Indian Evidence Act,[8] the Code of Civil Procedure[9] and the Code of Criminal Procedure.[10] The members of Nyaya Panchayats were chosen based on an election, either direct or indirect,[11] and the lawyers had no right to appear and plead before it in most of the states in India.[12]

Post - Independent India

The process of rural justice evolution was initiated in independent India with the Constituent Assembly being entrusted with the drafting of the Indian Constitution. Although the Constituent Assembly maintained a firm stance in establishing a judicial hierarchy proceeding from the courts at the district level at the bottom, there was continuous demand in and outside the Constituent Assembly of adopting an indigenous and decentralized dispute resolution system. Village Panchayats were often claimed as the concrete form for

6 The Tamil Nadu Village Courts Act, 1888, No. 1, Acts of Tamil Nadu State Legislature, 1889.

7 II Law Commission of India, *14th Report: Reform of the Judicial Administration*, Ministry Of Law, Government Of India, ¶ 3, p. 874 (1958), https://lawcommissionofindia.nic.in/1-50/ Report14Vol2.pdf.

8 The Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

9 The Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908 (India).

10 The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

11 Law Commission of India, *supra* note 7, at 883, ¶ 10.

12 Law Commission of India, *supra* note 7, at 884, ¶ 14.

grassroot level of dispute resolution system through Nyaya Panchayats.[13]

Further, the role of village panchayat shaping Indian history was again brought to the limelight by the Law Commission of India in its 14th Report, 1958. It is evident from the report that the panchayat was mainly an autonomous product by villagers for their convenience without having qualified professionals or standard legal procedure to resolve the disputes.[14] However, despite the recommendations of the Civil Justice Committee (Rankin Committee), 1924-25[15] to confer both civil and criminal disputes to the Nyaya Panchayats, the nature of the disputes entrusted with these bodies were simple in nature which would otherwise intend to disrupt the harmony of the rural environment. The Law Commission, therefore, concluded that the Panchayats were vested with a wide authority and command to act in accordance with the will of common rural people.[16]

The 14th Report of the Law Commission of India on 'Reform of the Judicial Administration'(1958)[17] was therefore founded on the autarchy of the Village or Nyaya Panchayats as the self-governing units. Proceeding further, Nyaya Panchayats although were exempted from the strict application of the Civil or Criminal Procedural laws, the customary rules based on its general respect were allowed to be applicable for adjudicating the disputes.[18]

Despite carrying out the ideals of indigenous access to justice, the decisions arisen from the disputes were devalued due to the ambiguity underlying the nature of disputes and the relevance of these bodies in the judicial administration. As Upendra Baxi and M. Galanter[19] specify that the effectiveness of Nyaya Panchayat in several states was declined miserably by the end of the 1970s with the rise of case filings in courts at district level. On one

13 Videh Upadhyay, *A Study to Review and Strengthen Nyaya Panchayats in India: Including Aspects of Constitutionality of Nyaya Panchayats with Reference to the Nyaya Panchayat Bill, 2009,* Samarthan - Centre For Development Support, (May. 2011), https://www.pan chayat.gov.in/documents/20126/0/A+STUDY+TO+REVIEW+AND+STRENGTHEN+NYAYA.pdf/5af4bd57-d247-b36d-9ca3-a972f49077a1?t=1554869249980&hLDf=false&hLDf=false&hLDf=false&hLDf=false&hLDf=false.

14 Law Commission of India, *supra* note 7, at 874, ¶ 3.

15 III Civil Justice Committee, *Report of the Civil Justice Committee 1924-25*, Government Of India (1925), https://indianculture.gov.in/report-civil-justice-committee-1924-25.

16 Law Commission of India, *supra* note 7, at 876-877, ¶ 8.

17 Law Commission of India, *supra* note 7, at 874.

18 Law Commission of India, *supra* note 7, at 883, ¶ 11,

19 U. Baxi & M. Galanter, *Panchayat Justice: An Indian Experiment in Legal Access*, Upendrabaxi.In, 1979, http://upendrabaxi.in/documents/Panchayat%20justice%20an%20indian%20experiment%20in%20legal%20access.pdf (last visited on Mar. 8, 2021).

hand, the 1962 Study Team on the Nyaya Panchayats constituted by the Ministry of Law[20] portrayed the bright future of the Nyaya Panchayats, yet on the other hand, the rate of total case filings considerably dropped in states like Uttar Pradesh, Bihar, Rajasthan etc. Thereafter, when another study was undertaken in 1982 by Meschievitz and Galanter,[21] the evidence of the existence of Nyaya Panchayat had almost disappeared from these states. The study thus identifies several drawbacks and abnormalities underlying the structure and authority vested with the Nyaya Panchayat System. There are various loopholes in the said system, so discovered by the 1982 study. *Firstly*, there were limitations in funding capacity. *Secondly*, there was ambiguity in the jurisdiction to hear disputes. *Thirdly*, the adjudicators or the Nyaya Panchas were necessitated to strictly follow the substantive laws, whereas most of them were laymen. *Fourthly*, no legal knowledge is required as an eligibility criterion for recruitment as Nyaya Panchas. The criteria for recruitment were the minimum age limit of 30 years and written as well as reading ability of Hindi. *Fifthly*, there was absence of impartiality and fairness in delivering justice. The Nyaya Panchayats were a failure in terms of striking a balance between customs and codified laws, maintaining fairness, transparency and conscience in terms of reaching an amicable settlement between the parties.[22]

Considering the above discoveries, it is axiomatic that the experiences gained from the operation of the Nyaya Panchayat and the data coupled with its efficiency portray a glaring need for rural justice reforms with respect to its restructuring and revitalizing the power, jurisdiction, composition and statutory recognition of the Nyaya Panchayats, by means of an active interference of the Indian policy makers.

Reviving Nyaya Panchayats into Gram Nyayalayas - An Attempt from 1986

The journey of the revival of the extinct Nyaya Panchayats was first initiated when the Law Commission of India submitted its 114th Report in 1986.[23] The Report was published on Gram Nyayalayas with an objective to shift the Nyaya Panchayat model towards a new dawn. The 114th Report stressed and suggested the various points as the key to such

20 Ministry of Law, *Report of the Study Team of Nyaya Panchayats*, Government Of India (Apr., 1962), https://indianculture.gov.in/report-study-team-nyaya-panchayats-1962.

21 C.S. Meschievitz, M. Galanter, *In Search of Nyaya Panchayats: The Politics of a Moribund Institution,* 2 The Politics of Informal Justice 47, 61 (1982).

22 *Id.* at 57, 70.

23 Law Commission of India, *114th Report: Gram Nyayalaya*, Government Of India (Aug. 12, 1986) https://lawcommissionofindia.nic.in/101-169/Report114.pdf.

reconstruction. *Firstly*, encouraging the idea of participatory justice.[24] *Secondly*, need for adjudicators having knowledge in local culture, customs and conditions.[25] *Thirdly*, there must be a village court consisting of a panel of three (3) members, out of which the head of the panel shall be a judicial official, along with two (2) lay-judges. The judicial official must be selected from the State-cadre of judges as maintained by every state, and the lay-judges would be appointed through a selection process by the panel of the concerned District Magistrate and the District & Session Judge.[26] *Fourthly*, although Nyaya Panchayat members were selected through a democratic direct election process, the law commission suggested no democratic election process for Gram Nyayalayas.[27] *Fifthly*, the Report did not specify any pecuniary jurisdiction vested with the proposed Gram Nyayalayas[28] but conferred subject-matter jurisdiction in civil cases to the Gram Nyayalayas by enclosing a list of civil subject matters, thus protracting the scope of this system unlike the case of Nyaya Panchayats.[29] *Sixthly*, the 114th Report recommended the grant of criminal jurisdiction to Gram Nyayalayas comparatively wider than earlier it had been with Nyaya Panchayats. The reason behind the same is the constitution of the proposed adjudicatory panel consisting of judicial officer and lay-judges.[30] *Seventhly*, unlike earlier, the lawyers were proposed not to be exempted from appearing and pleading before the Gram Nyayalayas.[31] With regard to the application of the Procedural Laws, the Law Commission of India recommended the exclusion of the Civil Procedure Code and the Indian Evidence from the Civil case by way of adopting a simple procedure, though the Code of Criminal Procedure was still allowed to be applicable.[32] *Eighthly*, the idea of site travel or mobile court was proposed in the operation of Gram Nyayalayas in order to collect evidence from local dispute sites and facilitating the resolution process as accessible as possible.[33]

Therefore, through the 114th Report, the Law Commission of India for the very first time introduced a hybrid model, founded on the combined features of formal courts and the erstwhile Nyaya Panchayats, with the sole aim to boost the rural justice administration in India.

24 *Id.* at ¶ 1.2 (1), 3.2, 5.9.
25 *Id.* at ¶ 3.3.
26 *Id.* at ¶ 3.7, 5.13, 5.16.
27 *Id.* at ¶ 3.5, 5.15.
28 *Id.* at ¶ 6.2.
29 *Id.* at 27, ¶ 3.11, 6.2.
30 *Id.* at ¶ 3.12, 6.3, 6.10.
31 *Id.* at ¶ 6.11.
32 *Id.* at ¶ 6.7.
33 *Id.* at 31, ¶ 4.4, 6.6.

Enacting the Gram Nyayalayas Act, 2008

Mostly, the recommendations so suggested in the 114th Report of the Law Commission of India[34] was attempted to transform into reality by way of enacting the Gram Nyayalayas Act, 2008.[35] Where on one hand, the proposals regarding mobility and frequent site visits were included in this Act, the concept of 'participatory justice' was completely excluded from the purview of the Act. Therefore, a quick analysis of the Gram Nyayalayas Act clearly evinces not only the departure from the erstwhile Nyaya Panchayat system but also the Recommendations moved forward by the 114th Law Commission Report of 1986.[36] There are various departures witnessed in the Act of 2008. *Firstly*, the erstwhile Nyaya Panchayats were exempted from the strict application of the procedural laws, both civil and criminal. The 114th Report, however, recommended such an exemption in civil matters and not in criminal matters, in which such application was proposed to be reduced a bit. On the contrary, the Act of 2008 maintains the stance by providing application of procedural laws in criminal cases, provided that those cases will be heard through summary trials at the first instance. The application of the criminal procedural laws will only be allowed if the Nyayadhikari thinks it fit and necessary to apply.[37] *Secondly*, for civil matters, the Gram Nyayalayas Act prescribes a standard procedure that reflects the departure from many significant provisions of the Code of Civil Procedure, 1908[38] in terms of substantial clauses. To deal with any incidental matter involved in a civil proceeding, Section 24(6) of the 2008 Act confers the power to the Gram Nyayalayas to adopt any procedure as it deems fit and reasonable for the purpose of preserving the ends of justice.[39] *Thirdly*, the Indian Evidence Act of 1872 is exempted from application in both criminal and civil cases tried by the Gram Nyayalayas. Therefore, the Gram Nyayalaya by virtue of Section 30 of the statute[40] is empowered to receive and regard any report, document, matter, statement or information as evidence if it may be of assistance to decide a dispute, irrespective of its inadmissibility under the Indian Evidence Act. *Fourthly*, for civil matters, the Gram Nyayalayas Act mandates conciliation[41] as the primary resolution method to follow at the first attempt. Such conciliation must proceed in accordance with the manner directed by

34 Law Commission of India, *supra* note 23, at 56 - 58.
35 The Gram Nyayalayas Act, *supra* note 5.
36 Law Commission of India, *supra* note 23, at 56 - 58.
37 The Gram Nyayalayas Act, *supra* note 5, § 18, 19.
38 The Code of Civil Procedure, *supra* note 9.
39 *Id.* at § 24.
40 *Id.* at § 30.
41 *Id.* at § 26.

the High Court followed by the establishment of a panel of conciliators[42] to be maintained by the Gram Nyayalayas. *Fifthly*, a panel consisting of one judicial officer and two lay-judges was the model proposed by the Law Commission 114th Report of 1986, due to the presence of persons familiar with substantial laws and local customs, in the adjudication panel. The Gram Nyayalayas Act 2008 portrays a sharp departure from such model by laying down that the composition of each Gram Nyayalaya will be chaired by a single adjudicator or Nyayadhikari, qualified to be a Judicial Magistrate of the First Class at the least. Hence, the absence of experienced adjudicators is well-evident from this composition structure.[43] *Sixthly*, the lawyers were explicitly barred from appearing before the majority of the erstwhile Nyaya Panchayats, whereas the Gram Nyayalayas Act re-establishes the concept of legal representation by stipulating no such bar on the lawyers. In this respect, the Gram Nyayalayas Act of 2008 broadly accepts the adversarial system of adjudication as mentioned in the 114th Report.

An Analysis of Ground-Level Justice Delivery with reference to the Erstwhile Nyaya Panchayats and the Current Gram Nyayalayas Model

Delving deeper into the concept behind equal access to justice, the Gram Nyayalayas Act, 2008 by no stretch of imagination endeavours to preserve the spirit of panchayat ideology by means of adopting fair legal representation, conferring wider civil and criminal subject-matter jurisdiction. Although the panchayat ideology promotes amicable dispute resolution, the Gram Nyayalayas unlike the erstwhile Nyaya Panchayats, departs from the same and re-establishes the adversarial mode of adjudication. Nonetheless, the present scenario of the Gram Nyayalayas, apart from the adjudication process, also promotes the amicable dispute resolution method in civil cases by providing due importance to the Conciliation mode.[44] Hence, the nature of the Gram Nyayalayas Act 2008 with respect to the Panchayat ideology is revitalized in the sense that it was recreated with certain departures from the original ideology in order to suit the needs of a dynamic society.

It is pertinent to mention at this juncture that out of all the Indian states, only the states of Madhya Pradesh, Rajasthan and Maharashtra had implemented the system of Gram Nyayalayas more efficiently than other states. This being said, shows the preliminary

42 *Id.* at § 27.
43 *Id.* at § 5, 6.
44 *Id.* at § 26, 27.

statistics as extracted from a 2013 study[45] that Madhya Pradesh topped with 89 Gram Nyayalayas in terms of effective operationalization of the statutory Gram Nyayalayas. Rajasthan being the second-highest in that respect, effectively operates 45 Gram Nyayalayas followed by Maharashtra with 9 Gram Nyayalayas. The drastic gap between the second and third highest positions with 45 and 9 Gram Nyayalayas respectively reflects an unfortunate reality of the access to delivery of justice at the grassroot level, even as of today.

Further, the study highlights multiple findings[46] with regard to the success of Gram Nyayalayas Act in reality. *Firstly*, the Gram Nyayalayas so existed today in these states are similar to Judicial Magistrate First Class Courts which are just renamed as Gram Nyayalayas in the course of designated village visits on certain days and for the sake of statutory compliance under Section 6 of the Act of 2008. Section 6 of the Act makes it mandatory to head each Gram Nyayalaya by a Nyayadhikari, qualified to be a Judicial Magistrate of the First Class.[47] *Secondly*, the Nyayadhikari who headed the Gram Nyayalaya in these states also heard the same criminal matters paralleled with the Judicial Magistrates First Class in regular courts. This is because the criminal cases of at least two out of three Gram Nyayalayas were shared in a docket with the regular Magistrate's court. This phenomenon, by no stretch of imagination, aids to fade away the ideals of ground-level rural justice delivery enshrined in the concept of Panchayat Raj.[48] *Thirdly*, although the external setup and the court decorum in these Gram Nyayalayas were appropriate, the real-time scenario with respect to the professional representation, legal application, proper examination and other procedural applications were significantly poor and extraordinarily low in quality. Unlike the statute mandates, the Gram Nyayalayas today lack in conducting the conciliation mode of resolution by way of maintaining an expert panel, due to a shortage of resources in terms of skilled manpower or location barriers.[49]

Fast-forwarding the screenplay from 2013 to the current scenario, it has been noticed from various files available on the Government of India website that the Central Government has been aiming to sanction a significant quantum of financial assistance to various states in order to accelerate the process of establishing more number of Gram Nyayalayas

45 Official Debates of Rajya Sabha, *Written Answers to Unstarred Questions: Working of Gram Nyayalayas*, I Parliament Of India, Session Number 225, p.145, (Mar. 19, 2012) https://www.rsdebate.nic.in/handle/123456789/606517?viewItem=browse.

46 Shishir Bail, *From Nyaya Panchayats to Gram Nyayalayas: The Indian State and Rural Justice*, 11(1) Socio-Legal Review 83, 97-98 (2015).

47 *Id.* at 97.

48 *Id.* at 97.

49 *Id.* at 98.

followed by its effective operation. For example, recently as of January, 2021, the State of Andhra Pradesh received a sanction of approx. 59 lakhs from the Centre for the purpose of incorporation and operation of 42 Nyayalayas.[50] At the same time, the scheme[51] formulated in 2017 with regard to effective operation and assistance to the Gram Nyayalayas across the country is being extended from time to time,[52] to expand the reach of rural justice by letters, spirit and also in quantity.

However, at the same time, if the quality is the determining factor to look into, it can easily be observed from the aforesaid discussions and observations of the new law and reality, that the modern Gram Nyayalaya system, by substantially departing from the erstwhile Village ideology, recreated a new hybrid system only in letter but not in spirit. Considering its role in the criminal justice delivery system, we can safely assume from the data available that the Courts of judicial magistrates of first-class currently play the similar and parallel roles as that of Gram Nyayalayas in reality - which automatically leads to no autoimmunity of the rural justice system from the regular court procedure and adds due stress to the vice of pendency. On the other hand, while talking about civil disputes, there is a mere possibility that the village ideology can still be followed in such cases due to no strict application of procedural laws and facilitating the parties through an amicable mode of resolution at the first attempt. The Gram Nyayalayas Act nonetheless is an applaudable attempt, but without having a tint of erstwhile Panchayat ideologies retained at its core, it eventually reflects no difference from the existing justice system in India, containing a plethora of unsettling concerns till date.

Conclusion

Nyaya Panchayats carrying the ideals of a village panchayat were at a standstill despite receiving several attempts to revive its operation since the time of independence. After evincing the failure of these institutions, the Gram Nyayalayas were brought into the picture to strike a difference in contributing to a meaningful rural justice reform. The

50 Ministry of Law and Justice, *Central Assistance towards Recurring and non-recurring expenditure for establishing and operationalising 42 Gram Nyayalayas in the State of Andhra Pradesh-regarding*, Government Of India (Jan. 21, 2021), https://doj.gov.in/sites/default/files/GN%20 Sanction%20 Andhra%20Pradesh.pdf.

51 Ministry of Law and Justice, *Establishing Gram Nyayalayas by the State Governments- General guidelines for central assistance to be provide to the States*, Government Of India (Dec. 16, 2009), https://doj.gov.in/sites/default/files/gmn_1.pdf.

52 Ministry of Law and Justice, *Continuation of the Scheme for Establishing and Operationalising Gram Nyayalayas from 01.04.2017 to 31.03.2020-Regarding*, Government Of India (Oct. 27, 2017), https://doj.gov.in/sites/default/files/GN%20cont.%20order.pdf.

problem however lies in the idea of adopting differential features i.e. focusing too much on bringing different features and shifting from the mainstream village ideology founded on participatory justice. The current Gram Nyayalayas, thus, took the perfect shape of a formal court, losing the very traits of rural justice ideology. In these circumstances, a need of the hour is to make meaningful attempts to return to the erstwhile Nyaya Panchayat system with internal modifications or amendments, so as to preserve the originality of panchayat ideology and contributing effectively as well as expeditiously in the rural justice delivery with the concerted effort of the Central and State Governments.